OSCE
Deutschland 2016

Vienna, 11 October 2016

Independent Evaluation Report of the German Institute for Human Rights

Excellencies,
Dear colleagues,

Please find attached the independent evaluation report regarding the implementation of selected OSCE commitments on human rights and democracy in Germany, which was initiated on the occasion of the German OSCE Chairmanship 2016 and recently presented in a side event at the HDIM in Warsaw.

Following the Swiss and Serbian examples, and in the spirit of our strong focus on implementation of commitments, Germany as OSCE Chairmanship has undergone an evaluation of its implementation of OSCE human dimension commitments, which was carried out by the German Institute for Human Rights, the German national human rights institution.

The German Institute for Human Rights independently selected the following thematic areas to be evaluated:

1. Tolerance and non-discrimination: Combatting discrimination and hate crime
2. Gender equality:
   - Data collection to prevent and combat violence against women
   - Pay equity

To:

- **all Heads of OSCE Missions / Delegations**
- **all Heads of Delegations of Partners for Co-operation**
- **all Heads of OSCE institutions**
- **the OSCE Special Representative/Co-ordinator for Combating Trafficking in Human Beings and the OSCE Special Representative/Senior Adviser on Gender Issues**

Permanent Mission of Germany to the OSCE, Gauermanngasse 2-4, 1010 Vienna
Phone: +43 1 711 54 171 | Fax: +43 1 711 54 6 67112 | E-mail: reg1-osze@wien.diplo.de

- Women, peace and security: Germany's implementation of UN Security Council Resolution 1325

3. Combatting trafficking in human beings
4. Voting rights: Voting rights of persons with disabilities
5. Transparency and democratic institutions: Income transparency of political parties and representatives and of political advocacy groups

NGOs and civil society actors as well as responsible Ministries of the Federal Government have commented on the evaluation report. Please also find attached the Ministries' commentary and the comments from civil society.

I extend my gratitude to all involved, the Institute, colleagues from the line ministries, and civil society organizations for their efforts and time in this important endeavor.

We hope that this is to become good practice for OSCE participating States on a voluntary basis to put emphasis on the implementation of our joint human dimension commitments.

Yours sincerely,

Eberhard Pohl
Ambassador
Chairperson of the Permanent Council

German Institute for Human Rights

Report

Implementation of Selected OSCE Commitments on Human Rights and Democracy in Germany

Independent Evaluation Report on the occasion of the German OSCE Chairmanship 2016

The Institute

The German Institute for Human Rights is Germany's independent National Human Rights Institution (NHRI). It is accredited according to the United Nations' Paris Principles (A status).
Its tasks include providing policy advice, human rights education, information and documentation, applied research on human rights issues, and co-operation with international organizations. It is financed by the German Bundestag. The Institute is also in charge of monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the UN Convention on the Rights of the Child (CRC) and has established Monitoring Mechanisms for this purpose.

Contents

List of Abbreviations

AA	Auswärtiges Amt Federal Foreign Office
ALB	Ausländerbehörde Foreigners Registration Office
B-L-AG	Bund-Länder Arbeitsgruppe Federal-Länder Working Group
BAKS	Bundesakademie für Sicherheitspolitik Federal Academy for Security Policy
BIGE	Bayerische Informationsstelle gegen Extremismus Bavarian Information Office Against Extremism
BKA	Bundeskriminalamt Federal Criminal Police Service
BMAS	Bundesministerium für Arbeit und Soziales Federal Ministry of Labour and Social Affairs
BMBF	Bundesministerium für Bildung und Forschung Federal Ministry of Education and Research
BMF	Bundesamt für Migration und Flüchtlinge Federal Agency of Migration and Refugees
BMFSFJ	Bundesministerium für Familie, Senioren, Frauen und Jugend Federal Ministry of Family Affairs, Senior Citizens, Women and Youth
BMG	Bundesministerium für Gesundheit Federal Ministry of Health
BMJV	Bundesministerium der Justiz und für Verbraucherschutz Federal Ministry of Justice and Consumer Protection
BMI	Bundesministerium des Inneren Federal Ministry of the Interior
BMVg	Bundesministerium der Verteidigung Federal Ministry of Defence
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung Federal Ministry for Economic Co-operation and Development
BpB	Bundeszentrale für politische Bildung Federal Agency for Civic Education
DIMR	Deutsches Institut für Menschenrechte German Institute for Human Rights
FBS	Fachberatungsstelle Specialized counselling centre
FHPol	Fachhochschule der Polizei State Police Academy
FKS	Finanzkontrolle Schwarzarbeit Financial Control of Illegal Employment
GAR	Gemeinsames Abwehrzentrum gegen Rechtsextremismus Joint Centre for Countering Right-Wing Extremism
GETZ	Gemeinsames Extremismus- und Terrorabwehrzentrum Joint Centre for Countering Extremism and Terrorism

GG	Grundgesetz Basic Law
GIZ	Deutsche Gesellschaft für international Zusammenarbeit German Agency for International Co-operation
GRETA	Sachverständigengruppe zur Bekämpfung des Menschenhandels des Europarates Council of Europe's Group of Experts against Trafficking in Human Beings
GZD	Generalzolldirektion Directorate General of Customs
HdP	Hochschule der Polizei State Police Academy
PUA	Parlamentarische Untersuchungsausschüsse Parliamentary Committee of Inquiry
StBA	Statistisches Bundesamt Federal Statistical Office
TBB	Türkischer Bund in Berlin-Brandenburg Turkish Community in Berlin-Brandenburg
TGD	Türkische Gemeinde in Deutschland Turkish Community in Germany
VBRG	Verband der Beratungsstellen gegen rassistische, rechte und anti-semitische Gewalt Association of Counselling Centres against Racist, Right-Wing, and Anti-Semitic Violence
ZIF	Zentrum für Internationale Friedenseinsätze Center for International Peace Operations
ZMD	Zentralrat der Muslime Central Council of Muslims

A Introduction to the Report

1 Voluntary State Reporting System on the OSCE's Human Dimension

In 2016, Germany holds the chairmanship of the Organization for Security and Co-operation in Europe (OSCE). On this occasion, the German Federal Foreign Office charged the German Institute for Human Rights (Deutsches Institut für Menschenrechte, DIMR) with evaluating how the political OSCE commitments in the area of the "human dimension" are being implemented in Germany. The "human dimension" includes the topics democracy, human rights, and fundamental freedoms. With this independent evaluation, the German Federal Foreign Office follows the examples of Switzerland and Serbia, who presented such reports for the first time during their OSCE chairmanships in 2014 and 2015. This is to become good practice for OSCE States on a voluntary basis to promote the effectiveness of the human dimension in the OSCE area and to strengthen the OSCE in its role as a regional actor for conflict prevention and resolution.

In contrast to the United Nations' or Council of Europe's frameworks for the protection of human rights, in the OSCE there is currently no country-based system to monitor the implementation of the OSCE human dimension commitments. Germany is the third country in a row to present an independent evaluation report voluntarily and thereby sends a clear signal that it takes the implementation of the OSCE human dimension commitments seriously. The process is made up of three elements: This independent evaluation report submitted by the German Institute for Human Rights as a National Human Rights Institution, a comment on the report from civil society and a comment from the federal government.

After the end of the East-West conflict in the mid-1990s, the OSCE arose from the Conference on Security and Co-operation in Europe (CSCE), which concluded with the Helsinki Final Act in 1975. The OSCE bases its work on a broad concept of security that includes the politico-military dimension, the economic and environmental, and the human dimension (human rights and democracy).

In the 1975 Helsinki Final Act, the "respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion, or belief" was already acknowledged as one of the guiding principles.[1] Since that time, all participating States have repeatedly renewed their commitment to these OSCE guiding principles, in 1990 in the Charter of Paris and most recently in the Astana Commemorative Declaration in 2010. Many detailed commitments in the human dimension have already been agreed upon by the participating States.[2] The commitments are not legally binding (in contrast to the United Nations' and Council of Europe's human rights treaties under international law) but are political commitments made by the States.

The OSCE guiding principles and commitments are also closely connected to international human rights law. In the Helsinki Final Act, the 7th guiding principle refers directly to the international system for the protection of human rights: "In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and tenets of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound."[3] Co-operation with the United Nations and the Council of Europe has been repeatedly affirmed, and calls have been made for participating States to implement the international legal obligations of these organizations in their own country. The individual thematic OSCE commitments also often refer to legally binding human rights standards. There is there-

1 http://www.osce.org/de/mc/39503?download=true

2 All OSCE commitments are available at http://www.osce.org/resources in several languages. The English-language publication "OSCE Human Dimension Commitments" (3rd edition 2012) compiles relevant OSCE human rights commitments thematically and can be downloaded at: http://www.osce.org/odihr/76894

3 http://www.osce.org/de/mc/39503?download=true

fore an inherent connection between the OSCE commitments and the human rights commitments that apply to the respective States arising from the conventions they have ratified.

2 Topic Selection

The objective of this report is to critically evaluate the implementation status of OSCE commitments in selected areas in Germany. For this kind of independent evaluation the National Human Rights Institution charged with carrying out the evaluation must also be able to independently select the topics to be covered. Only in this way can the evaluation fulfil its purpose of offering a meaningful picture of the implementation of OSCE commitments and thus indirectly of the human rights situation in the country. The selection of topics was made according to the key activities of OSCE-ODIHR (Office for Democratic Institutions and Human Rights). In doing so, attention was given to including current, relevant political and human rights challenges that typically date back no more than five years.

The following topics were evaluated:
- Tolerance and Non-discrimination: Combating discrimination and hate crimes
- Gender Equality: Collection of data on preventing and combating violence against women; equal remuneration; women, peace and security
- Combating Trafficking in Human Beings: Human trafficking for forced labour, child trafficking, collection of data and reporting
- Elections: Voting rights of persons with disabilities and their right to run in elections
- Transparency and democratic institutions: Transparency of parties' and representatives' incomes and political interest representation

The selection made by DIMR according to these criteria is open to criticism from the government and non-governmental organizations, who can also raise objections on this point in their comments on the report.

3 Methods

The standard for evaluating the areas listed above are the OSCE commitments.

In the individual chapters, the contents of the OSCE commitments are first described and their connections to human rights commitments are shown. Basic information on the legal-institutional framework of the respective topic in Germany is also given. The problem is then described using the current situation in Germany. Following that, the status of the OSCE commitments' implementation is assessed. In the evaluation, a process-oriented perspective has been chosen in accordance with the political character of the OSCE commitments, and answers to the following questions are sought: Is the human rights problem recognized by the government? Are steps to solving the problem being taken? Are the steps taken effective in eliminating the human rights problem? Are there recommendations for further steps? To answer these questions, we used government and parliament statements (in some cases at the Länder[4] level in addition to the federal level), publicly available data, studies, evaluations from independent national and international committees and our own data collected by surveying government agencies and civil society organizations. For some topics, interviews with experts were used to gather more in-depth information in addition to desk research. Depending on the topic area, the evaluation includes developments from the past three to five years and considers publicly available data and information until mid-May 2016. In many areas, however, official statistics were only available for 2014. The Institute itself worked on several chapters while others were assigned to external experts. The co-operation of the responsible government departments and civil society is crucial for the evaluation's success and role model effect. Despite the short timeframe, civil society is to have an opportunity to comment meaningfully on the report. This is to be ensured by the position at the Center for International Peace Operations (ZIF) initiated by the German

4 The term "states" is the closest English language translation of the German word "Länder" (singular "Land").

Federal Foreign Office to support and co-ordinate civil society actors during Germany's OSCE chairmanship.[5] This report and the comments from the government and civil society will be presented in the autumn of 2016 on the margins of the annual "Human Dimension Implementation Meeting", the central OSCE conference on human rights and democracy.

5 Contact: p.wittschorek@zif-berlin.org

B Tolerance and Non-discrimination

Combating Discrimination and Hate Crimes

Dr. Britta Schellenberg

Dr. Kati Lang

1 Introduction

1.1 OSCE Commitments

The 1990 Copenhagen Document emphasizes the fundamental concern of the 1948 Universal Declaration of Human Rights by stating:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground."[1]

The prohibition of discrimination represents a fundamental principle of human rights and is considered a core OSCE element. In its "Strategy to Address Threats to Security and Stability in the 21st Century", the OSCE emphasizes that discrimination and intolerance both endanger the security of individuals and can be responsible for the emergence of wider-scale conflicts and violence,[2] as discrimination, intolerance, and hate crimes can cause "ethnic, political and social tensions within and between States".[3]

The OSCE emphasizes that to implement its goals it seeks out co-operation with international organizations, for example the United Nations (UN) or the European Commission against Racism and Intolerance (ECRI) as well as with civil society.[4]

1.2 Legal and Institutional Framework in Germany

Germany has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the OSCE considers groundbreaking in setting and implementing standards based on the rule of law in participating States.[5] Germany is also a contracting State of the Framework Convention for the Protection of National Minorities.

In the Basic Law (Grundgesetz), which arose in deliberate contrast to National Socialism, human rights and the protection against discrimination are given a high priority.

Since 2006, the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) has guaranteed the legal protection against discrimination in the area of employment and occupation as well as in general civil legal relations. The AGG implements four EU Directives on protection against discrimination. In the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) an Anti-Discrimination Agency (ADS) was established, and several Länder have also set up anti-discrimination agencies. They have a mandate for raising awareness and counselling but no investigative rights or rights to initiate proceedings. Legal protection is guaranteed by the courts.

The Immigration Act, which entered into force in 2005, controls immigration and reflects Germany's new self-understanding as a destination country for immigration.[6]

In 2015, it was clarified in the Criminal Code that racist, xenophobic or other bias-related motivations are to be considered aggravating circumstances in sentencing (Sec. 46(2) German Criminal Code (Strafgesetzbuch, StGB)). Protection against discriminatory statements is guaranteed in particular with the criminal offences of incitement of the people (Sec. 130 StGB) and the prohibition against using or distributing signs and symbols of anti-constitutional organizations (Sec. 86 StGB).

In 1998, the "Forum against Racism" was established by the Federal Ministry of the Interior (BMI)

1 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, para., 5.9., cited in: OSCE Human Dimension Commitments (2011), p. 92 and p. 200.

2 OSCE (2003), MC.DOC/1/03, cited in: OSCE HRC, p. 211.

3 OSCE (1993), cited in: OSCE (2012): Human Dimension Commitments: Volume 1, Thematic Compilation (third edition), p. 209, OSCE (1994), cited ibidem; OSCE (1996), DOC.S/1/96, cited ibid., p. 2010.

4 OSCE (2003), MC.DEC/4/03, cited in: OSCE HDC, p. 213.; OSCE (2006), MC.DEC/13/06 cited ibid., p. 216.

5 OSCE (2003), MC.DEC/3/03, cited in: OSCE HDC, p. 222.

6 Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern) from 30 July 2004 Federal Law Gazette I, p. 1950 from 5 Aug 2004.

to encourage exchanges and dialogue between government institutions and non-governmental organizations about racism and protection against discrimination in Germany.

1.3 Methods

This chapter is based on documents from OSCE / ODIHR, in particular Ministerial Council Decisions, documents from German governments and parliaments at the federal and Länder levels, reports from non-governmental organizations (NGOs) and independent committees, and scientific studies. Beyond that, our own surveys were used in order to give as complete and informed a description of the topics as possible. Guidelines (semi-open questions) were developed as the basis for addressing relevant actors. During March and April 2016, interviews were conducted by the authors of this chapter. All police training and continuing education facilities as well as many civil society actors were sent a written survey. In addition, semi-structured interviews were conducted with people from civil society, the judiciary and representatives. In particular, groups affected by discrimination and hate crimes (including those affected by racism and members of the LGBTI community) were surveyed.

2 Description of the Problems Using the Current Situation in Germany

Calls for violence against refugees and migrants as well as against politicians, journalists and human rights defenders have significantly increased in recent years. Due to this, many people and organizations feel called to get involved in civil society. They hold demonstrations for diversity, tolerance and human rights, for example at the beginning of 2015 in Munich with more than 20,000 people. Large social organizations and the religious communities have clearly stated their position against hate speech and racist attacks.[7] Many people are involved in volunteer work to support refugees. Numerous members of the government and the Federal President have asked people not to follow racist slogans and movements. For the most part, members of the Bundestag and Länder parliaments, with the exception of parties such as "Alternative for Germany" (Alternative für Deutschland, AfD) and the National Democratic Party of Germany (Nationaldemokratische Partei Deutschlands, NPD), have clearly distanced themselves from racist hate speech and violent acts.

2.1 Hate Crime in Germany

In 2015, the number of hate crimes (crimes motivated by group-based bias) increased by 77% compared to the previous year (2015: 10,373, 2014: 5,858 crimes). According to the Federal Criminal Police Service statistics, 22,960 were crimes with a right-wing motive.[8] This represents an increase of 35% from the previous year (17,020 crimes with a right-wing motive in 2014).

A large number of the criminal acts are "hate speech", including 11,071 propaganda crimes and 1,951 acts of incitement in 2014.[9] There were 1,029 violent hate crimes in the sense of physical assaults, and the vast majority of these – 900 – were assault and battery offences.[10] The independent counselling centres, however, recorded nearly double the number of physical assaults in its statistical territory[11] between 2014 and 2015 (2014: 782; 2015: 1,468).[12]

The number of xenophobic crimes subsumed under the term "crimes with a right-wing motive" even increased by 117%: From 3,945 in 2014 to 8,529 in 2015.[13] Even when only considering

7 For example: Alliance for Tolerance, Solidarity, Democracy and Constitutional State – Against Prejudice, Hatred and Violence (Allianz für Weltoffenheit, Solidarität, Demokratie und Rechtsstaat – gegen Intoleranz, Menschenfeindlichkeit und Gewalt) http://www.allianz-fuer-weltoffenheit.de/

8 Federal Ministry of the Interior: Politisch motivierte Kriminalität im Jahr 2015 [Politically motivated crime in 2015], p. 1.

9 Bundestag Printed Paper 18/5758, pp. 4 ff.

10 Federal Ministry of the Interior: Politisch motivierte Kriminalität im Jahr 2014 [Politically motivated crime in 2014], pp. 2 f.

11 Author's note: East German Länder including Berlin.

12 Association of Counselling Centres for Victims of Right-Wing, Racist and Anti-Semitic Violence (Verband der Beratungsstellen für Betroffene rechter, rassistischer und antisemitischer Gewalt) (VBRG) 2015: Statistik 2015 [Statistics 2015].

13 Federal Ministry of the Interior: Politisch motivierte Kriminalität im Jahr 2015 [Politically motivated crime in 2015], p. 5.

racially motivated violent acts, the civil society counselling centres for those affected by right-wing and racist violence registered 1,056 incidents in 2015 for the East German Länder, Berlin and North Rhine-Westphalia.[14]

After a significant increase by 25.2% in 2014 (especially in the area of hate speech), anti-Semitic crimes decreased by 14.4% in 2015.[15] In all, in 2015 the police recorded 1,366 anti-Semitic offences.[16]

Statements on homophobic / transphobic attacks or attacks on people with disabilities or the homeless are difficult to make because of the lack of valid data. There are some civil society organizations that monitor these types of acts, but they are limited in terms of the territory they cover. The gay anti-violence project MANEO, for example, recorded 474 reports of homophobic attacks in Berlin alone in 2014.[17]

For all areas of hate crime, we can assume a high number of unrecorded cases.[18]

2.2 Xenophobic Attitudes and Radicalization in Society

When looking at attitudes in the Federal Republic of Germany over the course of time, xenophobic attitudes have steadily declined. However, the most recent studies on attitudes show that in certain population segments there has been an increase in xenophobia toward groups like the "Roma" and "refugees" as well as toward Muslims.[19] In longitudinal studies of so-called "group-focused enmity", it has been found that people who devalue other people often harbour a more generalized "ideology of inequality". Relevant forms of "group-focused enmity" have been identified as racism, xenophobia, anti-Semitism, homophobia, prejudices against homeless persons, prejudices against disabled persons, anti-Muslim attitudes, classic sexism, privileges of the establishment, and prejudices against long-term unemployed persons.[20]

With the motto "Patriotic Europeans against the Islamization of the Occident" (Patriotische Europäer gegen die Islamisierung des Abendlandes, Pegida), many people have marched in weekly demonstrations since October 2014, mostly in Dresden but also in other German cities under different names. This movement is hostile to refugees and Islam and tries to pick up and intensify diffuse prejudices and fears that exist in the broader population.

"Pegida" achieved its highest degree of mobilization in January 2015 with around 17,000 participants. In 2016 between 2,000–4,000 people have demonstrated almost weekly in Dresden. The movement offers a degree of arbitrariness, a bias-oriented "anti" attitude, vague to clear rejection of democratic institutions – in particular of the free press – and opposition to women's emancipation and gender mainstreaming. It is difficult to determine the movement's ideological core by looking at platforms but its ideology becomes manifest in its weekly statements. The propaganda of hate is justified with the right to "self-defence". The – not precisely defined – Us, "the Germans" are believed to be threatened and the elites, politicians and journalists who are out of touch with the people are thought to be accepting of this supposedly existential threat. With this logic, the followers see themselves placed into a self-defence situation, which is why a crime is ultimately not viewed as a crime but as an act of self-defence. This can contribute to radicalization processes among the participants who can then

14 VBRG 2015: Statistik 2015 [Statistics 2015].

15 Federal Ministry of the Interior: Politisch motivierte Kriminalität im Jahr 2014 [Politically motivated crime in 2015], p. 4.

16 Federal Ministry of the Interior: Politisch motivierte Kriminalität im Jahr 2015 [Politically motivated crime in 2015], p. 5.

17 MANEO – The gay Anti-Violence Project in Berlin: Jahresbericht 2014 [Annual Report 2014], p. 9.

18 In particular this is due to underreporting and insufficient recording by the police. Inter alia the response to the survey by the Amadeu Antonio Foundation.

19 Oliver Decker, Johannes Kiess & Elmar Brähler: Die stabilisierte Mitte. Rechtsextreme Einstellung in Deutschland 2014. [The stabilized middle. Right-wing extremist attitudes in Germany 2014.] Leipzig: Universität Leipzig 2014. http://www.uni-leipzig.de/%7Ekredo/Mitte_Leipzig_Internet.pdf (Last accessed: 6 May 2016), Andreas Zick, Klein, Anna: Fragile Mitte – Feindselige Zustände. [Fragile Middle – Hostile Conditions.] Edited for the Friedrich Ebert Foundation by Ralf Melzer; Verlag J.H.W. Dietz Nachf., Bonn 2014.

20 Wilhelm Heitmeyer (ed.): Deutsche Zustände, Folge 1–10 [Conditions in Germany, Vols. 1–10]. Frankfurt a. M. 2002–2011.

certainly "take action" and commit bias-motivated illegal acts.[21]

Since then, both in Germany and in other European countries regional "branches" of Pegida have been founded, although not all have been as successful as the original. However, the numerous campaigns and initiatives directed against refugee accommodation should not be underestimated. Despite the public welcoming culture viewed positively by a much larger percentage of the population, when refugees are brought to their accommodation there are often protests.

2.3 Attacks on Refugees and Refugee Accommodation

Refugees and other migrants are especially in danger of becoming victims of hate crimes. In the Federal Republic of Germany, there are violent attacks resulting in serious injury every day. In particular, actions against refugee accommodation have increased recently. The Federal Criminal Police Service registered 923 politically motivated crimes against asylum accommodation in 2015.[22] Often damage was done before the accommodation was opened. There were instances of stones being thrown and graffiti of hate speech but also shots with live ammunition, arson, and bomb attacks. In 2015, German non-governmental organizations[23] recorded 1,072 attacks on refugee accommodation nation-wide including 136 arson attacks.[24]

2.4 Attacks on Human Rights Defenders and Journalists

For several years, verbal attacks, insults and threats against human rights defenders[25] have been on the rise.

With the new refugee situation and assistance in Germany, those active in work with refugees have become a target for hatred and violence. According to the estimates of civil society organizations, this threat is often not sufficiently recognized by government agencies.[26]

Politicians from all parties are also affected, especially Die Linke (46) and the SPD (22), who have worked against right-wing extremism or for refugees. In 2015, a total of 75 violent acts and incidents of property damage were registered.[27]

The non-governmental organization Reporters without Borders recorded six attacks on journalists in 2014; in 2015 it increased to 26 attacks, although the organization noted that there is a high number of unrecorded cases.[28] It has been observed that right-wing extremist violent criminals are integrated into the security structure at demonstrations and take co-ordinated action against media representatives.[29] In 2014, the European Centre for Press and Media Freedom recorded 10 attacks on journalists in Germany, and in 2015 there were even 49 in Germany, 29 of which were violent crimes, 13 property damage (usually cameras) and 7 serious verbal threats. The resulting negative impact on the freedom of the press was the subject of a public expert discussion in the Bundestag at the beginning of 2016.[30]

2.5 Social Media

On social media, for example Facebook, YouTube, Twitter, Instagram and Tumblr, hate speech has continually increased in recent years and is becoming more aggressive. The incitement is directed especially against non-Germans, people of Muslim and Jewish faith, Sinti and Roma, refu-

21 Cf. Schellenberg (2016), pp. 309–339.

22 http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Pressemitteilungen/2016/05/pmk-2015-straftaten-gegen-asylunterkuenfte.pdf;jsessionid=1E5BA632C1568D27FE4015514CC68D8A.2_cid287?__blob=publicationFile

23 The non-governmental organizations Pro Asyl and Amadeu Antonio Foundation, whose goal is to promote a civil society that firmly opposes anti-democratic tendencies.

24 Mut gegen rechte Gewalt [Courage against right-wing violence] (2014).

25 Definition according to the OSCE: "Human rights defenders" are people who, individually or with others, act to promote or protect human rights through peaceful means. http://www.osce.org/odihr/103584

26 Response from the Amadeu Antonio Foundation to the authors' survey.

27 German Federal Government (2016): Response to the Brief Enquiry from Representative Lazar, Bündnis 90 / Die Grünen.

28 Cf. Öffentliches Fachgespräch [Public expert discussion] (2016); Metzger (2015), pp. 68 f.

29 Cf. Öffentliches Fachgespräch [Public expert discussion] (2016); Metzger (2015), pp. 68 f.

30 Cf. Öffentliches Fachgespräch [Public expert discussion] (2016).

gees or homosexuals and transsexuals as well as human rights defenders.

The non-profit company Jugendschutz.net has observed an increase in the radicalization of internet debates.[31] Several newspapers such as Der Tagesspiegel and Die Zeit have agreed to monitor comments. They report that hateful comments make up around 5 to 10 percent of daily posts.[32]

2.6 The Series of Murders by the National-Socialist Underground (NSU) and the Authorities' Failure to Solve Them

The Neo-Nazi terrorist group "NSU" is being held responsible for at least ten murders; nine of the victims had a Turkish, Kurdish or Greek migrant background and one was a police officer without a migrant background. They are also being held responsible for three bomb attacks that affected primarily people with Turkish and Iranian migrant backgrounds. After an attempted bank robbery that failed on 4 November 2011, the "NSU" exposed itself. A video released afterward took responsibility and proves the crimes' racist background: The first nine victims – called Turks – were chosen according to racist criteria. The group denied their right to live in Germany. The targeted killings of individuals and the bomb attacks were supposed to realize the national-racist ideas of the "NSU", which were influenced by National Socialism, and spread fear and terror among migrants. Between 1998 and 2001, the "NSU" was able to commit its crimes undisturbed without the law enforcement agencies seriously considering racists and neo-Nazis as suspects and searching for them.[33]

Instead, government agencies in all Länder in which the crimes had been committed primarily investigated the victims, their friends and families, and in the "Turkish milieu" or among minority groups (especially Sinti and Roma), whereby they were assumed to be involved in "organized crime" based on stigmatizations of their ethnic groups. Other lines of investigation were quickly dropped or not pursued at all. Corresponding to these methods, the names of the investigation units were "Bosporus" and "Halbmond" (Crescent). The agencies' media strategy also focused particularly on "organized crime" among Turkish migrants. This led to the crimes becoming known to the public as the "Kebab murders".[34] In addition, the agencies informed the media about "investigations in the Gypsy milieu" and the supposedly "hottest lead" with suspicious "Sinti clans".[35]

3 Assessment of the OSCE Commitments' Implementation

At the Ministerial Council's meeting in Maastricht in 2003, the term "hate crimes" was introduced into OSCE agreements and since then has increasingly been included. With the Ministerial Council's Decision on Tolerance and Non-discrimination in 2007 and the Decision on Combating Hate Crimes in 2009, detailed agreements on the topic were made.[36] To be considered a hate crime, a criminal act must fulfil two criteria: it must (1) be a criminal offence and (2) be motivated by bias.[37] It is stated that besides physical attacks on certain persons and groups, for example damaging their homes or places of work, other offences that can be considered hate crimes include attacks on their places of worship or cemeteries, denying the holocaust and damaging their business or property.[38]

With the Decisions from Athens 2009, the Ministers underline their concern with the increase

31 Jugendschutz.net (2015).

32 Der Tagespiegel (2015): Dem Hass im Netz begegnen. Shitstorm? Candystorm! [Encountering hatred online. Flamewar? Flower war!] Astrid Herbold, 4 September 2015. http://www.tagesspiegel.de/medien/digitale-welt/dem-hass-im-netz-begegnen-shitstorm-candystorm/12279860.html

33 Cf. Lawyers/NGOs/Researchers (Anwält_innen/NGOs/Wissenschaftler_innen) (2015), pp. 2–4.

34 Cf. German Bundestag (2013): Bundestag Printed Paper 17/14600; Schellenberg (2014), p. 8f.; Lawyers/NGOs/Researchers (Anwält_innen/NGOs/Wissenschaftler_innen) (2015).

35 Cf. Lawyers/NGOs/Researchers (Anwält_innen/NGOs/Wissenschaftler_innen) (2015).

36 Cf. OSCE (2003), MC.DEC/4/03; OSCE (2007), MC.DEC/10/07; OSCE (2009), MC.DEC/9/09.

37 http://hatecrime.osce.org/

38 Cf. ODIHR website mentioned above; also including: OSCE (2003), MC.DEC/4/03, cited in: OSCE HRC, pp. 2010f.

in hate crimes in the OSCE area and confirm the need for national and international co-operation to combat them effectively.[39] In particular, the Decision calls for the enactment of appropriate, specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes.[40] It is to be guaranteed that the States promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership.[41] National legislation is to provide all persons with equal and effective protection from intolerant and discriminatory actions.[42] Persons responsible for discriminatory actions are to be brought to justice.[43] The States are also asked to adopt laws necessary to provide protection against any acts that constitute incitement to violence against persons or groups.[44]

The OSCE participating States emphasize[45] that in order to combat discrimination, intolerance and hate crimes, a comprehensive approach is necessary that also focuses on protecting individual, at-risk groups of people such as Roma and Sinti, Muslims and Jews. On the advice of the participating States, ODIHR uses 5 (transnationally relevant) categories of bias for the Hate Crime Reporting Portal:[46] (1) Racism and xenophobia, (2) Bias against Roma and Sinti, (3) Anti-Semitism, (4) Bias against Muslims and (5) Bias against Christians and members of other religions. Recently, additional groups were also perceived as being in need of particular protection: (6) Persons who are affected by discrimination and hate crimes because of their sexual orientation and gender identity, especially lesbians, gays, bisexuals and transgender persons (LGBT), (7) disabled persons, (8) human rights defenders and (9) refugees and migrants. In the OSCE, there is an awareness that additional at-risk groups could be identified depending on the country or region.[47]

In Germany, the groups named by the OSCE/ODIHR are recorded both by civil society counselling centres[48] and the police definition (politically motivated crimes, PMK)[49] of hate crime. The German Criminal Code does not explicitly list all groups, however, but instead gives a collective heading of other bias which is – according to the legal reasoning[50] – to include all forms of hate and bias crimes beyond racism and xenophobia.

As explicitly provided for by the OSCE/ODIHR concept, other groups may be included. Due to the persecution of the so-called “social misfits” (Asoziale) by National Socialism and existing prejudice[51] and attacks on the homeless,[52] these groups can also be considered in particular need of protection. Although crimes directed at the socially marginalized are not recorded as frequently due to under-reporting or even if they are reported then the motivation behind the crime remain unclear, the data on bias-motivated homicides show that these groups are especially focused on when it comes to (homicidal) hate crimes.[53]

3.1 Monitoring Hate Crimes

In recent years, the OSCE has placed particular importance on strengthening its focus on hate

39 OSCE (2009), MC.DEC/9/09, cited in: OSCE HDC, p. 219.
40 OSCE (2009), MC.DEC/9/09, p. 2 no. 2.
41 OSCE (2009), MC.DEC/9/09, p. 2 no. 6.
42 OSCE (2005), MC.DEC/10/05, cited in: OSCE HDC, p. 223; cf. also: OSCE (2003), MC.DEC/3/03, cited in: OSCE HDC, p. 222.
43 OSCE (2003), cited in: OSCE HRC, p. 211.
44 OSCE (1990), cited in: OSCE HDC, p. 221.
45 OSCE (2007), MC.DEC/10/07.
46 http://hatecrime.osce.org/
47 Cf. ODIHR: http://hatecrime.osce.org/what-hate-crime/bias-against-other-groups
48 VBRG, Handbuch Datenbank 2016 [Handbook Database 2016], p. 12 (unveröffentlichtes Dokument, Stand 2015 / unpublished document as of 2015).
49 PMK-Definitionssystem [Politically motivated crime definition system], As of 1 July 2010.
50 Bundestag Printed Paper 18/3007, pp. 15f.
51 Cf. Heitmeyer (2002–2011).
52 Linde, in: Berliner Forum Gewaltprävention [Berlin Forum Prevention of Violence], No. 16, 2004, p. 81; Lang 2014, p. 367.
53 Zeit Online: Grafik Todesopfer rechter Gewalt 1990–2014 [Graphic of homicide victims of right-wing violence 1990–2014]. http://www.zeit.de/gesellschaft/zeitgeschehen/todesopfer-rechter-gewalt (Last accessed: 19 April 2016).

crimes. Reliable data are to be collected and recorded in sufficient detail and regularly made publicly accessible, including as statistics.[54] The data should include the following aspects: (1) The number of cases reported to law enforcement, (2) the number of cases prosecuted and (3) the number of rulings passed.[55] Civil society should also provide its own data. If necessary, they should be trained in how to do so by government agencies – supported by ODIHR. Participating States are called upon to publish periodic overviews of the problems of racism, xenophobia and discrimination[56] and to develop early warning measures for violence, intolerance, extremism and discrimination.[57]

Participating States are to report the data collected to ODIHR, whereby it is recommended that they appoint a national contact agency for collecting the various national data.[58] With domestic monitoring and reporting mechanisms, information about progress in implementing anti-discrimination legislation is to be given regularly and transparently.[59]

The digital "Tolerance and Non-Discrimination Information System tandis"[60] and the digital "Hate Crime Reporting" portal[61] – both operated by ODIHR – provide comprehensive state-related data on hate crimes, background on data collection and information on relevant activities and publications in the OSCE area.[62] In the Bundestag's NSU committee of inquiry, all parties represented in the German Bundestag jointly recommended the facilitation of "a nation-wide independent monitoring of right-wing, racist and anti-Semitic violent acts".[63]

3.1.1 Police

For reporting, German agencies use the data collected in the context of "Politically Motivated Crime" (Politisch Motivierte Kriminalität, PMK).[64] Hate crime includes offences that were directed at a person "due to their political attitude, nationality, ethnicity, race, skin colour, religion, worldview, descent or due to their outward appearance, their disability, their sexual orientation or their social status and the criminal act is thus causally linked or is therefore directed at an institution/issue or an object".[65]

The inclusion of the hate crime concept into that of extremism, as well as the assumption that it must be a "political" action are viewed critically.[66] The extremism concept focuses primarily on subversive efforts and dedicates itself to averting dangers to the free democratic order. Therefore, bias-motivated crimes are often only recognized as such when they are linked to right-wing extremist perpetrators or organizations.

The extremist approach is criticized by international organizations,[67] researchers, and the Bundestag's NSU committee of inquiry[68] (NSU-UA). In 2015, the UN Committee on the Elimination of Racial Discrimination (CERD) once again emphatically pointed out to Germany that the importance of combating right-wing extremism and neo-Nazism is recognized but there is concern that the (exclusive) use of these terms inhibits

54 OSCE (2009), MC.DEC/9/09, p. 2 no. 8.; OSCE (2007), MC.DEC/10/07; OSCE (2005), MC.DEC/10/05, PC.DEC/607, PC.DEC/621, pp. 226 f; OSCE (2003), MC.DEC/4/03, p. 226; Geneva 1991 (VI), OSCE, p. 225.
55 OSCE (2009), MC.DEC/9/09, p. 2 no. 8.
56 OSCE (2004), MEC.DEC/12/04, PC.DEC/621.
57 OSCE (2001), MC(9).DEC/1, cited in: OSCE HDC, p. 210.
58 OSCE (2005), MC.DEC/10/05, p. 227.
59 OSCE (2003), MC.DEC/3/03, cited in: OSCE HDC, p. 222.
60 http://tandis.odihr.pl/
61 http://hatecrime.osce.org/what-odihr-doing
62 http://hatecrime.osce.org/what-do-we-know/our-mandate; Regarding Germany: http://hatecrime.osce.org/germany; cf. OSCE/ODHIR (2014): Hate Crime Date Collection.
63 Bundestag Printed Paper 17/14600, p. 867.
64 Terms such as "race" or "ethnicity" are problematic because they are linked to outdated scientific concepts and contradict these linguistically. Cf. Lang (2011), pp. 161f.
65 PMK, Definitionssystem [Politically motivated crime definition system], As of 1 July 2010.
66 Cf. Lang 2015, p. 7f.
67 ECRI 2008, p. 16; Human Rights Watch 2011, p. 3.
68 Bundestag Printed Paper 17/14600, p. 861.

the broader complex of problems presented by racial discrimination that is urgently in need of being worked on.[69]

Changes are called for by the affected groups. Anti-Muslim and antigypsyist attacks are currently not registered separately; there is only the possibility to record anti-Muslim acts according to the target "Place of Worship / Mosque",[70] in regard to the antigypsyist criminal acts there is no option beyond the generic categories mentioned above. For quite some time, interest groups such as the Central Council of Muslims (ZMD) or the Turkish Community in Germany (TGD) have demanded separate recording. According to the federal government, "the area of Islamophobia has been increasing in importance as a new form of xenophobia within right-wing extremism in recent years," but this does "not represent a fundamentally new quality of Islamophobic attitude".[71] In regard to criminal acts against Roma and Sinti, the federal government explained that antigypsyist-motivated crimes have a particular importance due to the special historical responsibility and therefore promised to continue to observe the developments in this situation carefully in the future.[72]

The PMK data categorized with the extremist concept are reported to ODIHR as part of Hate Crime Reporting and made publicly accessible by the Home Affairs agencies.[73]

Contradictory data exists from the government agencies. In 2014, the Berlin police recorded 74 homophobic/transphobic criminal acts in Berlin alone, including 24 violent crimes.[74] Nationwide, however, only 60 criminal acts against the person's sexual orientation, including 34 violent crimes, were recorded by the PMK.[75]

3.1.2 Judiciary

As a counterpart to the PMK police statistics, since 1992 the public prosecutor's offices have had so-called special surveys that record preliminary investigations, arrest warrants and convictions of criminal acts with xenophobic and right-wing extremist backgrounds. The aggregation of the data collected by the Länder has been carried out by the Federal Office of Justice since 2007. However, the assessment as to whether a criminal act is to be considered one of right-wing extremism is only indicated by a numbered coding scheme that differs from Land to Land.[76] The judiciary's special survey forms were substantially revised for the first time in 2013. In the new version, the term "xenophobic and right-wing extremist criminal act" is more precisely defined and the data collection was expanded to include offences committed on the Internet.[77] The definitions were harmonized with the PMK, whereby it can be assumed that detailed data, for example in the area of crimes against the homeless, are not possible.[78] The statistical records end with indictments in court and do not include verdicts. The courts' evaluation of the motive for the crime is therefore not included in the statistical data.[79]

The data obtained have not yet been made publicly available and also not yet been reported to ODIHR, meaning that the ODIHR database shows a gap. With the Decision by the Conference of the Ministers of Justice on 17 March 2016, the data obtained are to be collected and made publicly available more quickly.[80]

69 CERD (2015): Concluding Observations, p. 4.
70 Bundestag Printed Paper 17/14754, p. 11. Only mosques themselves are included under the target of the attack category "Place of Worship / Mosque"; other places of worship, mosque associations or other Islamic institutions are not included (response from the federal government Bundestag Printed Paper 18/7489, p. 5).
71 Bundestag Printed Paper 17/13686, p. 2.
72 Bundestag Printed Paper 17/14754, p. 13.
73 http://hatecrime.osce.org/germany?year=2014
74 MANEO (The gay Anti-Violence Project in Berlin): Jahresbericht 2014 (Annual Report 2014), p. 90.
75 Bundestag Printed Paper 18/5758, pp. 18 ff.
76 Contribution by B. Götting (Federal Office of Justice) on 30 August 2013 at an event held by the Friedrich Ebert Foundation.
77 Bundestag Printed Paper 18/7830, p. 3.
78 Interview with senior public prosecutor on 6 April 2016.
79 Contribution by B. Götting (Federal Office of Justice) on 30 August 2013 at an event held by the Friedrich Ebert Foundation.
80 BMVJ (2016): Final Declaration from the Conference of the Ministers of Justice on 16 March 2016, p. 2 no. 5.

The lack of statistics on bias-motivated criminal offence covering the whole process of investigations from the police to the public prosecutor's office to court proceedings including verdicts was already criticized by the NSU committee of inquiry.[81] As a consequence, in 2015 an obligation was introduced for the public prosecutor's office[82] to inform the Federal Criminal Police Service about the outcome of the investigation of certain serious, politically-motivated criminal offences (homicide, arson, offences involving explosives) – after the investigations by the public prosecution have been concluded with indictments in court. The aim of this obligation is to guarantee that the Federal Criminal Police Service is fully informed about the criminal proceedings of prosecuting hate crimes, including the verdicts. The federal government believes it to be necessary for the Federal Criminal Police Service to be able to evaluate and analyse data on the outcome of the proceedings in the area of politically motivated violent crime.[83]

In addition to this, at the request of the Conference of the Ministers of Justice the Federal Prosecutor's Office prepared informational sheets with "Indicators for Recognizing Right-Wing Terrorist Connections" (as of 2015) for the public prosecutor's offices and prison officers. However, this concentrates more on the "classic right-wing extremist" perpetrators; the focus is on "right-wing terrorism" and not hate crimes.

3.1.3 Monitoring by Civil Society

Besides state agencies, civil society organizations conduct independent monitoring to collect data on hate crimes. In all East German Länder and increasingly in the other Länder, professional counselling centres exist for those affected by right-wing and racist violence. They list the following characteristic groups:[84] (1) Anti-Semitism, (2) racism including (a) anti-Muslim racism and (b) antigypsyism, (3) sexual orientation / identity (against LGBTI), (4) persons with disabilities, (5) social Darwinism (against homeless persons), (6) political opponents including (a) journalists and (b) politicians in positions of responsibility, (7) non-right-wing or alternative persons.[85]

In a continual process of exchange, the counselling centres have agreed on common criteria for collecting the data; the criteria are based on the concept of hate / bias crimes. The information is recorded in a joint, online database. The number of cases is published regularly and reported to ODIHR.

There are also several regional initiatives by individual groups of those affected, for example the Berlin Gay Anti-Violence Project MANEO e. V. that monitors homophobic attacks; anti-Semitic crimes – even those below the threshold of violent offences – are recorded by the Amadeu Antonio Foundation.

The Berlin districts have dared to take a further step against discrimination by establishing registration offices that aim to uncover everyday discrimination at the local level. They document violent offences, property damage and low-threshold incidents such as graffiti and insults that are not reported for various reasons. They are financed by the districts' funds and by the Berlin state programme against "right-wing extremism, xenophobia and anti-Semitism".[86]

The civil society counselling centres record many more cases than the government agencies: In 2014, 782 attacks were recorded in East Germany while the agencies register 383 attacks.[87] Up to the present, only the Land Brandenburg discussed this discrepancy in a solution-oriented manner: Under the direction of the University of Potsdam

81 Bundestag Printed Paper 17/14600, p. 861.

82 No. 207 (2 and 3) Guidelines for Criminal Proceedings and Fine Proceedings (RiStBV).

83 Cf. Bundestag Printed Paper 18/7830, p. 5.

84 Verband der Beratungsstellen gegen rassistische, rechte und anti-semitische Gewalt (Association of Counselling Centres against Racist, Right-Wing, and Anti-Semitic Violence) (VBRG) 2015: Handbuch Datenbank 2016 [Handbook Database 2016], p. 12 (unveröffentlichtes Dokument, Stand 2015 / unpublished document as of 2015).

85 This also includes all persons who were victims of hate crimes because they did not want to join the right-wing movement or were viewed by the perpetrators as being on the political left.

86 Cf. Interview with members of the Bundestag on 29 March 2016.

87 Interview with representatives of the NGO VBRG on 12 April 2016.

and with the inclusion of civil society and government actors, the homicide cases were re-evaluated, leading to a convergence of the numbers and the actors.[88]

3.2 Criminal Prosecution of Hate Crimes

The responsible authorities are to investigate immediately, meticulously and objectively and prosecute criminally, especially if there are "reasonable grounds for the suspicion" that the motive for the crime is relevant for this area.[89]

3.2.1 Consequences of the NSU Failure

The authorities' failure in solving the "National-Socialist Underground's (NSU)" crimes was viewed as shocking by politicians and the public. The question whether immediate, meticulous and objective investigation and prosecution of hate crimes is ensured in Germany was elevated high up on the political agenda. The establishment of numerous Parliamentary Committees of Inquiry (PUA) at the national and Länder levels underscores the firm desire to make improvements. PUAs were set up at the national level (2012, 2015) and in some Länder (2012: Saxony, Bavaria, Thuringia; 2014: Hesse, North Rhine-Westphalia, Baden-Wuerttemberg; 2015: Thuringia) that not only determine and analyse problems but also create strategy recommendations. In these parliamentary processes it has been determined that "right-wing extremism" was underestimated by government agencies and that the agencies failed in many ways in investigating these cases, in part because not all possible leads were followed when investigating the murders and attacks.[90]

However, the focus of the problem analysis continues to be primarily right-wing extremism. The racist and stigmatizing work of the investigating and security agencies was not sufficiently discussed on the individual or structural level.[91] Counter-measures within government institutions have not been taken, and that has further strained the relationship between the affected groups or civil society actors and government agencies.[92] Characteristic for the failure to consider these aspects is the founding of the Joint Centre for Countering Right-Wing Extremism (GAR) in December 2011, which led to the Joint Centre for Countering Extremism and Terrorism (GETZ) in November 2012. It established the (co-)operation between the police and offices for the protection of the constitution (Verfassungsschutzbehörden) and provided them with technical upgrades without getting into the problems of racism and hate crimes. This co-operation is based on an extremist concept: Besides "right-wing extremism and terrorism", it focuses on "left-wing extremism and terrorism" and "extremism of foreigners" (as well as "counter-espionage" and "proliferation").[93]

The lack of emphasis on the bias motive of the NSU crimes and the lack of insight into the structural and institutional deficits in investigation work and processing give rise to the concern that in similar cases investigations are not open to all possibilities even today.[94] Problems similar to those in the NSU investigations can be seen, for example,[95] in the "cases" Elias and Mohammed: In 2015, the same perpetrator killed two children after sexually abusing them. One of the victims was a six-year-old German, the other was a four-year-old refugee child. In the case of the German Elias, the investigation followed "all possible leads" while the investigation of the refugee child

88 Response from the Police Academy Brandenburg.

89 OSCE (2002), MC(10).DEC/6, cited in OSCE HDC, p. 219; OSCE (2004), MC.DEC/12/04, PC.DEC/633, cited in OSCE HDC, p. 221.; OSCE (2003), MC.DEC/3/03, cited in OSCE HDC, p. 219.; OSCE (2009), MC.DEC/9/09, p. 225.

90 German Bundestag (2013): Bundestag Printed Paper 17/14600, p. 861.

91 CERD (2015): Concluding Observations, p. 9, no. 10.

92 Also the response by the Amadeu Antonio Foundation: "Many of those affected perceive institutionalized racism to be part of their daily lives." and interview with a representative of the Initiative of Black People in Germany, ISD (Initiative Schwarzer Menschen in Deutschland e. V.) on 5 April 2016.

93 In the German state report to CERD, the establishment of the GAR/GETZ is represented as a measure taken as a result of the "NSU" investigation problems. 19th – 22nd CERD State Report by the Federal Republic of Germany 2013, p. 19f.

94 Cf. Lawyers / NGOs / Researchers (2015); also the responses to surveys of the Turkish Community in Berlin-Brandenburg (Türkischer Bund in Berlin-Brandenburg, TBB).

95 Cf. also: Schellenberg (2014/15), pp. 273–282.

Mohammed focused on the family, in particular they were assumed to have deceived authorities in order to prevent their impending deportation (even though between 2011 and 2015 there were no cases of faked kidnappings of children with the motive of securing a residency permit).[96]

3.2.2 Investigation and Prosecution of Hate Crimes

In reports from international committees and organizations, the problem of discrimination against minorities by the police and security agencies has repeatedly been pointed out to Germany.[97] Studies have shown evidence of problematic investigation strategies.[98] According to ECRI and Human Rights Watch, members of minority groups in Germany have the impression that they cannot rely on the police.[99] Discrimination against Muslims[100] and the police's negative attitude against Roma[101], refusal to help blacks when they came to the police for help after racist attacks and categorical suspicion of black victims[102] have been noted. Beyond this, the UN Anti-Racism committee noted with concern that there were repeated reports of racist incidents at police stations.[103]

In particular for the affected groups "homeless persons"[104] and "persons with disabilities"[105], there is a clear lack of awareness on the part of government authorities.[106] The same applies to the area of homophobic and transphobic crimes, in which progress was achieved when several Länder were able to establish confidence-building measures after delegating special competencies. For this area of hate crimes, as well, it is still to be feared that a majority are not recognized by the authorities.[107]

Organizations for those affected[108] and lawyers[109] tell of long proceedings in some cases, ignoring the motivation of the crime if the proceedings do not go to the departments specializing in politically motivated crimes, and secondary victimization by the authorities.[110] According to a recent study, 47 per cent of those affected by hate crimes did not feel they were taken seriously by the local police, 56 per cent had the impression that the police felt it was important to determine the political background of the act and around one-fifth reported that the officers accused them of being partially at fault.[111]

In regards to public prosecutor's offices and courts, academic studies have determined that they do not appropriately deal with this crime phenomenon. The bias motivation is not sufficiently included in the charge or the judgment. Only in around half of all charges and judgments is the motive for the crime mentioned.[112] Only around one in ten crimes have the bias motivation included as a justification for harsher sentencing.[113]

96 Berlin House of Representatives (2015): Printed Paper 17/17492; cf. in detail: Der Spiegel 06/2016.
97 ECRI Report (1998), p. 11 no. 16; ECRI Report (2004), p. 25 no. 69; ECRI Report (2009), p. 36 no. 96, p. 40, no. 111, p. 51, no. 159, p. 39 no. 108; CERD (2001), Concluding Observations, no. 11.
98 Schellenberg 2014.
99 ECRI Report (1998), p. 11, no. 16, Human Rights Watch (12/2011).
100 ECRI Report (2009), p. 36, no. 96.
101 ECRI Report (2009), p. 40, no. 111.
102 ECRI Report (2009), p. 39, no. 108; p. 50, no. 158.
103 CERD (2001), Concluding Observations, no. 11.
104 Lang (2011) in: wohnungslos [homeless], p. 132.
105 Lang 2014, p. 364.
106 Cf. Bundestag Printed Paper 18/5758, where hardly any criminal offences are recorded for the areas named and an interview with a senior public prosecutor on 6 April 2016: Even if actions motivated by social Darwinism are included in hate crimes by definition, this is not reflected in reality (cf. Bundestag Printed Paper 18/5758, pp. 22ff.).
107 Interview with senior public prosecutor on 6 April 2016; written information from the Lesbian and Gay Association in Germany (Lesben und Schwulen Verband Deutschland, LSVD) on 18 April 2016; Schellenberg 2014.
108 Interview with representatives of the NGO VBRG on 12 April 2016.
109 Interview with lawyer on 20 April 2016.
110 On secondary victimization in hate crimes, cf. ezra 2014; Asmus/Enke 2016.
111 ezra 2014, pp. 27ff.
112 Lang 2014, pp. 274, 281.
113 Lang 2014; Glet 2011.

Criminal prosecution also suffers from a lack of interpreters and being unable to reach the victims because they have been deported.[114]

3.3 New Regulations on Hate Crimes

The aforementioned regulations on sentencing for hate crimes came into effect in August 2015. According to the new wording of Sec. 46(2) of the Criminal Code (StGB), when sentencing the judge must now consider the perpetrators' racist, xenophobic or other hate-based motivations as aggravating circumstances. Germany thus fulfils the requirement for a specific regulation for hate crimes.[115]

However, it is unclear how the terms racism and xenophobia are to be differentiated. In addition, the term "xenophobia" seems open to criticism: By ascribing the attribute "foreign" to someone, it takes on the perspective of racist perpetrators and can thus trivialize the social dimension of racism.[116]

The phrase "other bias motivations" is open to interpretation and serves as a catch-all term to include all offences in which "the perceived otherness of a group of persons is used to justify the negation of their human rights and to violate the victims' human dignity."[117] Associations for those affected have criticized that no other forms of hate crimes have been explicitly named by the lawmakers, for example homophobic and transphobic hate crimes or hate crimes against persons with disabilities. This is necessary so that these motivations are appropriately pursued by police and the judiciary.[118]

Because the law only came into effect in August 2015, there is currently an insufficient number of procedures and statistical data to draw conclusions about the application of the new norm.[119]

Besides the criminal legal regulation, the "Guidelines for Criminal Proceedings and Fine Proceedings" (RiStBV), which are binding for the investigating authorities (police and public prosecutor's office), were also amended. For investigation work, no. 15 RiStBV now emphasizes that "if there are indications that racist, xenophobic or other bias motivations exist, [...] the investigation is to be expanded to include these circumstances, as well." In addition, the possibilities for the public prosecutor's office to refer victims of bias-motivated offences to private legal action or for the public prosecutor's office to stop the proceedings have been considerably limited. No. 86 RiStBV clarifies that it is typically in the interest of the public to prosecute if the aforementioned motivations exist. In the case of bodily harm offences, for these reasons a particular public interest can be assumed (No. 234 RiStBV). The background is that certain criminal offences – especially trespassing, insults, (actual) bodily harm, threats and property damage – are only prosecuted if the public prosecutor's office believes there to be a (particular) public interest.

3.4 Handling Hate Crimes on the Internet

The OSCE calls on the participating States to strengthen their efforts to co-operate with civil society to counter the incitement to bias-motivated hate crimes, explicitly also those that are committed using the Internet. At the same time, the OSCE underlines that the opportunities offered by the Internet for the promotion of democracy, human rights and tolerance education should be fully exploited.[120] In some agreements, references are made (always unspecific) to the need to respect freedom of opinion.[121]

In Germany, the constitutionally protected freedom of opinion applies as a matter of principle.

114 Interview with senior public prosecutor on 6 April 2016.

115 In general, civil society actors view this positively. Response from survey of the Central Council of German Sinti and Roma; Response from survey of the Turkish Community Berlin-Brandenburg (TBB).

116 cf. Terkessidis 2004, pp. 44 ff.; Butterwegge (no year), pp. 1 f.; German Institute for Human Rights 03/2014, p. 1 f.

117 ibid.

118 See, for example, a statement from the Lesbian and Gay Association (LSVD) 2014; also response to survey from the LSVD.

119 According to information from the counselling centres and co-prosecutors, there is as yet no information on proceedings after the change in the law because these are mostly still in the investigation stage.

120 OSCE (2007), MC.DEC/10/07, p. 3 no. 5; OSCE (2009), MC.DEC/9/09, p. 3 no. 11; OSCE (2003), MC.DEC/4/03, cited in: OSCE HDC, p. 212.; OSCE (2006), MC.DEC/13/06 cited in: OSCE HDC, p. 215.

121 OSCE (2007), MC.DEC/10/07, cited in: OSCE HDC, p. 217; see also: OSCE (2006), MC.DEC/6/06, p. 236.

However, there are limits set to this fundamental right. German criminal law includes explicit regulations in the area of hate speech. Sec. 86 of the Criminal Code (Strafgesetzbuch, StGB) criminalizes the distribution of propaganda for anti-constitutional organizations, Sec. 86a StGB criminalizes the use of signs from prohibited parties and associations, in particular National-Socialist organizations. Sec. 130 StGB penalizes incitement, which includes attacks on human dignity and the incitement to racially motivated hate as well as the call for violent and arbitrary measures. According to this norm, the denial of the National-Socialist genocide of the Jews and the Sinti and Roma as well as public glorification, justification or trivialization of the National-Socialist dictatorship are also criminalized. A public call to criminal acts is penalized according to Sec. 111 StGB. Additionally, there are general norms on offences involving insults and defamation (Secs. 185 ff. StGB).

The federal government has no comprehensive strategy for handling hate speech on the Internet. In particular the German Federal Ministry of Justice and Consumer Protection (BMJV) is active in this area, though. In autumn 2015, the Federal Justice Minister started an "Initiative against Hate Messages in Social Networks" together with Facebook and other social media.[122] In December, government representatives, businesses and industry associations agreed on stricter monitoring of hate speech. Besides this, in March 2016 the Ministers of Justice at the national and Länder levels agreed (a) that the BMJV would provide information online to make it easy to understand how to submit reports of online hate crimes; (b) that the public prosecutor's offices would quickly review reports and prosecute if the requirements to do so are met; and (c) that the cross-border investigations of the distribution of propaganda for anti-constitutional organizations as well as of the use of signs from prohibited parties and associations is to be made easier.[123]

Strategies against hate speech and bias crimes in the public and social web are being discussed by various social and state actors: For example, hate speech online is to be contradicted with counter-speech approaches, and objections are to be encouraged. First reactions can be seen in individual model projects funded by the national government. Initiatives such as jugendschutz.net try to directly contact internet providers to convince them to delete hate speech content.[124]

Organizations for those affected such as the Central Council of Jews in Germany point out the lack of measures for combating hate speech found online. Content that is put online via a foreign server cannot be traced back at all or only to a limited extent.[125]

3.5 Education and Further Training of Police and Judiciary

The OSCE wants to promote understanding for the universality of human rights in the OSCE area with education and further training for police and members of the judiciary.[126] To combat hate crimes, the Ministerial Council calls on the participating States to "introduce or further develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes."[127] Capacity-building for the government offices includes measures for positive interactions between police and victims, in part so that they report hate crimes, as well as

122 The Central Council of German Sinti and Roma criticizes that the Sinti and Roma were not consulted even though they are one of the most affected groups. Response to the author's survey.

123 BMJV 2016, pp. 1 f.

124 Jugendschutz.net (2015).

125 Response from survey of the Central Council of Jews.

126 Cf. among others Madrid 1983 (Questions Relating to Security in Europe: Principles), cited in: OSCE HDC, p. 10; Moscow 1991, cited in: OSCE HDC, p. 10; OSCE (2004), MC.DEC/12/04.

127 OSCE (2009), MC.DEC/9/09, p. 37 no. 4; Sofia 2004, cited in: OSCE HDC, p. 223; OSCE 2012, Permanent Council Decision No. 1049: OSCE Strategic Framework for Police-Related Activities.

supporting the exchange with civil society organizations that assist victims of hate crimes.[128] The UN Committee on the Elimination of Racial Discrimination (CERD) recommends that Germany "institute a comprehensive strategy, including mandatory training, to enhance the understanding of police, prosecutors and judges of the notion of racial discrimination and the ways to combat it".[129] The European Commission against Racism and Intolerance (ECRI) also "recommends that the German authorities intensify their efforts to provide training to police officers, prosecutors and judges on issues pertaining to the implementation of criminal legislation addressing racism and racial discrimination, in order to ensure that all offences with racist motivations, whether or not they fall into the category of extremist crimes, are properly identified and dealt with as racially motivated offences."[130] The NSU Committee of Inquiry also called for a "culture of error" in police organizations and thus a reflection on their own work as well as an institutional willingness to accept discourse and critique.[131]

Knowledge about international and national norm-setting (including on hate crimes or the General Equal Treatment Act / AGG) and how to handle them varies according to the individual training and education centre in the Federal Republic of Germany: There are institutions that do not see any links to the topics they cover in their training[132] and institutions that go into detail on these topics. Special training materials for police on discrimination and hate crimes were not mentioned by the institutions.

Human rights and fundamental rights were usually listed as cross-cutting topics (e. g. by the Federal Police Force[133]).[134] They are solidly anchored in the curriculum primarily in regard to international topics or assignments abroad and/or as sub-topics in the subject Ethics or Professional Ethics as well as in State or Constitutional Law courses.[135] Courses on the topic "Human Rights and the Police" were recently offered by the Brandenburg State Police Academy (FHPol) and the Rhineland-Palatinate State Police Academy (HdP).

The prohibition of discrimination is a subject in education and training much less frequently; however, it was listed as a cross-sectional task by a few institutions.[136]

In the case of the Federal Police Force, hate crimes are a topic covered in State and Constitutional Law / Civic Education.[137]

The Bremen School of Public Administration (HfÖ) is a best practice example. In the module "Hate Crimes – Politically Motivated Crime", it discusses characteristics of hate crimes, victim groups, effects of victimization and prevention.[138] There are hardly any explicit references to particularly

128 OSCE (2009), MC.DEC/9/09, p. 37 no.8; Brussels 2006 (Decisions: Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding), cited in: OSCE HDC, p. 224.
OSCE (2004), MC.DEC/12/04; PC.DEC/633, cited in: OSCE HDC, p. 223; OSCE (2012), PC.DEC/1049; OSCE (2006), MC.DEC/13/06, cited in: OSCE, HDC, p. 224; OSCE (2004), MC.DEC/12/04; PC.DEC/621; PC.DEC/633, cited in: OSCE HDC, p. 223; OSCE (2007), MC.DEC/10/07; MC.DEC/9/09, p. 225.

129 CERD (2015): Concluding Observations, pp. 7 ff.

130 ECRI Report (2008), p. 17, Recommendation no. 23.

131 German Bundestag (2013): Printed Paper 17/14600, p. 909, l. 2, p. 911, l. 19.

132 For example in Mecklenburg-West Pomerania.

133 CERD (2013): State Party's Report from the Federal Republic of Germany, p. 25.

134 Individual institutions describe fundamental and human rights as basic topics in their professional ethos (e. g. Lower Saxony Police Academy, Brandenburg Police Academy).

135 Among others, Brandenburg Police Academy, p. 2, Lower Saxony Police Academy, p. 5, Thuringia, p. 2, Bremen School of Public Administration, pp. 2 and 4.

136 E. g. North Rhine-Westphalia School of Public Administration, Saarland School of Public Administration (FHSV) p. 1, Federal University of Applied Administrative Sciences (HS Bund), pp. 2 ff.

137 Cf. Response from the Federal University of Applied Administrative Sciences, p. 2.

138 Bremen School of Public Administration.

discriminated groups in the education and training programmes.[139]

The topic of victim protection is usually discussed generally without explicitly mentioning hate crimes. A study of the Saxony-Anhalt State Police Academy that looked at how the police deal with migrant victims in racist crimes noted an urgent need for action in this area in particular: For example, the study found that there were clear indications of a lack of sensitivity on the part of police officers when dealing with migrant victim witnesses in bias-motivated criminal offences.[140] The Brandenburg FHPol addresses the topic of victim protection and dealing with victims in a sustainable way: A five-day course on "Victim Protection" informs participants about co-operation with victim assistance organizations including the Victim Perspective Brandenburg (Opferperspektive Brandenburg) that supports victims of right-wing, racist and anti-Semitic violence.[141] Co-operation or exchanges with civil society organizations and specialized organizations to protect victims of hate crimes are generally rare. In Saxony-Anhalt, however, there is co-operation with the Mobile Victim Counselling Halle (Mobile Opferberatung Halle) and the Workers' Welfare Association (Arbeiterwohlfahrt).[142]

Migrants and foreigners are always seen as subjects of investigation. They are a topic in modules on international co-operation. All educational and training institutions have modules such as "International Police Work", "Migration and Crime", "Migration and Extremism", and "Islam" or "Salafism". The content here focuses on "cultural aspects of the Arabian region" and "our own and foreign cultural standards" among other aspects.[143] The topics extremism and terrorism, often specifically right-wing extremism, are also covered.

Lawyers, NGOs and researchers point out the danger of generalizing negative attributions being taught about non-citizens, migrants and people with religions other than that of the majority society that then result in bias being strengthened.[144] With this in mind, possible bias and generalized links of minorities, migrants and non-citizens with crime, extremism and terrorism must be counteracted.

At the Lower Saxony Police Academy (PA), this topic is therefore discussed: In their education one aspect is the "deconstruction of the culturalist assumptions of crime by migrants that are often held by new students".[145] In class, discussions centre on theories of crime, increased tendency to report crimes committed by migrants, negative consequences of selective suspicions and dealing with civil diversity.[146]

In order to achieve the best possible performance by the investigating authorities and avoid problematic behavioural patterns, several institutions rely on promoting social skills (e. g. conflict-solving skills, self-reflection).

Several Bundesländer have now set up police complaint offices (including Saxony), some Bundesländer have independent complaint offices: In Rhineland-Palatinate in 2014, a police representative was established under the citizens' representative to report to the parliamentary Committee of the Interior. Complaints about police and internal grievances are recorded. In Schleswig-Holstein in 2016, a representative for the Land's police was appointed to process citizens' complaints and assist police officers with internal problems. The

139 However, the North Rhine-Westphalia School of Public Administration discusses disabled and homeless persons as particularly vulnerable groups, the Rhineland-Palatinate State Police Academy mentions disabled persons, and several institutions discuss refugees. As part of its further education programme, Brandenburg deals explicitly with anti-Semitism and Islamophobia in the digital learning application "Basic Knowledge on Right-Wing Extremism".

140 Asmus/Enke 2016, p. 147.

141 Brandenburg State Police Academy.

142 Response from Saxony-Anhalt.

143 Response to survey on education and further training of police (2016).

144 Lawyers / NGOs / Researchers (2015).

145 Response from Lower Saxony Police Academy.

146 Ibid., pp. 3 ff.

position has comprehensive authority such as the right to question, view files and carry out inspections; in addition, civil society organizations can file complaints.[147]

The topic of hate crimes is dealt with insufficiently in education and training of legal professionals, as well. The German Judicial Academy, a continuing education institution for judges and public prosecutors, offers the courses "Political Extremism – Challenge for Society and Judiciary" and "Right-Wing Radicalism and Neo-Nazism – Most Recent Trends" as part of its programme in 2016[148]. While the first course is not a qualification in the area of hate crimes but instead maintains the extremism term, in the second a reflection on the NSU has been included. Besides this, there are courses with titles such as "Justice and Judaism", "The National-Socialist Judiciary and Coming to Terms with It", "Religious Pluralization – A Challenge for our Legal Order" and "Intercultural Competency". In the area of victim protection, a general course on "Sentencing, Victim Protection and Adhesion" as well as a course on new aspects of victim protection law are offered; there are no specific courses on victims of hate crimes.

In the Final Declaration from the Judicial Summit against extremist violence in March 2016, it was announced that specific further education modules are to be developed to encourage judges and public prosecutors to react appropriately to the sharp increase in xenophobic and hate-motivated crimes.[149]

3.6 Victim Support and Counselling

The OSCE promotes the support of persons who were victims of bias-motivated crimes. In light of the fact that unreported crimes could lead to governments not reacting adequately and taking too few measures in this area, States are called on to take appropriate measures to encourage victims to report hate crimes.[150] Besides this, in co-operation with relevant actors, States are to explore ways to provide victims of hate crimes with access to counselling, legal and consular assistance as well as effective access to justice.[151] Victims can request assistance from the Federal Office of Justice as "Hardship Benefit for Victims of Extremist Attacks" regardless of whether or not the perpetrators have been caught.[152] Victims may take legal action to assert their civil-legal claims. Depending on the crime, in criminal proceedings, they can be joint plaintiffs, sometimes with victims' defence counsel.

An obstacle to the legal representation, however, is the risk of carrying the costs, as the regulations on providing assistance for the cost of proceedings force some of the victims to pay the costs up front or carry them themselves.[153] The authorities rarely make proactive use of victim-friendly regulations such as victim protection counsellors accompanying the victims to questioning and court dates.[154]

Civil society counselling centres convey knowledge about victims' rights as well as psychological, legal and financial support – however, these centres are not yet widespread. Since the early 2000s there have been independent counselling centres for victims of hate crimes in the East German Bundesländer and in Berlin. Since 2015, the establishment of these specialized counselling centres has also been furthered in the West German Länder – financially supported by the federal programme "Live democracy!" as well as a few programmes by the Länder. The developing structures are mostly oriented on the common

147 In addition, Thuringia is currently reviewing the establishment of a confidential police agency as a direct point of contact for police officers and victims.

148 http://www.deutsche-richterakademie.de/icc/drade/med/0fd/0fdb0047-318f-4144-577d-156350fd4c22,11111111-1111-1111-1111-111111111111.pdf

149 BMJV: Final Declaration of the Judicial Summit on 17 March 2016; url: http://www.bmjv.de/SharedDocs/Downloads/DE/Artikel/03172016_Abschlusserkl%C3%A4rung_Justizgipfel.html?nn=6704238

150 OSCE (2009), MC.DEC/9/09, p. 2 no. 3.

151 OSCE (2009), MC.DEC/9/09, p. 2 no. 5.

152 https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Opferhilfe/extremistisch/Haerteleistung.html

153 Lawyers A. Hoffmann/B. Elberling, in: ezra 2014, p. 41.

154 Interview with lawyer on 20 April 2016; interview with senior public prosecutor R. Kästner-Hengst on 6 April 2016, in: ezra 2014, p. 40.

quality standards, but due to limited funding their coverage is not (yet) complete.[155]

The projects are mostly organized by the Association of Counselling Centres for Victims of Right-Wing, Racist and Anti-Semitic Violence (VBRG e. V.) and are almost exclusively financed by public funds.

The counselling centres are active on two levels: Firstly with practical support of the victims and the affected environment in dealing with the material and immaterial effects of the attack as well as strengthening their ability to act. There is also psychosocial assistance, help in completing compensation requests, information about rights and obligations in criminal proceedings and, if necessary, providing contacts for psychotherapists and lawyers. The support is conceptualized to have a low threshold in the sense that the counsellors are proactive, there is outreach on the part of the counsellors, it is confidential or even anonymous, biased in favour of the victim, independent, and it is focused on solutions, resources, and the task.[156]

Secondly, activities are conducted according to the theory of intervention to positively change the social environment that shares responsibility for marginalized groups becoming the target of violence and exclusion. On the case level, local interventions are done: discussions are held with local actors, events are organized and public relations work is done. Beyond the individual cases, the counselling centres are the lobby for the victims of hate crimes by acting as experts in a parliamentary context, conducting public relations and lobbying work and ensuring there is independent monitoring by civil society.

On the regional level, there are some counselling projects directed at specific groups of affected persons, for example the gay Anti-Violence Project MANEO in Berlin.[157]

In the context of their work, the general police representatives for victim protection are also available as contacts for victims of hate crimes. The NSU Committee of Inquiry recommends that the "communication with the victims or the surviving dependents [...] should be done by officers who have received special training in this area."[158] There are almost no special competencies.

Several Bundesländer (including Hesse, Lower Saxony, Rheinland-Palatinate, Berlin) have appointed specialized contact persons for same-sex lifestyles. In Berlin in 2014, this position was renamed as the Contact for LSBTI.[159] The goal of the Berlin Office, which is considered a best practice example, is to improve the protection of victims with confidence-building measures, to shed considerable light on the dark field of homophobic and transphobic violence, to conduct prevention and educational work, to promote internal police education and training on crimes against LSBTI and to provide support for complaints against the police.[160] A few public prosecutor's offices have also appointed contact persons for same-sex lifestyles who have been assigned to handle homo-/bi- and transphobic criminal offences and place particular importance on providing information for the victims.[161]

Because the authorities have only a few or no specialized points of contact, the police and public prosecutor's offices' co-operation with the affected groups and counselling centres has not been able to be implemented well as of yet. Joint prevention and education strategies can only be developed selectively depending on whether a knowledgeable person is coincidentally available.

155 Verband der Beratungsstellen gegen rassistische, rechte und anti-semitische Gewalt (Association of Counselling Centres against Racist, Right-Wing, and Anti-Semitic Violence) (VBRG) on 12 April 2016; Response to a survey of the Turkish Community Berlin-Brandenburg, p. 2. The funds provided by the federal government totalling EUR 50,000 (2015; since 2016: EUR 70,000) are not sufficient to establish an adequate counselling structure.

156 Verband der Beratungsstellen gegen rassistische, rechte und anti-semitische Gewalt (Association of Counselling Centres against Racist, Right-Wing, and Anti-Semitic Violence) (VBRG): Quality Standards for Professional Counselling, 2015.

157 http://maneo.de/en

158 Final Report by the NSU Committee of Inquiry, Bundestag Printed Paper 17/14600, p. 862.

159 Lesbians, Gays, Bisexuals, Transsexuals and Intersexual Persons.

160 Tischbier/Löher 2012, in: Der Polizeipräsident in Berlin [The police president in Berlin] (ed.), p. 3.

161 Contribution from the Berlin public prosecutor's office. In: MANEO-Jahresbericht 2014 [MANEO Annual Report 2014], pp. 93ff.

3.7 Political Measures for Awareness-Raising

The Ministerial Council "commits to take appropriate measures, in conformity with respective constitutional systems, at the national, regional and local levels to promote tolerance and non-discrimination as well as to counter prejudices and misrepresentation, particularly in the field of education, culture and information."[162] Important political measures mentioned by the OSCE are the "development of comprehensive domestic education policies and strategies", "increased awareness-raising measures" and "human rights education" starting at an early age[163]. The participating States are to strengthen their partnerships with civil society organizations to better combat discrimination and hate crimes, including by establishing local, regional and national consultation mechanisms. When creating national strategies and programmes, affected groups such as migrants and Roma and Sinti are explicitly to be involved in the process. The NSU Committee of Inquiry's final report from all parties represented in the German Bundestag recommended expanding federal support by involving civil society actors and academic competency more in the development and implementation of measures. In particular, the goal must be to promote mobile counselling and victim counselling against right-wing extremism, racism and anti-Semitism by independent institutions and to promote other civil society organizations and initiatives in educational and awareness-raising work.

3.7.1 Federal Programmes and Activities

"Solidarity with Participation": The federal programme, headed by the Federal Ministry of the Interior, promotes projects for democratic participation and against extremism. The Ministry's Federal Agency for Civic Education (BpB) implements the programme. First initiated in 2011 as an instrument for promoting regional associations, clubs and those who disseminated information in structurally weak regions of East Germany, in 2016 the programme was opened to include West Germany. Projects, especially by organizations who work with volunteers – such as sport clubs, volunteer firefighters and technical aid associations – can receive funding and are then part of a target group for government coaching, qualification and supervision programmes.

The programme has no explicit conceptual focus on the topics of protection against discrimination, human rights or diversity / society of immigration; instead, it is based on the idea of promoting structures in East Germany and on the concept of "extremism", which means that the perception of the problem is focused on political organizations and activities that the Federal Republic's political system wants to eliminate aggressively.

According to criticism from civil society actors, the programme's second pillar "democratic participation" tends to be contradicted by guidelines on content and structure.[164] Supervision, training and scientific support by the authorities is provided, but, for example, there are no provisions for youth project participants to have a say in shaping their project.[165]

"Live democracy!" The federal programme has been carried out by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth since 2015 to directly implement recommendations from the German Bundestag's first NSU Committee of Inquiry (2012–2013). The programme responds to local, regional and national needs for action with a subsidy for already existing structures and new ideas. It is evaluated and there is scientific support.

Nationwide, "Partnerships for Democracy" supports towns in developing and implementing actions plans to promote democracy and diversity. In all sixteen Länder, mobile counselling and "democracy centres" for counselling victims and those who have withdrawn from society are supported as well as non-governmental organizations that are developed with "structural support into federal government organizations". In addition, the development of model projects on selected phenomena

162 OSZE (2002), MC.DEC/6/02, Para.4.
163 OSZE (2006), MC.DEC/13/06.
164 Responses of civil society to the author's survey.
165 BMI (2016): http://www.zusammenhalt-durch-teilhabe.de; Survey of civil society.

of group-based hate, on strengthening democracy in rural areas and on preventing radicalization are supported. The focus on target groups and those affected by (1) racism and racist discrimination, (2) current forms of anti-Semitism, (3) current forms of Islamophobia, (4) antigypsyism, (5) homophobia and transphobia and (6) anti-discrimination (early prevention, primary school age) are for the most part consistent with the priorities set by the OSCE and ODHIR.[166] Numerous civil society actors and organizations for those affected praise the programme as a best practice example.[167]

Both "Live democracy!" and "Solidary with Participation" received significantly more funding corresponding to the parliamentary NSU investigations and as part of the federal government's Asylum Pact.

Besides this, in the coalition negotiations the government agreed on expanding the "Federal Republic of Germany's National Plan of Action on Combating Racism, Xenophobia, Anti-Semitism and Intolerance Related to These" to include the topic of homophobia and transphobia.[168] Civil society actors criticize that at the current time (April 2016) no details about the creation of the plan are known and it remains unclear as to how civil society, including associations for the affected groups, are to be included, especially considering the fact that the end of the legislative period (September 2017) is fast approaching.[169]

3.7.2 Programmes in the Länder

In most Länder there are programmes on democracy promotion that are primarily directed against "right-wing extremism", and in most cases this is the perspective from which they discuss the topics of discrimination and protection from discrimination. All East German Länder (including Berlin) have such programmes as well as the Western Länder Hamburg, Schleswig-Holstein, Hesse and Bavaria. In others, Baden-Wuerttemberg, Lower Saxony and North Rhine-Westphalia, similar programmes are being negotiated. In Saarland, Bremen and Rhineland-Palatinate there are as yet no such programmes. However, the existing programmes differ greatly in regard to the conceptualization of their content and their inclusion of civil society organizations such as NGOs.

A good practice example according to the OSCE commitments is "Hamburg – City with Civic Courage. Land programme to promote democratic culture and prevent and combat right-wing extremism". This programme, headed by the Agency for Labour, Social and Family Affairs and Immigration, has been implemented since 2014. It seeks in particular to counteract "perceptions of inequality" and degrading actions, prevent prejudices, support those affected by bias-motivated crimes and thereby to promote an inclusive society. In the early stages of developing the programme, numerous government (all senators, police / state protection, Office for Protection of the Constitution) and civil society actors (e. g. citizens' coalitions, mobile counselling centres, sport associations) were included, and their participation remains clearly visible in the implementation process.[170]

On the opposite end of the spectrum is the Bavarian programme "Action Plan against Right-Wing Extremism" that was put together in 2009 as a reaction to a suspected right-wing extremist assassination attempt of a high-ranking police director. It is co-ordinated by the Ministry of the Interior and did not include anyone other than state agencies in its development or implementation. Its staff is recruited from among the police and the staff of the Office for the Protection of the Constitution. The core element – which was initiated with the action plan – is the Bavarian Information Office Against Extremism (BIGE). It engages in work on information, advising and net-

166 BMFSFJ (2016): https://www.demokratie-leben.de

167 Responses to survey of civil society actors including the Central Council of Jews in Germany, the Central Council of German Sinti and Roma, and the Initiative of Black Germans (ISD-Bund e. V.).

168 Stems from UN Commitment / Durban. Cf. Coalition Agreement between SPD and CDU/CSU (2013), p. 105.

169 Response from survey of the Lesbian and Gay Association in Germany (LSVD) in April 2016.

170 http://www.hamburg.de/landesprogramm/ (Last accessed: 2 April 2016). Berlin's programme is also evaluated positively; it has successfully achieved a similarly broad integration of state and civil society actors and the programme is further developed in a learning process. Cf. on this among others the interview with the Anne Frank Zentrum in Berlin on 30 March 2016.

working to combat both right-wing and left-wing extremism. Protection from discrimination plays no role in this.[171]

Overall, the positive summary is that in both the programmes of the federal government and Länder governments there is a trend toward dealing more with discrimination and an increasing inclusion of civil society organizations. There is also an increase in the consideration of those affected by discrimination and hate crimes, which is an aim of the OSCE and the German Bundestag.

There is room for improvement, however, in the conceptualization of several programmes; although exchange and co-operation between government authorities and civil society actors exist in many areas that is not yet the case everywhere. More comprehensive consultation mechanisms at the local, regional and national levels should be established.

4 Conclusion

At the legislative level, Germany is largely in line with the OSCE standards – as shown by the new wording of the regulations on sentencing in the Criminal Code. However, there continues to be a lack of important discrimination characteristics (LGTBI, disability, homelessness) in the legal texts, and a mere catch-all characteristic seems insufficient. Particular deficiencies must be noted in the application of the laws, especially when dealing with those affected by hate crimes. The implementation of the OSCE requirement for co-operation between the state and civil society could be improved in the area of judicial and interior agencies.

It is recommended that process statistics be introduced to collect data on hate crimes with the inclusion of the characteristics of those affected.

The increasing orientation of programmes from the federal and Länder governments related to preventing discrimination and hate crimes and the consideration of key affected groups is a welcome development and should be strengthened nationwide.

There is a need for action in the area of continuing education for police and the judiciary. Here measures should be taken to raise awareness of the OSCE commitments and the national legislation on the topics of equal treatment and protection against discrimination, prosecution of hate crimes and how to protect and deal with victims of hate crimes; it should be ensured that they are accepted and implemented in everyday professional life.

5 Bibliography

Asmus, Hans-Joachim/Enke, Thomas (2016): Der Umgang der Polizei mit migrantischen Opfern. [The police's treatment of migrant victims.] Wiesbaden.

Aydin, Öykü Didem (2006): Die strafrechtliche Bekämpfung von Hassdelikten in Deutschland und in den Vereinigten Staaten von Amerika. [The criminal-legal combating of hate crimes in Germany and the United States of America.] Freiburg.

Bavarian Ministry of the Interior (2009): Bayerisches Handlungskonzept gegen Rechtsextremismus. [Bavarian action plan against right-wing extremism.] Decision by the Ministerial Council on 12 January 2009. https://www.bayern-gegen-rechtsextremismus.bayern.de/wissen/externes-material/Handlungskonzept%20Rechtsextremismus.pdf (Last accessed: 22 April 2016).

Bavarian Government (no date): Über die Bayerische Informationsstelle gegen Extremismus [On the Bavarian Information Office Against Extremism] (BIGE). https://www.bayern-gegen-rechtsextremismus.bayern.de/ueber-die-bayerische-informationsstelle-gegen-extremismus-bige (Last accessed: 2 April 2016).

Bleich, Erik/Hart, Ryan K (2008): Quantifying Hate: The Evolution of German Approaches to Measuring 'Hate Crime'. In: German Politics, Volume 17, No. 1, March 2008, pp. 63–80.

171 Bavarian Ministry of the Interior (2009); Bavarian government (no date); Bavarian Ministry of the Interior (2009); Bavarian government (no date); Response from Bavaria to the author's survey.

Bundestag Committee on Culture and Media (2016): Public expert discussion "Working Conditions of Journalists – Insults, Threats and Physical Assaults". 13 January 2016. https://www.bundestag.de/dokumente/textarchiv/2016/kw02-pa-kultur-medien/400394 (Last accessed: 22 April 2016).

Butterwegge, Christoph (no year): Garanten eines ruhigen Gewissens trotz Ausgrenzung von und Gewalt gegen Migrant(inn)en. Über die Rolle von Kulturrassismus und Standortnationalismus beim Bau der Wohlstandsfestung (West-)Europa [Guarantees for a good conscience despite exclusion of and violence against Migrants. On the role of cultural racism and location-based nationalism in the establishment of the (West) European stronghold of wealth]. (no year): http://www.christophbutterwegge.de/texte/Rassismus.pdf (Last accessed: 19 April 2016).

CERD (2015): Concluding Observations on the 19th-22nd State Party's Report from the Federal Republic of Germany, 30 June 2015.

CERD (2001): Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD): Germany.

Coester, Marc (2008): Hate Crimes. Frankfurt am Main.

Decker, Oliver/ Kiess, Johannes/ Brähler, Elmar (2014): Die stabilisierte Mitte. Rechtsextreme Einstellung in Deutschland 2014 [The stabilized middle. Right-wing extremist attitudes in Germany 2014]. Leipzig.

German Institute for Human Rights (2015): Parallel Report to the UN Committee on the Elimination of Racial Discrimination (CERD).

German Institute for Human Rights (2014): Strafverfolgung muss effektiver werden [Criminal prosecution must become more effective]. In: aktuell 3/2014.

European Commission against Racism and Intolerance (ECRI) (2014): ECRI Report on Germany (fifth cycle), passed on 5 December 2013. Strasbourg, published on 25 February 2014.

European Commission against Racism and Intolerance (ECRI) (2009): ECRI Report on Germany (fourth cycle), passed on 19 December 2008. Strasbourg, published on 26 May 2009.

European Commission against Racism and Intolerance (ECRI) (2004): ECRI Report on Germany (third cycle), passed on 5 December 2003. Strasbourg, published on 8 June 2004.

European Commission against Racism and Intolerance (ECRI) (1998): ECRI Report on Germany. Strasbourg, March 1998.

Federal Criminal Police Service (2010): Informationen zum polizeilichen Definitionssystem Politisch motivierte Kriminalität. [Information on the police definition system for politically motivated crime.] Meckenheim, Updated 1 July 2010.

Federal Office for Anti-Discrimination (ed.)/ Kugelmann, Dieter (2015): Möglichkeiten effektiver Strafverfolgung bei Hasskriminalität. [Possibilities for effective criminal prosecution of hate crimes.] Legal Analysis. http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/aktuelles/20150407_Rechtsgutachten_Hasskriminalitaet.pdf?__blob=publicationFile&v=1 (Last accessed: 19 April 2016).

Federal Ministry of Justice and Consumer Protection (2016): Abschlusserklärung des Justizgipfels am 17. 3. 2016. [Final declaration from the Conference of the Ministers of Justice on 17 March 2016] https://www.bmjv.de/SharedDocs/Downloads/DE/Artikel/03172016_Abschlusserklärung_Justizgipfel.pdf?__blob=publicationFile&v=1 (Last accessed: 19 April 2016).

Federal Ministry of the Interior (2015): Politisch motivierte Kriminalität im Jahr 2014. Bundesweite Fallzahlen. [Politically motivated crime in 2014. Nationwide case numbers.]

https://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Pressemitteilungen/2015/05/pmk-2014.pdf?__blob=publicationFile (Last accessed: 19 April 2016).

Federal Ministry of the Interior (2015): Verfassungsschutzbericht 2014 [2014 Report from the Federal Office for the Protection of the Constitution]. Berlin.

FRA (2015): Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU. Comparative legal analysis. Vienna 2015.

Finkbeiner, Florian/Schenke, Julian/Trittel, Katharina/Schmitz, Christopher/Marg, Stine (2016):
PEGIDA: Aktuelle Forschungsergebnisse [Current research findings]. Göttinger Institut für Demokratieforschung. (Göttingen Institute of Democracy Research.)
http://www.demokratie-goettingen.de/blog/pegida-2016-studie. (Last accessed: 19 April 2016).

Friedrich Ebert Foundation – Forum Berlin (2013): Lagebild mit politischer Brisanz. Zur kriminalstatistischen Erfassung rechtsextremer Straftaten [Current situation with political sensitivity. On gathering criminal statistics on right-wing extremist crime]. Summary of the Conference on 30 August 2013.

German Federal Government (2013): State Party's Report from the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination (CERD).

Glet, Alke (2011): Sozialkonstruktion und strafrechtliche Verfolgung von Hasskriminalität in Deutschland [Social construction and criminal prosecution of hate crimes in Germany]. Freiburg.

Heitmeyer, Wilhelm (ed.): Deutsche Zustände. Band 1–9 [Conditions in Germany. Vols. 1–9], Suhrkamp: Frankfurt am Main 2002–2011.

Human Rights Watch (2011): Die Reaktion des Staates auf "Hasskriminalität" in Deutschland [The reaction of the state to 'hate crimes' in Germany]. Berlin, 8 December 2011.
http://www.hrw.org/sites/default/files/related_material/2011%2012%2007%20HateCrimesPaper_German_0.pdf (Last accessed: 19 April 2016).

Jugendschutz.net (2015): Rechtsextremismus online beobachten und nachhaltig bekämpfen. Bericht über Recherchen und Maßnahmen im Jahr 2014 [Monitoring and combating right-wing extremism online in a sustainable way. Report on research and measures in 2014]. Mainz.

Lang, Kati (2011): Mit Recht gegen Rechts. Staatliche Verfolgung rechtsmotivierter Gewalttaten [Using the law against the right. State prosecution of right-wing-motivated violence]. In: RAA Sachsen e. V. (ed.). Tödliche Realitäten [Deadly Realities]. Dresden 2011.

Lang, Kati (2011): Hau ab Du Penner – Gewalt gegen Wohnungslose [Get Lost, Loser – Violence against the Homeless]. In: wohnungslos, 4/2011, pp. 131–134.

Lang, Kati (2014): Vorurteilskriminalität [Bias-Motivated Crime]. Baden-Baden.

Lang, Kati (2015): Hintergrundpapier "Parallelbericht zum deutschen Staatenbericht an die VN- Antirassismuskommission" [Background paper "Parallel report on the German State party's report to the UN Anti-Racism Committee"].
http://rassismusbericht.de/wp-content/uploads/Hintergrundpapier-Dr-Kati-Lang.pdf

Lawyers / NGOs / Researchers (2015): Parallel Report to the 19th – 22nd State Party's Report from the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination (CERD): Institutional Racism using the Example of the Case of the Terrorist Group "National-Socialist Underground" (NSU) and Necessary Steps to Protect Individuals and Groups from Racial Discrimination.

Linde, Christian (2004): "Obdachlose" als Opfer struktureller, direkter und vierter Gewalt ["The homeless" as victims of structural, direct and the fourth power]. In: Berliner Forum Gewaltprävention, 16/2004.

Link, Christiane (2014): Nicht erwähnenswert – Gesetzentwurf zur Hasskriminalität [Not worth mentioning: draft law on hate crime]. In: Blog Zeit Online, 29 August 2014. http://blog.zeit.de/stufenlos/2014/08/29/nicht-die-erwaehnung-wert-hasskriminalitaet/. (Last accessed: 19 April 2016).

MANEO – The gay Anti-Violence Project in Berlin (2015): Jahresbericht 2014 [2014 Annual report]. Berlin. http://www.maneo.de/infopool/dokumentationen.html?eID=dam_frontend_push&docID=984. (Last accessed: 19 April 2016).

Metzger, Frank (2015): Gewaltsamer Ausschluss. Vor den Augen der Polizei: Neonazis bedrohen Pressefreiheit [Violent expulsion. In front of the eyes of the police: neo-Nazis threaten freedom of the press]. In: apabiz and MBR (ed.): Berliner Zustände. Ein Schattenbericht über Rechtsextremismus, Rassismus und Antisemitismus im Jahr 2014, Mai, [Conditions in Berlin. A shadow report on right-wing extremism, racism and anti-Semitism in 2014, May], pp. 66–72.

Mobile Beratung für Opfer rechter, rassistischer und antisemitischer Gewalt (Mobile Counselling for Victims of Right-Wing, Racist and Anti-Semitic Violence) (Ezra) (ed.) (2014): Die haben uns nicht ernst genommen. Eine Studie zu Erfahrungen von Betroffenen rechter Gewalt mit der Polizei [They didn't take us seriously. A study on the experiences of right-wing violence victims with the police]. Neudietendorf. http://www.ezra.de/fileadmin/projekte/Opferberatung/download/EzraStudie_klein.pdf

Schellenberg, Britta (2016): "Lügenpresse"? "Rechtsextremismus" und "Rassismus" in den Medien ['The press lies?' 'right-wing extremism' and 'racism' in the media]. In: Frindte, Wolfgang, Geschke, Daniel, Haußecker, Nicole and Franziska Schmidtke (ed.): Rechtsextremismus und "Nationalsozialistischer Untergrund". Interdisziplinäre Debatten, Befunde und Bilanzen [Right-wing extremism and the 'National-Socialist Underground'. Interdisciplinary debates, findings and results]. VS Verlag für Sozialwissenschaften: Wiesbaden, pp. 309–339.

Schellenberg, Britta (2014/15): Polizeilicher Umgang mit rassistischer und extrem rechter Gewalt am Fallbeispiel "Mügeln" [Police handling of racist and right-wing extremist violence using the example of 'Mügeln']. In: Möllers/van Ooyen (ed.): Jahrbuch Öffentliche Sicherheit [Yearbook of Public Security] (JBÖS) 2014/15, pp. 273–282.

Schellenberg, Britta (2014): Rassismus, extrem rechte Morde und Terrorismus in Deutschland am Beispiel der Mordserien des "Nationalsozialistischen Untergrunds" (NSU) [Racism, Right-Wing Extremist Murder and Terrorism in Germany Using the Example of the Series of Murders by the 'National-Socialist Underground' (NSU)]. Expertisen für Demokratie, 3/2014, pp. 1–20.

Schellenberg, Britta (2014): Die Rechtsextremismus-Debatte. Charakteristika, Konflikte und ihre Folgen [The right-wing extremist debate. Characteristics, conflicts and their consequences]. Edition Rechtsextremismus VS-Verlag für Sozialwissenschaften: Wiesbaden 2014 (2nd edition).

Terkessidis, Mark (2004): Die Banalität des Rassismus. Migranten zweiter Generation entwickeln eine neue Perspektive [The banality of racism. Second generation migrants develop a new perspective]. Bielefeld.

Tischbier, Maria/Löher, Uwe (2012): Straftaten gegen Lesben, Schwule, Bisexuelle und Transgender (LSBT) [Crimes against lesbians, gays, bisexuals and transgender persons (LSBT)]. In: Der Polizeipräsident in Berlin [The police president in Berlin] (ed.). Berlin.

http://www.berlin.de/imperia/md/content/polizei/praevention/homosexualitaet/straftaten_gegen_homosexule_januar_2012.pdf?start&ts=1326108418&file=straftaten_gegen_homosexuelle_januar_2012.pdf

Tolmein, Oliver (2012): Stellungnahme zur Anhörung Gesetzesentwürfe Hasskriminalität [Statement on the hearing for the draft laws on hate crimes]. 13 June 2012. http://www.bundestag.de/bundestag/ausschuesse17/a06/anhoerungen/archiv/23_Hasskriminalit__t/04_Stellungnahmen/Stellungnahme_Tolmein.pdf

UN High Commissioner for Refugees (UNHCR) (2015): Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees, December 2015.

Verband der Beratungsstellen gegen rassistische, rechte und anti-semitische Gewalt (Association of Counselling Centres against Racist, Right-Wing, and Anti-Semitic Violence) (VBRG) (2015): Qualitätsstandards für eine professionelle Beratung [Quality standards for professional counselling]. Berlin, 2015. http://verband-brg.de/images/qs.pdf (Last accessed: 19 April 2016).

Verband der Beratungsstellen gegen rassistische, rechte und anti-semitische Gewalt (Association of Counselling Centres against Racist, Right-Wing, and Anti-Semitic Violence) (VBRG) (2015): Handbuch Datenbank [Database handbook]. Unpublished document, 2016.

Vorländer, Hans/Herold, Maik/Schäller, Steven (2015): Wer geht zu Pegida und warum? Eine empirische Untersuchung von PEGIDA-Demonstranten in Dresden [Who goes to Pegida and why? An empirical study of PEGIDA demonstrators in Dresden]. Center for the Study of Constitutionalism and Democracy, Dresden.

C Gender Equality

At the summit in Istanbul in 1999 it was already declared: “The full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area. We are committed to making equality between men and women an integral part of our policies, both at the level of our States and within the Organization.”[1]

In 2004, the OSCE States decided on a comprehensive action plan for the equality of men and women that was explicitly reaffirmed in 2014 (MC.DEC/8/14) and incorporated many topics, including the three sub-topics on gender equality dealt with here:

I Collection of data on preventing and combating violence against women
Dr. Monika Schöttle

II Equal remuneration
Anne Rennschmid, LL.M.

III Women, Peace, Security
Germany‘s Implementation of UN Security Council Resolution 1325
Anne Rennschmid, LL.M.

1 Istanbul Document (1999), para. 23, http://www.osce.org/mc/39569?download=true

I Collection of Data on Preventing and Combating Violence against Women

Dr. Monika Schröttle

1 Introduction

Preventing and combating violence against women[2] represents an important element of the OSCE's efforts toward equality. It was named in the Action Plan on the Promotion of Gender Equality as a priority objective on which the participating States are to concentrate when implementing gender equality policies.[3] The requirement to collect, document and distribute comprehensive and differentiated data and information on violence against women was formulated as a key measure in connection with combating and preventing violence against women in several recent OSCE Ministerial Council Decisions.[4] The participating States are requested to collect, update and publish meaningful, comparable, differentiated and evidence-based data and statistics on violence against women; in addition, effective measures on criminalization of violence against women are to be taken on the legal level and boys and men are to be included more in preventing violence. In addition to this, it is recommended that the States sign and ratify the Council of Europe's Istanbul Convention on preventing and combating violence against women. The Ljubljana Decision (2005), which lists violence against women as a relevant security issue, encourages States to support efforts to raise awareness; to make significant additional efforts to collect, analyse and disseminate comparable data; and to support specialized NGOs and research on the issue. According to this Decision, it should also be ensured that all female victims of violence are provided with full, equal and timely access to justice and effective remedies and medical and social assistance, including emergency assistance; perpetrators are to be prosecuted; the economic independence of women is to be strengthened and they are to have equal access to education and training; also, gender-based violence during and after armed conflict and emergencies is to be prevented.

The following report serves to assess the extent to which the OSCE commitments regarding the system of data collection and research on violence against women have been implemented in Germany.

A key measure for evaluating the OSCE commitments on gathering and collecting data on preventing and combating violence against women in Germany are the aforementioned Ministerial Council Decisions, which also call for the ratification and implementation of the Council of Europe's Convention on preventing and combating violence against women (the so-called Istanbul Convention). The agreement obligates the States to take comprehensive measures in all areas from prevention (chapter III) to the provision of support (chapter IV) to criminal and civil law and laws concerning foreigners (chapters V, VI, VII). To evaluate the implementation of these measures and continue them in an evidence-based manner, the Contracting States commit to collecting data systematically and regularly on the measures, and the data collection is to be included in a nationally and internationally institutionalized monitoring system using national co-ordination offices and an international committee of experts (GREVIO). Germany has signed the Istanbul Convention (2011); ratification is being prepared.

2 Violence against women is only one form of gender-based violence. Violence directed at transgender and intergender persons due to their gender identity or their biological sex is also gender-based. However, it is not mentioned by the OSCE commitments.

3 OSCE, Action Plan for the Promotion of Gender Equality, MC.DEC/14/04.

4 MC.DEC/15/05; MC.DEC/07/14.

2 Description of the Problems Using the Current Situation in Germany

Combating and preventing violence against women and the support of those affected is seen as an important human rights and socio-political goal in Germany. On the federal and Länder level, action plans were developed by the responsible ministries – usually the ministry of family affairs, women and social affairs. The plans were in part based on representative data from the population and on reviews of the support systems;[5] the implementation of the measures and their effects were evaluated periodically but not systematically. Since 2000 there has also been a cross-ministry federal-Länder working group on domestic violence. At the local level, for many years there have been interdisciplinary networks active in bringing together specialized support programmes, police and the judiciary, the health care system, youth welfare offices and other agencies and psychosocial programmes in so-called round tables against domestic / sexualized violence. These have contributed to better networking for the protection and support of women affected by violence and their children.[6]

On the legal level, the Protection against Violence Act ("Act on the Civil-Legal Protection from Violent Acts and Stalking", Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen), which came into effect in 2002, represents an important milestone in the intervention, particularly in the case of domestic violence. It created a clear legal basis for protection orders in cases of domestic violence and stalking (prohibition of contact, approaching and harassment) and for temporary abandonment of a shared home; additional changes to the police laws at the Länder level also enabled a stricter removal of the violent perpetrator from the home directly after a violent act. Special competencies within the police and public prosecutor's offices for domestic and/or sexual violence also contributed to improving intervention, protection and criminal prosecution. The Protection against Violence Act and the legal practice have not yet been comprehensively evaluated after this legislation took effect,[7] but the institutions to support women affected by violence repeatedly report problems in carrying out and consistently implementing it as well as specific dangers for women (for example in the context of contact and custody decisions).[8]

In European comparison, Germany also has a differentiated, specialized non-governmental support system for women affected by violence in the form of women's homes, women's counselling centres, intervention offices and women's emergency hotlines; since 2013, there has also been a state-funded nationwide assistance hotline. However, there is still no assurance for the long-term work of women's homes, women's emergency hotlines or counselling centres for women affected by violence, and they have insufficient personnel so that many affected women and their children cannot receive the immediate protection and support that they need. A report commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) on the situation of women's homes, specialized counselling centres and other support programmes for women affected by violence and their children points out the gap in the provision of these services depending on the region and target group.[9]

There is still a high number of women in Germany affected by violence. The first nationwide representative survey on violence against women in Germany[10] showed that almost one in seven women living in Germany between the ages of 18 and 85 (13%) has been the victim of a forced, criminally relevant sexual act at least once in her adult life. One in every four (25%) has experienced physical and/or sexually violent acts by a current and/or previous relationship partner

5 Cf. for example the Action Plan II from the federal government, BMFSFJ, 2007.
6 WIBIG, 2004.
7 Rupp, 2005.
8 Among others, BIG e.V., 2012.
9 Kavemann/Helfferich, BMFSFJ, 2012.
10 Schröttle/Müller, BMFSFJ, 2004.

at least once (64 % of these resulted in physical injuries). A current European-wide study by the European Union Agency for Fundamental Rights[11] showed a similarly high prevalence of violence in Germany: According to this study, 12 per cent of women have experienced sexual violence since they were 15 years old and 22 per cent have been affected by physical and/or sexual violence by their partner during their adult life. Despite more political activities, we can therefore not detect a significant reduction in violence against women in the last ten years.

3 Assessment of the OSCE Commitments' Implementation

In the following, a description is given of whether and how the aforementioned OSCE commitments related to data collection and monitoring have been implemented up to now at the federal level. The key relevant OSCE commitment is to collect relevant, precisely differentiated, evidence-based statistical data.[12]

In Germany, the ministries potentially responsible for implementation at the federal level are the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth; the Federal Ministry of the Interior; the Federal Ministry of Justice; the Federal Ministry of Health; and the Federal Ministry of Education. Due to the federal system, beyond the national level there are corresponding ministries responsible in each of the Länder.

Up until the present, at the federal level almost exclusively the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth has carried out activities on combating violence against women and on data and information gathering as required in the OSCE Decisions (see above). In the area of monitoring and data collection, the Decisions in the following fields have been – partially – implemented:

Carrying out representative population-wide studies and in-depth cause and risk factor analyses specific to the target group

In Germany, between 2002 and 2004 the first comprehensive, nationwide representative survey on violence against women was carried out with more than 10,000 respondents,[13] and in the following years they were evaluated in-depth in regard to patterns, severity and consequences as well as risk factors and particularly affected target groups (among others Schröttle/Khelaifat 2008; Schröttle/Ansorge 2009). However a representative longitudinal survey that could show the developments over time has not yet been carried out. Between 2009 and 2012, the BMFSFJ also commissioned a representative survey of women with disabilities that showed that they are subjected to violence extremely often (Schröttle/Hornberg et al. 2013).

Carrying out a nationwide survey on support systems for women affected by violence and their children

Regarding the evaluation of the support system, a report was commissioned by the BMFSFJ on the situation of women's homes, specialized counselling centres and other support programmes for women affected by violence and their children, and the report was then published by the federal government.[14] Using the nationwide survey, the structures and gaps in the provision of services were determined. But here, as well, beyond the statistics on women's homes there is no plan for regular, comprehensive continuation of the reporting using the data from the support system and those who use it. Some Länder have begun carrying out their own surveys and studies for needs assessments (e. g. Needs assessment study in Bavaria, Schröttle et al. 2016), but they are also unlikely to be continued in the long-term. Developments over time and possible effects political measures can therefore not be empirically mapped.

11 FRA, 2014.
12 OSCE MC.DEC/07/14, OSCE MC.DEC/15/05.
13 Schröttle/Müller, BMFSFJ, 2004.
14 Kavemann/Helfferich, BMFSFJ 2012.

Carrying out a conceptual study on future monitoring

In regard to the issue of continuing to improve the data with long-term monitoring at the national level, from 2011 to 2012 an exploratory study on obtaining data and indicators on violence in relationships and sexual violence against women and men was carried out at the behest of the BMFSFJ.[15] In this study, a methodological concept was developed for continual, regular and systematic collection of data and information on the following topics: Extent and severity of sexual / domestic violence, consequences and subsequent costs, support, legal protection – legal basis, police and judicial practice, and prevention (ibid.).

With this, a better estimation of the short-term and long-term effects of anti-violence policies and the practice are to be made possible, and it is also to be ensured that measures and concepts based on regular reporting are continued in a scientifically well-founded manner. Conceptual suggestions were made for regular institutionalized monitoring at the national level with an independent scientific co-ordination office. However, the concept was not implemented or further pursued so that no systematic, continual systems for data and information collection exist in Germany.

Data collection in the area of health care

Relatively few activities related to regular data collection on violence against women can be seen in the area of health care. The Federal Ministry of Health has not yet developed any long-term activities in the context of health-related data on violence. In the framework of the Health Report 2008 an expert opinion was provided on the health consequences of violence,[16] but systematic and long-term national data collection on violence and its consequences are foreseen neither in the area of health care institutions nor in conjunction with the regular national health surveys even though the health care sector plays a key role in prevention and improved care for women affected by violence.

Research funding

The Federal Ministry of Education has thus far not earmarked any targeted research funding for projects in the area of violence against women; only in the area of sexual abuse of children and youth were large amounts of funding provided for research.

Data collection by police / courts

In the area of police data collection on violence against women, relevant progress could be made. Since 2011 in the police criminal statistics, not only the age, sex and nationality of those affected is recorded but also the relationship between the perpetrator and victim, which for the first time allows for a differentiated analysis of cases of domestic violence in relationships. According to present knowledge, the Federal Criminal Police Office (BKA) and the Federal Ministry of the Interior are planning a report on domestic violence based on the police criminal statistics. It can be hoped that this potential will result in continual, long-term reporting structures. Systematic data collection and analysis of court proceedings and their results as well as the protective measures taken in relation to domestic violence have not yet been done, but they would be highly relevant for monitoring state interventions and their consequences.[17]

4 Conclusion

In conclusion, it can be said that data collection on violence against women as foreseen by the OSCE Decisions has been started in Germany and its necessity is generally recognized. When it comes to the concrete implementation, however, a system of continual data collection and analysis and continued reporting in the framework of institutionalized, independent monitoring is lacking.

It is therefore recommended that independent co-ordination offices on domestic / sexual violence are established both at the federal and Länder levels. There, relevant, detailed, evi-

15 Schröttle/Fein, BMFSFJ, 2012, unpublished.
16 Schröttle et al., RKI, 2009.
17 Schröttle/Fein, BMFSFJ, 2013.

dence-based statistical data and information for long-term and continual monitoring should be collected from various sub-systems (police and judiciary, health care system, support systems, quantitative and qualitative surveys), analysed and documented. These should then lead to permanent, regular reporting. In particular in regard to data collection in the area of the judiciary and health care systems, activities must be significantly increased.[18] Information on violence against women should be collected at regular intervals in population-wide surveys and standardized surveys (of those affected and professional groups) should be proposed in the support system as well as in the area of police and the judiciary in order to be able to better map developments, problems and progress over time in relation to prevention and successful intervention and support.

5 Bibliography

BIG e. V. (2012): 10 Jahre Gewaltschutzgesetz [10 Years of the Protection against Violence Act]. Documentation. Berlin.

Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (1999). Aktionsplan der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen [Federal government's action plan on preventing and combating violence against women]. Published online at: http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=67514.html

Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (2007). Aktionsplan II der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen [Federal government's second action plan on preventing and combating violence against women]. Published online at: http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=100962.htmlBMFSFJ (1999).

FRA; European Union Agency for Fundamental Rights (2014): Violence against women: an EU-wide survey. Main results. Published online at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-resultsapr14_en.pdf. Last accessed: 28 November 2014.

Kavemann, Barbara/Helfferich, Cornelia (2012): Bericht der Bundesregierung zur Situation der Frauenhäuser und Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder [Federal government report on the situation of women's homes, specialized counselling centres and other support programmes for women affected by violence and their children]. Commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Published online at: http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Bericht-der-Bundesregierung-zur-Situation-der-Frauenh_C3_A4user,property=pdf,-bereich=bmfsfj,sprache=de,rwb=true.pdf

Rupp, Marina (2005): Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz [Legal practice report on the Protection against Violence Act].

Schröttle, Monika/Müller, Ursula (2004): Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland [Living situation, security and health of women in Germany. A representative study on violence against women in Germany]. Commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Berlin. Download of the short and long version of this and the following four documentations at: http://www.bmfsfj.de/BMFSFJ/Service/publikationen,did=20560.html

18 Specific measures on this in: Schröttle/Fein, BMFSFJ, 2013.

Schröttle, Monika/Khelaifat Nadia (2008): Gesundheit – Gewalt – Migration: Eine vergleichende Sekundäranalyse zur gesundheitlichen und sozialen Situation und Gewaltbetroffenheit von Frauen mit und ohne Migrationshintergrund in Deutschland [Health – Violence – Migration: A comparative secondary analysis on the health and social situation of women affected by violence with and without migrant backgrounds in Germany]. A research project by the University of Bielefeld's Interdisciplinary Centre for Women's and Gender Research (Interdisziplinaräes Zentrum für Frauen- und Geschlechterforschung) commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Final documentation, Berlin.

Schröttle, Monika/Hornberg, Claudia/Bohne, Sabine et al. (2009): Expertise für ein Themenheft der Gesundheitsberichterstattung des Bundes zum Thema "Gesundheitliche Folgen von Gewalt", [Expert Opinion for a special issue of the federal health report on the topic 'Health Consequences of Violence'], commissioned by the Robert Koch Institute. Special issue published online at: http://www.rki.de/DE/Content/GBE/Gesundheitsberichterstattung/Themenhefte/gewalt__inhalt.html

Schröttle/Ansorge (2009): Gewalt gegen Frauen in Paarbeziehungen – eine sekundäranalytische Auswertung zur Differenzierung von Schweregraden, Mustern, Risikofaktoren und Unterstützung nach erlebter Gewalt [Violence against women in partner relationships – a secondary analytical evaluation on the differentiation according to severities, patterns, risk factors and support after experienced violence]. A research project by the University of Bielefeld's Interdisciplinary Centre for Women's and Gender Research (Interdisziplinaräes Zentrum für Frauen- und Geschlechterforschung) commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Berlin.

Schröttle, Monika/Hornberg, Claudia et al. (2013): Lebenssituation und Belastungen von Frauen mit Behinderungen in Deutschland. Eine repräsentative Studie [Living situation and difficulties for women with disabilities in Germany. A representative study]. Research project by the University of Bielefeld's Interdisciplinary Centre for Women's and Gender Research (Interdisziplinaräes Zentrum für Frauen- und Geschlechterforschung) commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Abridged version at: http://www.bmfsfj.de/BMFSFJ/Service/publikationen,did=186150.html

Schröttle, Monika/Fein, Sylvia (2012): Explorationsstudie zur Gewinnung von Daten und Indikatoren zu Gewalt in Paarbeziehungen und sexueller Gewalt gegen Frauen und Männer im Hinblick auf ein langfristiges Monitoring auf nationaler Ebene [Exploratory study on obtaining data and indicators on violence in relationships and sexual violence against women and men in regard to long-term monitoring at the federal level]. Internal study commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Berlin. Unpublished.

Schröttle, Monika/Vogt, Kathrin/Rosemeier, Janina (2016): Studie zur Bedarfsermittlung zum Hilfesystem für gewaltbetroffene Frauen und ihre Kinder in Bayern [Study on a needs assessment in the Bavarian support system for women affected by violence and their children]. Study commissioned by the Bavarian Ministry of Social Issuces (**Bayrisches Sozialministerium,** StMAS). Forthcoming.

WIBIG (2004): Gemeinsam gegen häusliche Gewalt. Kooperation, Intervention, Begleitforschung [Working Together against Domestic Violence. Co-operation, Intervention, Accompanying Research]. Extended version. BMFSFJ. Berlin.

II Equal Remuneration

Anne Rennschmid, LL.M.

1 Introduction

1.1 OSCE Commitments

In the Ministerial Council's Decision on promoting equal opportunity for women in the economic sphere (2011),[19] the participating States recognize that women's participation in the economic sphere contributes significantly towards economic recovery, sustainable growth and the creation of cohesive societies and is thus essential to the security and stability of the OSCE region. They are concerned about the under-representation of women in economic leadership and decision-making processes in the public and private sectors. States are called on to take concrete measures that lead to women's equal opportunity for economic participation and equal access to social protection, and that support quality as well as full-time and/or self-employment. Policy and legal measures, including positive actions measures as appropriate, that would facilitate and protect equal opportunity for participation of women in the labour market, including through the expansion of childcare and nursing facilities, are to be initiated or strengthened. In the OSCE Action Plan on gender (2004),[20] it is emphasized that it is necessary to encourage raising of gender awareness and to promote equality in rights and full and equal participation of women and men in society, with the aim of promoting the practice of gender equality.[21]

1.2 Legal and Institutional Framework in Germany

According to the UN Convention on the Elimination of All Forms of Discrimination against Women CEDAW (Article 11 Section 1 letter d), Germany is obligated to guarantee women the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. Structural discrimination is also to be dismantled. This includes factual inequalities that arise on the labour market.[22] According to Article 157 of the Treaty on the Functioning of the European Union (TFEU), Article 23 of the Charter of Fundamental Rights of the European Union and Article 4 of the Directive 2006/54/EC, equal pay for equal work is required for men and women.

Article 157 TFEU includes the principle of equal pay without discrimination based on gender for equal work or work of equal value. According to jurisprudence from the European Court of Justice (ECJ), this is directly applicable even between employees and employers and also includes civil servants.[23] This principle, anchored in primary law, is clarified by Directive 2006/54/EC (Equal Treatment Directive). Article 4 of the EU Directive 2006/54/EC states: "For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated." Direct discrimination exists if a person performs equal work or work of equal value but based on their sex receives lower pay than a person of the other sex. Indirect discrimination, on the other hand, exists when women in a group comparison receive lower pay in relation to men despite neutrally formulated pay conditions in a collective agreement or in an employer's remuneration system without this having a factual justification.

19 MC.DEC/10/11/Corr.1.

20 MC.DEC/14/04.

21 The OSCE Decisions on gender equality are incomplete in so far as they only address women and men. They ignore the diversity of genders and gender identities and thus the situation of transsexuals, intersexual persons and other persons who identify themselves outside of the two-gender system.

22 Gleiche Rechte – Gegen Diskriminierung aufgrund des Geschlechts, Bericht der unabhängigen Expert_innenkommission der Antidiskriminierungsstelle des Bundes [Equal rights – against discrimination based on gender, report from the independent committee of experts in the federal Anti-Discrimination Office], 2015, p. 44.

23 ECJ 8 April 1976–43/75, Slg. 1976, p. 455.

Article 3 of the Basic Law (Grundgesetz, GG) guarantees the equality of men and women. According to this Article, the state promotes the actual implementation of equality and takes steps to eliminate existing disadvantages (Article 3(2) Sentence 2 GG). In Sec. 2(1) in conjunction with Sec. 7(1) and Article 3, the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) provides for a general prohibition of discrimination in working life. In Germany, however, there is no explicit regulation on implementing equal pay that would also be binding to the parties to the collective agreement.

The Basic Law also guarantees the principle of free collective bargaining (Article 9(3) GG). That means that employers (employer organizations) and employees (unions) agree on wages and salaries on their own in collective agreements, largely without state influence. The state's implementation of the principle of equal pay is not, however, a violation of free collective bargaining. On this, the European Court of Justice (ECJ) decided: "Where there is indirect discrimination in a provision of a collective agreement, the national court is required to set aside that provision, without requesting or awaiting its prior removal by collective bargaining or any other procedure, and to apply to members of the group disadvantaged by that discrimination the same arrangements as are applied to other employees."[24]

In the coalition agreement after the Bundestag elections in 2013, the governing parties announced they would contribute to eliminating existing differences in pay between women and men.[25] For the topic of equal pay of women and men, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is the head agency, and for labour law / collective agreements it is the Federal Ministry of Labour and Social Affairs (BMAS).

The following report is based on research in publicly accessible sources.

2 Description of the Problems Using the Current Situation in Germany

In Germany, the fundamental right to equal pay between women and men is not realized in practice. Official statistics point to a significant pay gap in the average pay of women and men totalling 21 per cent: The average gross hourly wage of men was EUR 20.59 in 2015, that of women was EUR 16.20.[26] The immense increase in women's professional qualifications in recent years has had no effect on unequal pay.[27] Germany is significantly above the EU average (17.6 per cent in 2015).[28] There are no statistics on equal pay for transsexuals and intersexual persons.

The pay gap describes the percentage difference in average gross hourly wages between women and men (related to men's pay). The difference in average gross hourly wage is measured using two different statistical procedures: The "adjusted pay gap" measures the gap between women and men with comparable qualifications, work and professional biographies. It refers to women who have the same career path as men and for whom the profession, work volume and professional position is not different. According to this statistic, in 2015 women employees earned 7 % less per hour than men on average.[29] However, the "adjusted pay gap" does not allow for any conclusions on whether women even have the opportunity to take the same career paths as men and whether these male career paths are desirable as a general social norm.

In contrast, the 21 per cent are expressed by the "unadjusted gender pay gap": For this, the aver-

24 ECJ, decision from 7 February 1991 – C-184/89 (Nimz).

25 Coalition agreement between the CDU, CSU and SPD. 18th legislative period, p. 103.

26 Federal Statistical Office, press release on 16 March 2016, https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/03/PD16_097_621pdf.pdf?__blob=publicationFile

27 Transparenz für mehr Entgeltgleichheit [Transparency for more equal pay], Study by the BMFSFJ, 2015, p. 16.

28 Gesetzentwurf für ein Entgeltgleichheitsgesetz [Draft legislation for an equal pay law], Bundestag printed paper 17/9781 on 23 May 2012.

29 Gleiche Rechte – Gegen Diskriminierung aufgrund des Geschlechts, Bericht der unabhängigen Expert_innenkommission der Antidiskriminierungsstelle des Bundes [Equal rights – against discrimination based on gender, report from the independent committee of experts in the federal Anti-Discrimination Office] 2015, p. 41.

age earnings of all women and men employees are compared in a general form. The part of the pay gap is also included that is caused by poorer access opportunities for women to certain professions or career stages, which could also be the result of discriminatory structures.[30] The causes of the pay gap are numerous. Many more men than women have management positions and are thus in higher pay groups. But even in the same hierarchical position, women are paid more poorly than men.[31] In particular when it comes to starting salaries for university graduates and in the private sector, there is a large gap in the gross hourly wages.[32] Upon career entry, women earn 10 per cent less than men, and in the course of their professional life the gap grows to 30 per cent.[33] Because it is primarily women who interrupt their careers or work part-time due to raising children or caring for relatives, they suffer from serious and permanent cuts in their income trajectories. It is also rare to reach a management position when working part-time.[34]

In addition, men and women often work in different industries and professions that are different in regard to their pay structures. This can be traced back to gender-specific stereotyping. Nursing or childcare professions, for example, are viewed as more "feminine" and paid more poorly than "masculine" professions in engineering or finance.

Typical "women's jobs" are systematically undervalued.[35] For equal pay, the procedure for evaluating work plays an important role.[36] The goal of such a procedure is to determine the value of various types of work using requirement criteria and stages and thus make them comparable. Such procedures are what the collective agreement pay grades and their implementation at the operational level are based on. The current legal situation and the European Court of Justice's (ECJ) jurisprudence demand that differentiating criteria reflect the "essence" of the work and are interpreted without discrimination, that is, they may not be interpreted such that they benefit one gender.[37] In order to be able to check the pay systems, they must be transparent.

One key part of unequal pay for women and men is the collective agreements and the company pay tables that are typically oriented on the collective agreements. Because there are now many indications for which mechanisms have indirect discriminatory effects and which women-dominated professions are likely undervalued, systematic evaluations of collective agreement regulations and business wage practices are necessary. An evaluation of equal pay is currently not required in Germany.

However, the collective agreement negotiations in the past decades have not changed the pay gap between women and men. The gender pay gap is hardly ever discussed in the negotiations.[38]

30 Federal Statistical Office, press release on 16 March 2016, https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/03/PD16_097_621pdf.pdf?__blob=publicationFile

31 Socio Vision: Entgeltungleichheit zwischen Frauen und Männern [Pay gap between women and men], Study commissioned by the BMFSFJ, 2010, p. 19.

32 Gleiche Rechte – Gegen Diskriminierung aufgrund des Geschlechts, Bericht der unabhängigen Expert_innenkommission der Antidiskriminierungsstelle des Bundes [Equal rights – against discrimination based on gender, report from the independent committee of experts in the federal Anti-Discrimination Office], 2015, p. 39.

33 ibid., p. 40.

34 ibid., p. 41.

35 Schliemann/ Ascheid (2002): Das Arbeitsrecht im BGB: Ein Kommentar [Labour law in the Civil Code: A commentary], Sec. 612, marginal notes 55 ff.

36 Gärtner, Grimm, Lang, Stephan: Kollektive Lohnverhandlungen und der Gender Wage Gap [Collective wage negotiations and the gender wage gap], ISB Discussion Paper, 14/2014, p. 10.

37 Bundestag printed paper 14/8952, p. 35.

38 Gärtner, Grimm, Lang, Stephan: Kollektive Lohnverhandlungen und der Gender Wage Gap [Collective wage negotiations and the gender wage gap], ISB Discussion Paper, 14/2014, p. 4.

3 Assessment of the OSCE Commitments' Implementation

3.1 Projects and Programmes

The federal government has initiated a series of projects to dismantle unequal pay that are based on voluntary co-operation with the business sector. Equal Pay Day, for example, was initiated by Business and Professional Women – Germany e. V. and is supported by the BMFSFJ. Equal Pay Day symbolically marks the day until which women have to work for free since the beginning of the year while men are already paid for their work during the same time. The most recent Equal Pay Day was on 19 March 2016. The goal of Equal Pay Day is to raise the public's awareness on the debate about the reasons for pay differences between women and men in Germany.

In the research project "Collective agreement negotiations and equal pay" funded by the BMFSFJ, the University of Erlangen-Nuremberg and the Institute for Employment Research in co-operation with social partners are to identify possible opportunities for dismantling remaining pay differences in collective agreement negotiations.

In addition to this, the government supports the development of various procedures to determine the pay differences in businesses[39] and unequal evaluations when assessing work in collective agreements.[40]

3.2 Legal Regulations

At the beginning of 2009 the UN Committee on the Elimination of Discrimination of Women (CEDAW Committee) noted with concern in its concluding observations on the sixth periodic state report from Germany the long-standing differences in wages and income between women and men.[41] According to the observations, Germany has thus far insufficiently addressed its commitment to gradually dismantle factual inequality. The Committee calls on Germany to consider enacting an Equality Act for the private sector with the establishment of a gender-based definition of pay in wage agreements and company pay structures or to amend the General Equal Treatment Act to that effect.

In 2012, that is, the previous legislative period, the BMFSFJ drew up a draft for equal pay legislation. It was to create an obligation for companies with 500 or more employees to make public in the framework of the annual report required by the Commercial Code the actual pay structure in the company, differentiated according to sex, and the work assessment procedure used. The core of the draft legislation is a legal right to information for employees on the pay system and actual pay structure in the company, differentiated according to the employees' sex and the area in which they work. If in the future the employers do not provide information about the pay system, the affected person is still limited to the individual petition procedure. Until today, the draft has not been presented to the cabinet or parliament. Another discussion focuses on making voluntary agreements with the private sector instead of legal regulations. The leading agency BMFSFJ is pressing for its draft legislation to be passed and is anticipating legislation in this calendar year.[42]

Anti-discrimination experts criticize the draft legislation because even after it has passed, a female employee who is affected by a discriminatory pay system must take individual action against her employer even if she is treated unequally not as an individual but as a member of a group. It must thereby be considered that there are barriers to entry in the courts, especially in cases when the woman affected by unequal remuneration is still under contract with the employer she is going to take legal steps against. A lawsuit is protracted and expensive. The situation is exacerbated by the fact that a plaintiff here is typically not only going up against her employer but is "attacking

39 For example the Logib-D (Lohngleichheit im Betrieb- Deutschland, Wage equality in business – Germany) procedure or the pay equality check.

40 For example the EVA list (Evaluierung von Arbeitsbewertungsverfahren) for the evaluation of work assessment procedures.

41 CEDAW/C/DEU/CO/06.

42 Information from the BMFSFJ, May 2016.

a system that is often supported the way it is by the parties to the collective agreement and/ or the workforce representation, and of course there are also (male) others who profit from it."[43] A court decision is also only directly applicable for the parties. The court cannot rely on its criticism of one pay system being implemented outside of the individual case, nor even on it being of interest to the parties to the collective agreement.[44] The independent committee of experts in the federal Anti-Discrimination Office therefore calls for farther reaching legislation that includes all companies and public administrations in its area of application.[45] The committee requests that the legislation include a requirement to eliminate any ascertained pay discrimination. "On their own responsibility, the supporters of the pay systems must create and implement a system free from discrimination. The state must ensure that this obligation is fulfilled. It is thereby not sufficient for individuals who were discriminated against to make use of their right of action."[46]

4 Conclusion

On the political level in Germany there are a series of initiatives and projects to promote equal opportunities for women and men as foreseen in the aforementioned OSCE Ministerial Council Decisions. These initiatives by the federal government that aim to sensitize the public and those affected on the topic and move the employer representatives to create more transparency in pay structures on a voluntary basis are welcome, but it cannot be expected that they will lead to the dismantling of the pay gaps between men and women in the foreseeable future. They cannot replace binding, legislative measures.

It is currently unclear when the draft for equal pay legislation presented by the responsible ministry will be taken up by the government. In addition, the draft is criticized by the Federal Office for Anti-Discrimination for being limited to large companies and for not sufficiently protecting the rights of those affected. Germany has therefore not yet taken all necessary measures to ensure equal pay for all genders. Besides this, statistics and measures must be expanded to include transsexuals and intersexual persons.

To promote equal pay, it is also necessary to implement measures to dismantle structural inequalities in the employment paths of women and men. As foreseen in the OSCE commitments, these include reliable, good infrastructure for childcare and support for people in need of care and flexible working time models. Offers to assist the compatibility of family and career should be focused more directly on men in order to motivate them to take on more tasks in the family.

5 Bibliography

Federal Office for Anti-Discrimination (2015): Gleiche Rechte – Gegen Diskriminierung aufgrund des Geschlechts, Bericht der unabhängigen Expert_innenkommission der Antidiskriminierungsstelle des Bundes [Equal rights – against discrimination based on gender, report from the independent committee of experts in the federal Anti-Discrimination Office].

Federal Ministry of Labour and Social Affairs (2016): Strategische Sozialberichterstattung Deutschland 2016 [Strategic social report for Germany 2016].

Gärtner/ Grimm/ Lang/ Stephan (2014)**:** Kollektive Lohnverhandlungen und der Gender Wage Gap [Collective wage negotiations and the gender wage gap], ISB Discussion Paper, 14/2014.

43 Heide Pfarr, Die Entgeltgleichheit für Frauen und Männer erfordert ein Durchsetzungsgesetz [Equal Pay for Women and Men Requires Enforcement Legislation], in: WSI Mitteilungen 5/2011, p. 253.

44 Gleiche Rechte – Gegen Diskriminierung aufgrund des Geschlechts, Bericht der unabhängigen Expert_innenkommission der Antidiskriminierungsstelle des Bundes [Equal rights – against discrimination based on gender, report from the independent committee of experts in the federal Anti-Discrimination Office], 2015, p. 45.

45 ibid.

46 ibid., p. 46.

Jarass, Hans-D. (2014): Jarass/Pieroth, Kommentar zum Grundgesetz [Commentary on the Basic Law], 14th edition.

Klenner, Christina/ Lillemeier, Sarah (2014): Der Entgeltgleichheit einen Schritt näher – Die EVA-Liste zur Evaluierung von Arbeitsbewertungsverfahren und Beispielanalysen [A step closer to equal pay – the EVA list on the evaluation of work assessment procedures and example analyses], Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (ed.).

Pfarr, Heide (2011): Die Entgeltgleichheit für Frauen und Männer erfordert ein Durchsetzungsgesetz [Equal pay for women and men requires enforcement legislation], WSI Mitteilungen 5/2011, Hans Böckler Foundation (ed.).

Schliemann, Harald/ Ascheid, Reiner /et al. (2002): Das Arbeitsrecht im BGB: Ein Kommentar [Labour law in the Civil Code: A commentary], 2nd edition.

Sinus Sociovision (2010): Entgeltungleichheit zwischen Frauen und Männern [Unequal pay between women and men], Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (ed.).

Wippermann, Carsten (2015): Transparenz für mehr Entgeltgleichheit [Transparency for More Equal Pay], Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (ed.).

III Women, Peace, Security: Germany's Implementation of UN Security Council Resolution 1325

Anne Rennschmid, LL.M.

1 Introduction

The Organization for Security and Co-operation in Europe (OSCE) was founded as a security organization. It is based on a comprehensive definition of security that has three dimensions: the politico-military, the economic and environmental and the human dimension, that is, human rights, democracy and the rule of law as prerequisites for lasting peace.[47] This understanding of security, is similar to the one promoted by the United Nations. Since the end of the East-West confrontation, the UN has reacted to complex conflict situations with crisis management that, besides the provision of military security, has included humanitarian aid, reconstruction of infrastructure and the promotion of democratic and rule-of-law structures with the goal of social, political and economic transformation.[48] The OSCE thus co-operates with the United Nations and other international organizations in the areas of crisis prevention, conflict prevention and peace-building.

With the adoption of UN Security Council resolution 1325 on women, peace and security[49] in 2000 and its subsequent resolutions,[50] for the first time the international community integrated a gender dimension into its peace and security policies. The catalyst for this was the realization that women are typically excluded from peace processes and an important perspective, without which peace cannot be sustainably secured, is thus lacking.[51] This change in perspective was preceded by years of persuasive efforts by women's organizations. The aim of resolution 1325 is to include women across the world as equal actors in crisis prevention, conflict management and peace-building and to call for the UN Member States to include a gender perspective in their peace and security policies. The resolution also aims to protect women from gender-based violence in armed conflicts and prosecute such acts according to international criminal law. Finally, during peace-building, future violations of women's human rights are to be prevented. These three goals are often summarized as participation, protection and prevention.

The implementation of resolution 1325 contributes to the assertion of women's and girls' human rights as set down in both global UN Covenants,[52] in the UN Women's Rights Convention CEDAW[53] and in other human rights instruments.[54] Resolution 1325 is a milestone because it links international security and human rights. Upholding women's human rights thus also becomes a security

47 OSCE, Human Dimension Commitments, 3rd edition, Warsaw 2011, p. XVI. Also see the "2004 OSCE, Action Plan for the Promotion of Gender Equality", accepted by the Ministerial Council Decision 14/03, MC.DEC/14/04, Annex, no. 1: "Respect for human rights and fundamental freedoms, democracy, and the rule of law is at the core of the OSCE's comprehensive concept of security."

48 Arloth and Seidensticker, Frauen als Akteurinnen in Friedensprozessen [Women as actors in peace processes], Study by the German Institute for Human Rights, 2011, p.4.

49 Security Council resolution 1325, UN Doc S/RES/1325 (2000). http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325%282000%29

50 UN Security Council resolutions 1820 (2008) 1888 (2009), 1889 (2009),1960 (2010), 2122 (2013) and 2242 (2015).

51 Rudolf, Beate: CEDAW und Resolution 1325 – Völkerrechtliche Maßstäbe für die Förderung der Menschenrechte von Frauen nach Konflikten [CEDAW and resolution 1325 – international legal standards for promoting women's human rights after conflicts], in Frauenrechte in Verfassung und Gesetzgebung nach bewaffneten Konflikten [Women's rights in the constitution and legislation after armed conflict], Workshop hosted by the Federal Ministry of Justice and Consumer Protection and the Federal Academy for Security Policy on 30 October 2012 in Berlin, p. 38.

52 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

53 With the included possibility of temporary special measures (Art. 4).

54 Federal Government's National Action Plan to Implement UN Resolution 1325 (NAP 1325), p. 4.

policy concern.[55] This corresponds to the OSCE's understanding of security, and respective OSCE Ministerial Council Decisions consequently refer to resolution 1325.

1.1 OSCE Commitments and their Connection to International Law

With the Charter of European Security in 1999, for the first time in the OSCE framework there was an explicit connection made between security and equal rights for women. In the Charter, the OSCE States emphasize that women's full and equal exercise of their human rights is essential to achieve a peaceful, prosperous and democratic OSCE area, and they commit themselves to make equality between men and women an integral part of their policies, both at the level of their States and within the Organization.[56] In the OSCE Action Plan from 2004 on the Promotion of Gender Equality, which serves to implement these commitments, one of the priority OSCE aims named is encouraging women's participation in conflict prevention, crisis management and post-conflict reconstruction; the main instrument for this is to be the implementation of resolution 1325.[57] This Action Plan was explicitly reaffirmed in 2014.[58]

In the Decision on Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation (2005), the participating States are encouraged to "take active steps to ensure that women are fully informed of and encouraged to apply for positions in the area of conflict prevention and post-conflict rehabilitation processes, in particular for senior management positions", to "support and encourage training and educational programmes focusing on women and girls, as well as projects aimed at women's participation in building sustainable peace", and to "regularly evaluate their efforts at gender mainstreaming in conflict prevention, conflict management and rehabilitation processes".[59] With the Decision on Women's Participation in Political and Public Life (2009), the participating States are once again called on to do this, and in particular it is recommended that they create equal opportunities within the police and military from recruitment to promotion and to allow for the equal contribution of women and men to peace-building initiatives.[60] In the Decision from Vilnius (2011), the Ministerial Council refers to 1325 to reaffirm "the significant role of women in the prevention and resolution of conflicts and in peace-building" and "urges participating States to implement UNSCR 1325 by ensuring increased representation of women at all levels in conflict resolution and peace processes".[61] Accordingly, the OSCE also supports the participating States in creating their own National Action Plans on the implementation of resolution 1325. In October 2014, the OSCE published a study to provide assistance on this matter[62] after it had published the handbook Guidance Note on Gender-Responsive Mediation in October 2013 to contribute to the implementation of resolution 1325.[63] In general, a particular focus on the participation of women as described in resolution 1325 can be noted in the OSCE commitments on peace, women and security.

Resolution 1325 is not a directly legally binding document,[64] but its implementation requires a focus on the UN Convention on Eliminating All

55 Rudolf, Beate: CEDAW und Resolution 1325 – Völkerrechtliche Maßstäbe für die Förderung der Menschenrechte von Frauen nach Konflikten [CEDAW and resolution 1325 – international legal standards for promoting women's human rights after conflicts], in Frauenrechte in Verfassung und Gesetzgebung nach bewaffneten Konflikten [Women's rights in the constitution and legislation after armed conflict], Workshop hosted by the Federal Ministry of Justice and Consumer Protection and the Federal Academy for Security Policy on 30 October 2012 in Berlin, p. 38.

56 Charter for European Security, Istanbul, November 1999, point 23.

57 MC.DEC/14/04, no. 44 (e).

58 MC.DEC/8/14.

59 MC.DEC/14/05, nos. 3, 6, 9.

60 MC.DEC7/09, nos. 1, 4, 6.

61 MC.DEC/3/11/Corr.1, preamble and no. 14.

62 OSCE STUDY ON NATIONAL ACTION PLANS ON THE IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325, (OSCE Study), http://www.osce.org/secretariat/125727.

63 At: http://www.osce.org/secretariat/107533?download=true.

64 Stefanie Schmahl, Frauen und Frieden [Women and peace] Beate Rudolf (ed.), Frauen und Völkerrecht [Women and international law], Baden-Baden 2006, pp. 47–70.

Forms of Discrimination against Women (CEDAW) from 1979.[65] In particular, the CEDAW Committee, which evaluates the implementation of the women's rights convention, emphasized in its "General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations" that the implementation of resolution 1325 must be premised on a model of substantive equality.[66] CEDAW Articles 7 and 8 make up the normative basis of women's participation. Equal participation of women thereby includes all areas of state power, foreign service, their participation in civil society organizations and senior management positions at the international level.[67] The CEDAW Committee also emphasizes the necessity of taking temporary special measures according to Article 4 in order to reach the goal of substantive equality.[68] The close connection between resolution 1325 and the human rights of women set down in the CEDAW can also be seen in the fact that the CEDAW Committee examines the implementation of the resolution within the state reporting procedure. When examining Germany in 2009, the Committee recommended that Germany "envisage launching a National Action Plan to implement the Security Council resolution 1325 (2000)."[69]

1.2 Legal and Institutional Framework in Germany

The Federal Republic of Germany has been a Contracting State to the CEDAW since 1985. The agreement has the status of a federal law and thus establishes binding implementation orders for all state powers.[70] It is also to be referred to when interpreting the constitutionally guaranteed fundamental rights.[71] Article 3(2) of the Basic Law (Grundgesetz, GG) guarantees the equality of men and women. According to this Article, the state promotes the actual implementation of equality and takes steps to eliminate existing disadvantages (Article 3(2) Sentence 2 GG). There are various laws intended to realize the equality of women and men, for example the Federal Equality Act,[72] which applies to foreign service among other areas, and for civil employees in the area of the Federal Ministry of Defence, the Equal Opportunity Act for Soldiers (Soldatinnen- und Soldatengleichstellungsgesetz)[73] and the Appointments to Federal Bodies Act (Bundesgremienbesetzungsgesetz, BgremGB).[74] The last also applies to the members sent by Germany to international bodies.

Since resolution 1325 was adopted in 2000, the federal government regularly reports on national implementation. In 2009, a cross-ministerial working group was established to co-ordinate German policies in regard to the implementation of resolution 1325. The participating ministries are the Federal Foreign Office (AA), the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), the Federal Ministry of the Interior (BMI), the Federal Ministry of Justice and Consumer Protection (BMJV), the Federal Ministry of Defence (BMVg) and the Federal Ministry for Economic Co-operation and Development (BMZ). In 2012, the federal government passed a Nation-

65 CEDAW Committee, General Recommendation No 30 (Women in conflict prevention, conflict and post-conflict situation), from 18 October 2013, UN-Doc. CEDAW/C/GC/30, no. 26; http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf.

66 ibid., no. 28.

67 ibid., no. 42.

68 ibid., no. 44.

69 Concluding observations from the Committee on the Elimination of All Forms of Discrimination against Women, UN-Doc. CEDAW/C/DEU/CO/6, no. 52.

70 Beate Rudolf/Felicitas Chen, Die Bedeutung von CEDAW in Deutschland [The importance of CEDAW in Germany], in: Hanna Beate Schöpp-Schilling/Beate Rudolf/Antje Gothe (eds.), Mit Recht zur Gleichheit [Heading toward equality with law], Baden-Baden 2015, pp. 25–70 (43).

71 Cf. Federal Constitutional Court, Decision on 23 March 2011, Ref. No. 882/09, www.bundesverfassungsgericht.de, no. 52 (on the UN Convention on the Rights of Persons with Disabilities) with reference to BverfGE 111,307 (Görgülü).

72 Act on the Equality of Women and Men in the Federal Administration and in Federal Companies and Courts (Gesetz für die Gleichstellung von Frauen und Männern in der Bundesverwaltung und in den Unternehmen und Gerichten des Bundes, BGleiG), from 24 April 2015, Federal Law Gazette I pp. 642, 643.

73 Equal Opportunity Act for Soldiers (SGleiG), from 27 December 2004, Federal Law Gazette I p. 3822, last amended by Article 31 of the Act from 24 April 2015 (Federal Law Gazette p. 642).

74 Appointments to Federal Bodies Act (Bundesgremienbesetzungsgesetz, BgremGB) from 24 April 2015, Federal Law Gazette I p. 642.

al Action Plan to implement the resolution (NAP 1325)[75] for the years 2013–2016. The focus of a new NAP 1325 starting in 2017 is the subject of current, ongoing co-ordination among the participating agencies. The objectives of resolution 1325 are also part of civilian crisis prevention, for which there is a separate "Action Plan for Civilian Crisis Prevention, Conflict Resolution and Peace-Building" from 2004.[76] This Action Plan is currently being revised, and starting in February 2017, the "Guidelines for Civilian Crisis Management" are to take its place.

The protection of women and girls in the context of armed conflicts, fragility and violence is currently expressed in the BMZ's "Development Policy Action Plan on Gender Equality 2016–2020" (GAP II) and the corresponding Road Map 2016. The Federal Ministry of Defence's White Paper on Germany's Security Policy and on the Future of the German Military from 2006 is still valid but is also currently being updated; a revised version is to be published this year.

Besides the cross-ministerial working group on the implementation of resolution 1325, another part of the institutional framework is the group on civilian crisis prevention that deals with all cross-cutting questions of civilian crisis prevention. The advisory board on civilian crisis prevention, which also includes members from civil society, is in contact with the group for expert discussions. Since 2010, the parliamentary sub-committee "Civilian Crisis Prevention, Conflict Regulation and Networked Actions" has existed in the German Bundestag. The independent Center for International Peace Operations (ZIF),[77] created and funded by the federal government, is charged by the Foreign Office to recruit, place, prepare, supervise and qualify German experts and managers for peace operations.

In 2003, the civil society Women's Security Council (Frauensicherheitsrat) was founded, and in 2010 it established a broad "Alliance 1325". Alliance 1325 and other non-governmental organizations are actively involved in the process of implementing 1325 and monitoring that process. As set down in the NAP 1325, at least once a year there is an exchange between the cross-ministerial working group on the implementation of resolution 1325 and civil society.

1.3 Methods

This chapter is based on research of publicly accessible documents – in particular national action plans and reports on their implementation as well as relevant expert literature – and on surveys of the relevant agencies, especially of the Federal Foreign Office, the Federal Ministry of Economic Co-operation and Development (BMZ) and the Federal Ministry of Defence (BMVg). In terms of topics, the focus is on women's participation in security and peace processes.

75 Federal government Action Plan on implementing UN Security Council resolution 1325 for the period from 2013–2016, Berlin, 19 December 2012, http://www.auswaertiges-amt.de/cae/servlet/contentblob/633902/publicationFile/175246/121219_Aktionsplan_download.pdf

76 Federal government Action Plan "Civilian Crisis Prevention, Conflict Resolution and Peace-Building", Berlin, 12 May 2004, http://www.auswaertiges-amt.de/cae/servlet/contentblob/384230/publicationFile/4345/Aktionsplan-De.pdf

77 Homepage: www.zif-berlin.de/en

2 Description of the Problems Using the Current Situation in Germany

2.1 Comprehensive Approach to Security and Peace Operations

The concept of networked security used by the federal government assumes that Germany's security threats can come from afar, making co-operative, networked action among the ministries necessary. In the Federal Ministry of Defence's White Paper on Germany's Security Policy it states: "Not primarily military but social, economic, ecological and cultural conditions that can only be influenced with multinational co-operation determine the future development of security policy. Security can therefore be ensured neither purely nationally nor solely with the military. Instead, a comprehensive approach is necessary that can only be guaranteed within networked security policy structures and with the awareness of an all-encompassing, national and global understanding of security."[78] The focus of German foreign policy in the area of peace and security is therefore not only on acute crisis management but also on crisis prevention.[79] The Federal Foreign Office describes multi-dimensional peace operations as a "key instrument of the international community for conflict prevention and conflict management".[80] Such international peace operations are carried out by the United Nations but also by regional organizations such as NATO, the EU and the OSCE.

Currently, Germany participates in 19 international peace operations with 3,430 soldiers[81] as well as with 172 police officers in 20 international police operations.[82]

2.2 Requests for Action on the Part of the Federal Government

German foreign, security and defence policy must ensure that the obligations arising from resolution 1325 are implemented in the context of German participation in peace operations. Military and civilian programmes must take the gender dimension fully into consideration at every phase of the conflict. This also includes the promotion of non-military conflict resolution instruments such as mediation.

Because enduring peace can only have a chance at success under certain stable state and social conditions, development policy is also involved. German development co-operation covers the following relevant topics, among others: Rights of women, gender, peace, fragile states, good governance and participation.[83] In a political transformation phase after an armed conflict, the rules of the game change for accessing state power and resources. This applies to the military and civilian sectors as well as to the different gender roles within the population. Here it must be ensured that women participate equally in the political transformation process.[84]

The obligation arising from resolution 1325 to create equal access for women to influential negotiating and decision-making positions must be implemented in the States' own human resource policies and be promoted in the (post-)conflict state. Globally, however, women are still underrepresented in crisis management and peace negotiations. An analysis by UN Women from 2012 shows that since 1992, only 5 % of peace agreement signatories have been women. In only 2.4 % of cases were women the lead negotiators. 3.7 % participated as observers in the peace ne-

78 BMVg, Weißbuch 2006 zur Sicherheitspolitik Deutschlands und zur Zukunft der Bundeswehr [White paper 2006 on Germany's security policy and the future of the military], p. 25.

79 http://www.auswaertiges-amt.de/DE/Aussenpolitik/Friedenspolitik/Krisenpraevention/1_Grundlagen/Grundlagen_node.html

80 ibid.

81 http://www.bundeswehr.de/portal/poc/bwde?uri=ci%3Abw.bwde.einsaetze.ueberblick.zahlen (As of: 9 May 2016). In April 2014, the numbers were around 4,500 soldiers, almost 200 civilian experts and around 300 police officers, http://www.auswaertiges-amt.de/cae/servlet/contentblob/649786/publicationFile/193156/130624_Peacekeeping_Factsheet.pdf

82 http://www.bundespolizei.de/Web/DE/03Unsere-Aufgaben/04Internationale-Aufgaben/uebersicht_dt_beteiligung_int_polizeimissionen.pdf?__blob=publicationFile&v=13 (As of: 22 May 2016).

83 https://www.bmz.de/de/themen/index.html

84 UN Women points out, however, that this is regularly not the case: Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325, UNWOMEN, 2015, p. 168.

gotiations; the negotiating teams were made up of only 9 % women.[85] In the states' traditional conflict prevention strategies, women's experiences are often ignored as irrelevant, and their participation in working on such policies is minimal.[86]

The federal government is therefore called on to become active on several levels:
- Its own human resource policies: hiring women, in particular for senior level positions
- Integrating a gender perspective into its own defence, security and foreign policy as well as development policy
- Promoting equal participation of women in the host country's society and government with concrete measures and encouraging partners to also do so.

In its General Observations No. 30, the CEDAW Committee clarified the extraterritorial applicability of the UN convention on women's rights for States that are present in a host country in the context of UN peace operations or post-conflict reconstruction assistance.[87] In peace operations and development co-operation, Germany must therefore fulfil the requirements of the CEDAW Convention.

3 Assessment of the OSCE Commitments' Implementation

The federal government views the implementation of resolution 1325 in the context of crisis prevention and peace-building as a cross-cutting issue and has taken a series of measures to implement the goals contained in the resolution. These include the aforementioned national action plans and the implementation of these plans abroad, that is, in the context of international peace operations or development co-operation. In addition, increasing the proportion of women in the relevant ministries and in peace operations is an objective.

3.1 Sector-Specific Action Plans

The National Action Plan for Civilian Conflict Prevention, Conflict Resolution and Peace-Building (2004)[88] has created the frame of reference for the federal government's policies up to now, and these policies have primarily been focused on crisis prevention. The term civilian crisis prevention includes conflict management before violence breaks out, crisis management and state-building as post-conflict reconstruction. Based on a broad concept of security, the action plan includes various fields of action and actors in civilian crisis prevention. The goal of the plan is to prevent violent conflicts in potential crisis regions at an early stage and contain violent outbreaks. After the end of armed conflict, effective measures of peace-building and the reconstruction of civilian structures are to prevent a renewed outbreak of violence. Resolution 1325 is not an actual element of this plan, there is only a reference to the respective National Action Plan. The obligation arising from resolution 1325 to integrate a gender dimension in peace and security policy can only be fulfilled, however, if it is taken into consideration from the beginning when working on policy plans. The equal participation of women should also be included as an important objective in such a document. This should be considered during the forthcoming, cross-ministerial development of the new Guidelines on Civilian Crisis Management. It will be the federal government's key document for civilian crisis management: an orientation for acting in international operations – in a manner of speaking as the counterpart to the Federal Ministry of Defence's military White Paper. It is therefore even more important for the Women, Peace and Security agenda to occupy a central position in the guidelines.

In the 2006 White Paper on Germany's Security Policy and the Future of the Military, UN resolution 1325 is not mentioned. Currently the White Paper is being revised, and the new version is to be published in the summer of 2016. It is cur-

85 UN Women (2012) "Women's Participation in Peace Negotiations. Connection between Presence and Influence", http://reliefweb.int/sites/reliefweb.int/files/resources/03AWomenPeaceNeg.pdf

86 CEDAW/C/ GC/30 (2013), p. 8.

87 CEDAW/C/GC30, nos. 9 and 12.

88 http://www.auswaertiges-amt.de/cae/servlet/contentblob/384230/publicationFile/4345/Aktionsplan-De.pdf

rently not clear whether resolution 1325 will be mentioned.

The measures in the National Action Plan on the Implementation of Resolution 1325 for the period of 2013–2016 (NAP 1325) take up the four aspects of resolution 1325 (prevention, participation, protection, post-conflict reconstruction) and add the elements of preparation for the operations and prosecution. The aspect of participation is thereby to have particular importance.[89] Women are not only to be viewed as victims but as protagonists for change.[90] However, this contradicts the fact that in 2010–2013, only 10% of all spending by the federal government for promoting projects that contribute to implementing resolution 1325 was for projects with a focus on participation.[91] The federal government reports on the implementation of NAP 1325 at regular intervals, most recently in May 2014. The NAP 1325 is to give the federal government's efforts at implementing resolution 1325 a more strategic and coherent direction.[92] This is not entirely successful, as the NAP does not include a strategic, operative focus; there is a lack of impact orientation. The implementation report lacks findings from an evaluation on how the measures taken have impacted the socio-political situation of women. The implementation of the OSCE commitments on resolution 1325 can therefore not be evaluated on the basis of the government's action plans.

In particular, the protection of women and girls in the context of armed conflicts and flight from conflicts is currently expressed in the BMZ's "Development Policy Action Plan on Gender Equality 2016–2020" (GAP II) and the corresponding Road Map 2016. This plan declares that a human rights-based, transformative gender approach is followed. According to the plan, German development policy and work deals critically with typical gender stereotypes and works in a targeted manner to dismantle structural inequalities. The BMZ strategy paper "Development for Peace and Security" (2013) dictates that all measures in contexts characterized by violence and conflict take the gender perspective into consideration. This is in the spirit of resolution 1325. It corresponds to the international community's sustainable development goal (SDG 5) of eliminating all forms of discrimination against women and girls worldwide. The effective participation of women and their equal opportunity for taking on senior level positions in economic, political and public life should be guaranteed.

BMZ Project Examples

Support for the African Union in the Area of Peace and Security (APSA) Phase II, 2015–2018, EUR 5 million

The programme supports the African Union in establishing and strengthening sustainable peace and security structures for Africa (African Peace and Security Architecture – APSA). Priority areas include strengthening the continent's early warning system and mediation capabilities and developing the civil dimension of the African Standby Force. Gender aspects are taken into consideration in all areas. For example, the African Union Commission's Peace and Security Department is supported in making its planning and monitoring processes as well as its reporting gender-sensitive and focused on impact and establishing a "Gender, Peace and Security Programme". With the support of the BMZ and the German Agency for International Co-operation (GIZ), numerous gender indicators were adopted into the APSA Roadmap 2016–2020. Examples are increased recruiting of female mediators for African Union peace operations and the inclusion of indicators on sexual and gender-based violence during the establishment of a continental early warning system. When planning the Gender, Peace and Security Programme,

89 See NAP 1325, p. 8 and the Vierter Bericht der Bundesregierung über Maßnahmen zur Umsetzung von Resolution 1325 des Sicherheitsrats der Vereinten Nationen zu Frauen, Frieden, Sicherheit [Fourth report from the federal government on measures to implement UN Security Council Resolution 1325 on women, peace and security], Fourth Implementation Report, p. 3.

90 ibid.

91 Fourth Implementation Report from the Federal Government on Measures to Implement Resolution 1325 (2014), p. 12.

92 NAP 1325, p. 4.

the AU was supported in actively including women's rights organizations in the process within the African Solidarity Initiative.[93]

Foreign Office Project Examples:

Since mid-2015, the Federal Foreign Office has supported a programme from the United Nations Office of Disarmament Affairs (UNODA) with EUR 1.23 million to improve the integration of women in decision-making processes on disarmament and arms control policy in Africa, Asia, Central America and in the Near and Middle East.[94]

3.2 Proportion of Women in Relevant Ministries, in the Military and in Peace Operations

The proportion of women in higher foreign service was 28.7 % at the end of 2013,[95] and in the Federal Foreign Office's headquarters 15.5 % of the senior managers were women. 13.8 % of diplomatic missions were headed by women. In the Federal Ministry of Family Affairs, Senior Citizens, Women, Youth and Sport, 52 % of the senior managers are female. In the Federal Ministry of the Interior, almost 50 % of employees are women and nearly 30 % of senior managers are women; in the Federal Ministry of Justice and Consumer Protection, it was around 40 % at the end of 2013. The proportion of women in the Federal Ministry for Economic Co-operation and Development (BMZ) was almost 60 %, and a little over 40 % of senior managerial positions were held by women.

Since all career paths in voluntary military service were opened to women in 2001, the number of female soldiers in the military has more than tripled. Currently, around 19,500 female soldiers are serving in the military.[96] Training courses preparing for military operations also deal with cultural particularities of the area of operation, including cultural gender roles.[97]

The Center for International Peace Operations (ZIF) is making an effort to increase the proportion of women in peace operations. At the end of 2015, 43.5 per cent of the ZIF expert pool members were women. In addition, the expert pool has 39 experts in the area "Gender Affairs". The proportion of women seconded to EU operations is 41 per cent, for OSCE operations it is 36 per cent. Since 2011, the course "Women, Peace & Security" has been held regularly, since 2013 it has also included mediation as a topic.[98] In the OSCE itself, in 2013 35 % of senior management positions were held by women; heading a Field Mission, however, so far continues to be men's business: Since 1992, out of the 130 "Head of Missions" who were hired, only eight were women.[99]

3.3 Gender Mainstreaming

In the framework of networked security and development co-operation Germany is active globally and supports democratic transformation processes. The conflict resolution and peace process is an opportunity for transforming existing political and social structures. It offers the chance to establish or strengthen women's political participation.

At the very beginning of the OSCE Action Plan 2004 for the Promotion of Gender Equality, the Charter of European Security, which was passed at the Istanbul summit, is cited: "The full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area. We are committed to making equality between men and women an integral part of our policies, both at the level of our States and within the Organization." The OSCE Action Plan on Gender (2004) then refers to resolution 1325 and calls for the full and equal participation of women in decision making with regard

93 Source: Information from BMZ, April 2016. Cf. also: http://www.bundeswehr.de/portal/poc/bwde?uri=ci%3Abw.bwde.streitkraefte.grundlagen.frauen_in_der_bw

94 http://www.auswaertiges-amt.de/cae/servlet/contentblob/730798/publicationFile/215050/160406_JAB_2015.pdf

95 Data from the Fourth Implementation Report from the Federal Government on Measures to Implement Resolution 1325 (2014), pp. 16/17.

96 Information from the Federal Ministry of Defence, February 2016.

97 ibid.

98 Information according to ZIF Memo on the Implementation of UNSCR 1325 in Germany. Here: ZIF Measures to Promote Women, 3 February 2016.

99 OSCE Study, p. 26.

to security policies so they can represent their specific interests. The goal is therefore participation that gives women effective influence. Women demand seats at the negotiation table and in the political landscape in general.[100] A global study published by UN WOMEN in 2015 on the status of the resolution's implementation fifteen years after its adoption showed that in 40 peace processes that had taken place over the last 25 years, there was a correlation between the prospects of reaching a peace agreement and the degree of influence women had in the negotiations.[101] The more influence women had, the higher the chance of the negotiating partners reaching an agreement. According to the study, there are similar effects when civil society representatives participate in the peace process.

According to Article 7 of the CEDAW, the States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) to participate in non-governmental organizations and associations concerned with the public and political life of the country. Women are to be encouraged and supported in being elected as political decision makers in public offices. A quota for women in hiring policies of the police, military, monitoring operations that monitor the observation of ceasefire agreements, and other positions focused on post-conflict reconstruction is viewed as an appropriate measure for achieving equal participation of women in accordance with Art. 7 CEDAW.[102]

What is important is to completely integrate a gender perspective into security and defence policy in order to create gender equality in all phases of the conflict cycle.[103] Resolution 1325 calls for the strengthening of women's human rights in conflict situations. This must be considered when planning and carrying out any political measures in this area.[104]

The tool of such an analysis on the equality of women and men is gender mainstreaming. It is based on the realization that women and men are subject to different living conditions and opportunities based on their social and cultural gender roles in society and that they are affected in different ways by social processes and their effects.[105] Women are affected differently by violent conflicts than men. Usually, they are not combatants but experience conflict as part of the civilian population and often take on new tasks and responsibilities, but they also experience gender-based violence. The key is to recognize and understand the mechanisms and regulations that lead to discriminatory hierarchies. From the outset, the focus is on the differing social roles of and power relationships between women and men in order to analyse the emergence and course of crises and wars at an early stage and to be able to develop appropriate concepts for solutions. The goal is not to include a marginalized group but to compensate for existing power asymmetries.

Equality measures aim to create equal opportunities. This was reaffirmed by the OSCE Ministerial Council Decision from Athens (2009).[106] According to Art. 4 CEDAW, temporary special measures are permitted to accelerate the establishment of effective equality. Art. 5 CEDAW declares that the states are obligated to work toward eliminating stereotyped roles for men and women. To do so, social norms and values must often be changed to make steps toward gender equality. This also includes

100 Women's Participation in Peace Negotiations: Connections between Presence and Influence, UNWOMEN, 2012, p. 12.
101 Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325, UNWOMEN, 2015.
102 Women's Participation in Peace Negotiations: Connections between Presence and Influence, UNWOMEN, 2012, p. 12.
103 OSCE Study, p. 71; UN Resolution 1325.
104 Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325, UNWOMEN, 2015, p. 15.
105 https://www.uni-due.de/genderportal/mainstreaming_definition.shtml
106 Decision on women's participation in political and public life, MC.DEC/7/09.

allowing for possible shifting of power structures between women and men. The political will of the donor and conflict countries is absolutely essential for this. It may be the case that a change in the way of thinking to align more closely with gender equality must be seriously and persistently supported and demanded. At the end of a violent conflict, after the negotiation of peace agreements the drafting of a constitution is of key importance. In the constitution, human rights standards for the participation of women must be included.[107]

The BMZ already supports this kind of "empowerment" of women in its project funding in the area of peace and security[108] as well as with the integration of a gender dimension in its own work.

With its equality policies, the federal government fulfils its effort to meet the relevant OSCE commitments to increase the number of women in peace operations, offer gender-sensitive training to staff and take the gender dimension into consideration as a matter of principle. For the area concentrated on here, participation of women, there is certainly still room for improvement, however, in particular regarding the quality and effectiveness of women's participation. What can be emphasized are the efforts to increase the proportion of women staff members in peace operations, including for managerial positions. One negative aspect, in contrast, is that there are very few projects that focus on strengthening the position of women for effective participation in political negotiations in countries affected by conflict. An increase in funding for measures in this area should be considered. Furthermore, it is recommended that

- UN resolution 1325 is given a key role in defence and security policy by including it in the new White Paper by the Federal Ministry of Defence on Security Policy and in the planned Guidelines for Civilian Crisis Management from the Federal Foreign Office;
- the comprehensive, networked security structures are based on a human security concept that focuses on the individual and includes the elimination of discrimination due to structural inequalities in the security concept;
- the implementation of the NAP 1325 is made more coherent by the cross-ministerial working group;
- the National Action Plan for the Implementation of Resolution 1325 is reissued starting in 2017 with a true focus on impact orientation based on improved indicators and a coherent implementation strategy.

Finally, particularly in areas characterized by ideas of masculinity such as the military and police, according to Article 5 of CEDAW the goal should be to overcome stereotypical gender images. This must be addressed equally to men and women. For the military, the need for action is shown by a study from the military's Centre for Military History and Social Sciences, which even found an increase in male soldier's negative perceptions of female soldiers, a "clouding of the integration waters".[109]

4 Conclusion

With its regulation of women, peace and security, UN resolution 1325 and its subsequent resolutions are particularly relevant for the OSCE's tasks and objectives: Conflict prevention and resolution by non-discrimination and equal socio-political participation of men and women as can be ensured by gender equality. The widespread efforts of the federal government to implement this resolution are therefore welcome. However, it is not sufficient as long as the gender dimension in the context of violent conflicts is left almost entirely to development co-operation. Closer integration of the topic in security and defence policy is therefore urgently necessary.

107 Rudolf, p. 37.

108 See https://www.bmz.de/de/themen/frieden/index.html

109 See especially Gerhard Kümmel, Truppenbild ohne Dame? [Picture of the troops without a lady?], Potsdam 2014, pp. 5f.

5 Bibliography

Arloth, Jana / Seidensticker; Frauke (2011): Frauen als Akteurinnen in Friedensprozessen [Women as actors in peace processes], Study by the German Institute for Human Rights (ed).

Bundestag Printed Paper 18/3213, (2014): Vierter Bericht der Bundesregierung über die Umsetzung des Aktionsplans "Zivile Krisenprävention, Konfliktlösung und Friedenskonsolidierung" [Fourth report from the federal government on the implementation of the action plan "Civilian conflict prevention, conflict resolution and peace-building"], Reporting period: June 2010 – May 2014. http://dip21.bundestag.de/dip21/btd/18/032/1803213.pdf

Bundestag Printed Paper 18/1003 (2014): Vierter Bericht der Bundesregierung über Maßnahmen zur Umsetzung von Resolution 1325 des Sicherheitsrats der Vereinten Nationen zu Frauen, Frieden, Sicherheit im Zeitraum August 2010 bis Dezember 2013 [Fourth report from the federal government on measures to implement UN Security Council resolution 1325 on women, peace and security for the time period August 2010 until December 2013], April 2014. http://dip21.bundestag.de/dip21/btd/18/010/1801003.pdf

Federal Ministry of Defence (2006): Weißbuch 2006 zur Sicherheitspolitik Deutschlands und zur Zukunft der Bundeswehr [White paper 2006 on Germany's security policy and the future of the military], online edition, http://www.bmvg.de

Freeman, Marsha A. / Chinkin, Christine / Rudolf, Beate (2012): The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary, Oxford University Press (ed).

German Federal Government (2004): Aktionsplan der Bundesregierung "Zivile Krisenprävention, Konfliktlösung und Friedenskonsolidierung" [Action plan from the federal government "Civilian crisis prevention, conflict resolution and peace-building"], Berlin, 12 May 2004. http://www.ifa.de/fileadmin/pdf/zivik/2004_Aktionsplan_de.pdf

German Federal Government (2012): Aktionsplan der Bundesregierung zur Umsetzung von Resolution 1325 des Sicherheitsrats der Vereinten Nationen für den Zeitraum 2013–2016 [Federal government action plan on implementing UN Security Council resolution 1325 for the period from 2013–2016], Berlin, 19 December 2012. http://www.auswaertigesamt.de/cae/servlet/contentblob/633902/publicationFile/175260/121219_Aktionsplan_download.pdf

Kümmel, Gerhard (2014): Truppenbild ohne Dame? [Picture of the troops without a lady?], Potsdam.

OSCE (2015): OSCE Study on National Action Plans on the Implementation of the United Nations Security Council Resolution 1325, http://www.osce.org/secretariat/125727

Rudolf, Beate (2012): CEDAW und Resolution 1325 – Völkerrechtliche Maßstäbe für die Förderung der Menschenrechte von Frauen nach Konflikten [CEDAW and resolution 1325 – international legal standards for promoting women's human rights after conflicts], in: Frauenrechte in Verfassung und Gesetzgebung nach bewaffneten Konflikten [Women's rights in the constitution and legislation after armed conflict], Workshop hosted by the Federal Ministry of Justice and Consumer Protection and the Federal Academy for Security Policy on 30 October 2012 in Berlin, Federal Ministry of Justice and Consumer Protection (ed.)

Rudolf, Beate / Chen, Felicitas (2015): Die Bedeutung von CEDAW in Deutschland [The importance of CEDAW in Germany], in: Hanna Beate Schöpp-Schilling/Beate Rudolf/Antje Gothe (eds.), Mit Recht zur Gleichheit [Heading toward equality with the law], Baden-Baden 2015, pp. 25–70.

Schmahl, Stefanie (2006): Frauen und Frieden [Women and peace], in: Beate Rudolf (ed.), Frauen und Völkerrecht [Women and international law], Baden-Baden, pp. 47–70.

UNIFEM (2010): Women's Participation in Peace Negotiations: Connection between Presence and Influence.

UN WOMEN (2015): Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325, http://wps.unwomen.org/en

ZIF (2016): Memo zur Umsetzung von UNSCR 1325 in Deutschland Hier: Maßnahmen des ZIF zur Förderung von Frauen [Memo on the implementation of UNSCR 1325 in Germany, here: ZIF measures to promote women].

D Combating Trafficking in Human Beings

Eva Küblbeck, LL.M.

1 Introduction

1.1 OSCE Commitments

Combating trafficking in human beings is one of OSCE's priorities. Already at the summit in Istanbul in 1999 the heads of state and government committed to a comprehensive catalogue including, among other points: "We will undertake measures to eliminate all forms of discrimination against women, and to end violence against women and children as well as sexual exploitation and all forms of trafficking in human beings. In order to prevent such crimes we will, among other means, promote the adoption or strengthening of legislation to hold accountable persons responsible for these acts and strengthen the protection of victims."[1] The OSCE Action Plan on Trafficking in Human Beings adopted in 2003 is of particular importance and provides the foundation for the OSCE's efforts to combat trafficking in human beings.[2] This document is supplemented by the "Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance" (2005)[3] and the "Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later" (2013)[4]. The goal of the Action Plan is to support participating States with a comprehensive catalogue of measures for implementing the OSCE Decisions against trafficking in human beings.[5] OSCE States have repeatedly committed to combat trafficking in human beings with a human rights-based approach and to focus on the victims' rights and interests.[6] For example, the Porto Declaration from 2002 states: "The dignity and human rights of victims must be respected at all times."[7]

In 2007 and 2006, the OSCE released detailed Decisions on trafficking in human beings for labour exploitation and various publications on this topic.[8] In 2005, one topic was added to the Action Plan 2003: the special need to protect children. The importance of collecting and evaluating data on measures taken against trafficking in human beings by the States is emphasized not only in the Action Plan, it was described in detail as a priority topic in the Special Representative's Annual Report in 2008. The comment on the Action Plan repeatedly underscores the importance of a rapporteur or equivalent mechanism.

In 2003, the position of an OSCE Special Representative for Combating Trafficking in Human Beings was established, and in 2006 the position was made a permanent element of the OSCE Secretariat.[9] The Special Representative regularly carries out country visits to improve the measures against trafficking in human beings in a dialogue with the individual States. In 2010, the Special Representative carried out an official country visit to Germany, followed by a presentation to the Committee on Human Rights and Humanitarian Aid of the German Bundestag in 2011. During that session, the link between illegal migration and human trafficking was discussed as well as the improvements to be expected from the implementation of the EU Anti-Human Trafficking Directive 2011/36 and the necessity of a comprehensive approach to combat trafficking in human beings for the purpose of labour exploitation.

1.2 Methods

The findings in this chapter are based on literature research and written and telephone interviews with: Federal Criminal Police Service, Directorate General of Customs, Conference of Ministers of Integration, Federal Agency of Migration and Refugees, Federal Ministry of Labour and Social Affairs and union advising offices, expert counselling centres against trafficking in human beings and the non-governmental organization National Co-ordination Circle against Trafficking in Human

1 OSCE (1999), p. 7, no. 24.
2 OSCE (2015), p. 25.
3 OSCE (2005), PC.DEC/685.
4 OSCE (2013), PC.DEC/1107.
5 See OSCE (2015), p. 11.
6 Cf. OSCE (2015), pp. 22–23.
7 OSCE (2002), p. 16.
8 e.g. see: OSCE/ Office of the Special Representative (2011).
9 OSCE (2006).

Beings. When evaluating the OSCE commitments, the concluding observations from various UN treaty bodies as well as the recommendations from the Council of Europe's Group of Experts against Trafficking in Human Beings (abbreviated: GRETA Commission) were used.

2 Description of the Problems Using the Current Situation in Germany

Germany is primarily a destination country for those affected by trafficking in human beings.[10] Those affected are both German citizens as well as EU and third-country nationals. In recent years, the topic of trafficking in human beings has received a relatively high degree of attention at the political level. Especially for the area of trafficking in human beings for the purpose of sexual exploitation, there is an established support system. Awareness for the problem of trafficking in human beings for labour exploitation has also increased. Step by step, the rights of victims in terms of residency and social rights have been strengthened. Reliable figures for the actual rates of trafficking in human beings are not available for Germany, however. According to estimates by the International Labour Organization (ILO) from 2012, in the European Union around 880,000 persons are affected by forced labour – this figure includes both sexual exploitation as well as labour exploitation including forced begging and unlawful activities.[11] The ILO estimates that labour exploitation (70%) clearly outweighs sexual exploitation; in all, nearly 60 per cent of the affected persons are women.[12] There are no estimates for Germany specifically. Nationwide statistics of cases of trafficking in human beings are included in the Federal Criminal Police Service's (BKA) annual situation reports. The reported crime statistics include all completed investigations on trafficking in human beings for sexual exploitation and labour exploitation, and they give information on the age, sex and nationality of the perpetrators and the victims. The fact that trafficking in human beings for the purpose of sexual exploitation has been illegal in Germany since 1973 and has been a point of discussion for many years is reflected in the rates. This is the type of trafficking in human beings that is most frequently recognized and prosecuted. According to the BKA's situation report, in the last four years almost 590 victims per year have been identified in the area of sexual exploitation. The vast majority (around 90%) are from Europe, more than two-thirds from Eastern and South-Eastern Europe, especially Romania and Bulgaria.[13] On average, around 80 of the victims identified each year were minors. For the cases involving labour exploitation in the same time frame, an average of just over 30 victims each year were minors.[14]

Other forms of trafficking in human beings such as forced begging, illegal activities or organ trafficking have not been well-researched and up to the present only individual cases have been reported from the practice. No conclusions can be drawn about actual frequency. There is also little known about the actual extent of trafficking in children in Germany; a problem that likely has been exacerbated by the large increase of minor asylum-seekers.

In the following, three topics in need of action in Germany are discussed: Human trafficking for the purpose of forced labour, child trafficking and collection of data and rapporteurs

10 GRETA (2015), p. 13.

11 ILO (2012) Forced labour: the EU dimension: www.ilo.org/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-brussels/documents/genericdocument/wcms_184976.pdf [Last accessed: 15 April 2016].

12 ibid.

13 Federal Criminal Police Service (2014): Bundeslagebild Menschenhandel [National situation report], Wiesbaden http://www.bka.de/nn_231620/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundeslagebild2014,templateId=raw,property=publicationFile.pdf/menschenhandelBundeslagebild2014.pdf [Last accessed: 25 March 2016].

14 Federal Criminal Police Service (2013): Bundeslagebild Menschenhandel [National situation report], Wiesbaden http://www.bka.de/nn_231620/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundeslagebild2013,templateId=raw,property=publicationFile.pdf/menschenhandelBundeslagebild2013.pdf [Last accessed: 25 March 2016].
Federal Criminal Police Service (2012): Bundeslagebild Menschenhandel [National situation report], Wiesbaden www.bka.de/nn_231620/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundeslagebild2012,templateId=raw,property=publicationFile.pdf/menschenhandelBundeslagebild2012.pdf [Last accessed: 25 March 2016].

2.1 Legal and Institutional Framework in Germany

Germany is a Contracting Party to the United Nations' Convention against Transnational Organized Crime (Palermo Protocol) and the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; to the Convention on Eliminating All Forms of Discrimination against Women (CEDAW); to the Convention on the Rights of the Child and the Convention's additional protocol regarding the sale of children, child prostitution and child pornography; and to the International Labour Organisation's Convention Concerning Forced or Compulsory Labour (Nos. 29 and 105).

The Council of Europe's Convention on Action against Trafficking in Human Beings as well as the European Convention on Human Rights are of particular importance. Besides these, the Charter of Fundamental Rights of the European Union and the Directives 2004/81/EC and 2011/36/EU are relevant. The implementation process for the latter Directive is still ongoing.

Trafficking in human beings has been criminalized in the currently valid form since 2005. Trafficking in human beings for sexual exploitation is included in Sec. 232 of the Criminal Code (Strafgesetzbuch, StGB),[15] and trafficking in human beings for labour exploitation is included in Sec. 233 StGB. The attempt is also punishable. Sec. 233a (Supporting Trafficking in Human Beings) deals with participation and supporting actions. Trafficking children under the age of 14 is listed as an aggravating circumstance in all sections. Sec. 236 StGB (Trafficking in Children) is not in line with the international understanding of trafficking in children because it only includes trafficking for the purposes of adoption. At the time of this report, a reform of criminal law is going through the parliamentary procedure. The existing system is to be changed and trafficking in human beings is to be defined as in the Palermo Protocol. Other forms of exploitation (forced begging, illegal acts and removal of organs) are also to be criminalized. According to current plans, the section on trafficking in children is not to be changed.[16]

Because citizens of other states are often, although not always, affected by trafficking in human beings, German residency laws allow for a period of recovery and respite[17] for third-state nationals, that is, for non-EU citizens, so they have a chance to decide whether or not to co-operate with the prosecution authorities. This recovery period is granted as a waiver of the obligation to leave Germany for at least three months, during which the victims have access to social benefits. If victims of trafficking in human beings decide to testify in court, then they can receive a special residence permit.[18] Since 2015, this permit can be extended beyond the end of the criminal proceedings. A residency permit is linked to criminal proceedings for minors, as well. The prosecution authorities are responsible for the formal identification of victims of trafficking in human beings.

Victims of trafficking in human beings are eligible for support. Here there are differences both between victims from third states and EU states as well as between the recovery time and time during criminal proceedings. For third-state citizens, during the recovery time benefits are paid according to the Benefits for Asylum Seekers Act (Asylbewerberleistungsgesetz),[19] which also means medical benefits are limited to acute care. For the duration of the criminal proceedings, benefits according to the Social Code (Sozialgesetzbuch) are paid – this also applies to EU citizens.[20]

Victims of trafficking in human beings have the right to their lost wages and/or compensation. It

15 Criminal Code (StGB) in the form from 11 February 2005.

16 www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Formulierungshilfe_Menschenhandel.pdf?__blob=publicationFile&v=1 [Last accessed: 9 April 2016].

17 Sec. 59(7) Residence Act (Aufenthaltsgesetz) in the version from 20 October 2015.

18 Sec. 25(4a) Residence Act.

19 Benefits for Asylum Seekers Act (AsylbLG) in the version from 11 March 2016.

20 Social Code (Sozialgesetzbuch, SGB), Second Volume, basic income for job seekers, in the version from 15 April 2015 or the Social Code, Twelfth Volume (SGB XII) social assistance, in the version from 21 December 2015.

is possible to assert the claim against the perpetrator, and under certain circumstances victims can also receive compensation according to social compensation law or statutory accident insurance. To receive unpaid wages, in Germany an out-of-court settlement or civil proceedings with a labour court can be pursued.

Due to Germany's federal structure, the responsibilities for combating trafficking in human beings and supporting victims are divided between the national and Länder levels. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is the leading agency. To improve co-operation among the various actors at the national level, in 1997 the Federal-Länder Working Group on Trafficking in Women was set up (in 2012 it was renamed as the Federal-Länder Working Group on Trafficking in Human Beings).[21]

Representatives from the Federal Criminal Police Service and civil society actors are also included in the working group.[22]

Since 2003, there has also been the Federal-Länder Sub-Working Group "Protection of Children and Youth from Sexual Violence and Exploitation" that furthers the implementation of the respective action plan. One of two sub-working groups focuses on trafficking in children and sex tourism.[23]

The Federal Ministry of Labour and Social Affairs (BMAS) is the head agency for the area of labour and thus also for labour exploitation. In 2015, a Federal-Länder Working Group was established in this area as well with a focus on trafficking in human beings for labour exploitation and has set the objective of creating a concept for combating trafficking in human beings by the end of 2016.[24]

Most Länder have created networking committees to co-ordinate the work of the relevant actors. These co-operation concepts are often related to the area of sexual exploitation. The topic of labour exploitation is not dealt with as frequently, and protection of children is a focus only in exceptional cases.

The Länder are responsible for establishing and funding the support structures for victims of trafficking in human beings. These structures are relatively well-developed for female victims, and in almost all Länder there is at least one specialized counselling centre for victims of trafficking in human beings (FBS).[25] They offer counselling, accommodation, etc., regardless of the victim's residency status and offer assistance, for example, in obtaining residency permits and social benefits.[26] The focus of counselling services is on women. Besides the specialized counselling centres for trafficking in human beings, there is an increasing number of union counselling centres that advise migrants who are/were employed under precarious working conditions.

2.2 Description of the Problem

There are still only very few known cases of trafficking in human beings for labour exploitation in Germany. Drawing the conclusion that this is not a problem or is only a minor problem in Germany would be too hasty, however. Various experts assume that, "(...) there are large gaps in the current practice of identifying victims of trafficking in human beings for the purpose of labour exploitation"[27] and believe the dark figure is high.[28] There

21 www.bmfsfj.de/BMFSFJ/gleichstellung,did=73024.html [Last accessed: 25 March 2016].

22 www.kok-gegen-menschenhandel.de/vernetzung/bundesweit/gremienarbeit.html [Last accessed: 25 March 2016].

23 Aktionsplan 2011 der Bundesregierung zum Schutz von Kindern und Jugendlichen vor sexueller Ausbeutung und Gewalt [Action Plan 2011 from the federal government on the protection of children and youth from sexual exploitation and violence], .19 www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/aktionsplan-2011,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf [Last accessed: 25 April 2016]; Information provided on the telephone by the BMFSFJ, Department 514, 25 April 2016.

24 www.bmas.de/DE/Themen/Soziales-Europa-und-Internationales/International/menschenhandel-arbeitsausbeutung-bekaempfen.html;jsessionid=5CD7707EC39920AFB368D349880050F9 [Last accessed: 24 April 2016].

25 For an overview of the existing specialized counselling centres, see: www.kok-gegen-menschenhandel.de/mitgliedsorganisationen-fachberatungsstellen.html [Last accessed: 25 March 2016].

26 For a task description according to the co-operation agreement, see e. g.: www.gesetze-bayern.de/Content/Pdf/BayVwV96522?all=False [Last accessed: 25 March 2016].

27 GRETA (2015), p. 38, marginal note 131.

28 cf. BKA (2014), p. 8.

are also still large gaps in regard to support for the victims and their access to wages and compensation. Another aspect that is particularly relevant for preventive reasons is the monitoring of private placement agencies. This monitoring is recommended by the OSCE, but in Germany it is done in such a way that it is hardly effective.

For the area of trafficking in children there are also not much reliable data,[29] and here as well a high dark figure can be assumed. Identifying children who are used for begging or forced to do criminal acts is especially problematic. Because these types of exploitation are not yet punishable as trafficking in human beings in Germany, there is not only a lack of awareness but also a lack of legal means to prosecute. The identification problem is especially true for minor refugees – almost nothing is known up to now about the extent of refugee children as victims of trafficking in human beings.

In Germany, until the present only a very limited amount of data and information on trafficking in human beings and the victims have been collected. The data are limited almost exclusively to criminal justice statistics; conclusions about the victims' assertion of their rights such as those related to support or compensation/wages cannot be drawn. Currently there is no agency that bundles and analyses the information that is gathered in part regularly and in part ad hoc. There is also a lack of an overall concept to measure and evaluate developments in the area of trafficking in human beings and the effectiveness of the measures taken.

3 Assessment of the OSCE Commitments' Implementation

3.1 Human Trafficking for the Purpose of Forced Labour

3.1.1 Foundation in Criminal Law

Combating trafficking in human beings for labour exploitation and supporting victims first presumes that trafficking in human beings is codified as a criminal offence in national criminal law. Among other commitments, with the Ministerial Council's Decision in 2000 in Vienna, Germany committed "to take necessary measures, including by adopting and implementing legislation, to criminalize trafficking in human beings, including appropriate penalties, with a view to ensuring effective law enforcement response and prosecution. Such legislation should take into account a human rights approach to the problem of trafficking [...]."[30] OSCE Decisions also repeatedly refer to the Palermo Protocol, which was ratified by Germany in 2006, and call for the implementation of the provisions contained in this Protocol. The term "trafficking in human beings" as in the Palermo Protocol is defined broadly. It is an umbrella term for many different conditions in which people are held and exploited against their will, that is, with force, using various methods.

Trafficking in human beings for the purpose of forced labour has been criminalized in Germany since 2005 according to Sec. 233 of the Criminal Code (StGB). Often, however, the "difficult manageability of the narrowly defined provision in Sec. 233 StGB" is criticized,[31] as it must be proven that the perpetrator brought the victim into the exploitative situation. In practice that is often difficult. The "catch-all" provision in Sec. 233a StGB (Promoting Trafficking in Human Beings) is meant to close such loopholes by criminalizing aiding and abetting trafficking in human beings by recruiting, transporting, transferring, accommodating and accepting the victim. The Bundesrat (2nd chamber

29 On this, see also ECPAT International (2012), p. 10.
30 OSCE (2000), MC(8).DEC/1/Corr. 1, no. 9.
31 BKA (2014) p. 8.

of the legislative branch) has made the current way in which the provision is formulated responsible for the fact that it has only rarely been applied in practice.[32] Germany is not only obligated to create a criminal offence, it must also ensure prosecution. This obligation arises from the national protective obligations in the conventions on human rights. To implement the EU Directive against Trafficking in Human Beings (2011/36/EU), draft legislation is currently going through the parliamentary process with the aim of adapting the criminal provisions to the internationally valid definition and easing their applicability.

Whether the planned statutory reforms will lead to better legal combating of trafficking in human beings and labour exploitation cannot yet be said for certain.

3.1.2 Sensitization as a Requirement for Identifying Affected Persons

Because recognizing trafficking in human beings and identifying those affected is the requirement for all further steps, the OSCE States have repeatedly emphasized the necessity of sufficient sensitivity in all professions (e. g. health care, social workers, labour inspectors) who might come in contact with affected persons. This awareness is to be raised further with training.[33] This is also in line with Germany's commitment arising from Article 10 of the Council of Europe's convention.

A systematic approach to the sensitization of relevant professions is not currently discernible in Germany. In its concluding report on Germany, the GRETA Commission also points out "(...) that there is a crucial lack of awareness of trafficking for labour exploitation amongst key authorities like labour inspectors, the police, prosecutors, judges and Foreigners Registration Offices."[34] An extensive interview study carried out on behalf of the European Union Agency for Fundamental Rights on serious labour exploitation reaches the conclusion that affected persons are often not perceived as victims by the prosecution authorities but rather as people who have violated labour or residency laws.[35] This insight corresponds to experience from the practice of specialized counselling centres and the results of an evaluation of public prosecutors' investigation files and court decisions.[36]

In contrast to other OSCE States, in Germany there is no labour inspectorate that checks working conditions to prevent exploitation. Problems can therefore only be uncovered by inspectors in other labour areas. Because their tasks do not include combating labour exploitation or trafficking in human beings for labour exploitation sensitization becomes even more important. The relevant supervisory authority in this area is the Financial Control of Illegal Employment (FKS). This agency, which is subordinate to customs, monitors whether minimum wage requirements are met, whether there are work and residence permits and whether tax obligations are being fulfilled, among other things.[37] Another agency that could discover trafficking for labour exploitation in the context of checks is the labour inspectorate, which monitors whether the laws on occupational health and safety and working times are upheld. However, certain branches of labour, for example private households, are largely excluded from checks by the labour inspectorate.

Both at the federal and Länder levels, the problem of inadequate identification of cases of trafficking for labour exploitation is increasingly being dis-

32 Bundesrat Printed Paper 641/13, p. 2.

33 OSCE MC.DEC/14/06, p. 47; confirmed in: OSCE MC.DEC/8/07, No. 4.

34 GRETA (2015), p. 36, marginal number 133.

35 Hoffmann, U./Rabe, H. (2015), p. 53.

36 cf. Lindner, C. in Bündnis gegen Menschenhandel zum Zweck der Arbeitsausbeutung [Alliance against Trafficking in Human Beings for Labour Exploitation] (2015), pp. 13ff.

37 www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Aufgaben-und-Befugnisse/aufgaben-und-befugnisse_node.html;jsessionid=7E2BE9A5DBA407743281 2C849D214154.live0502#doc30888bodyText3 [Last accessed: 25 March 2016].

cussed.[38] Up to now, though, this can only be seen reflected to a limited extent in the sensitization programmes for various professions:

- Police: Trafficking in human beings for labour exploitation is discussed in police training in almost all Länder; there are a few specialized continuing education courses, e. g. in Berlin.[39] For several years, the Federal Criminal Police Service offered several courses annually on trafficking in human beings for sexual exploitation or labour exploitation. In 2016, however, these were reduced and only one training session on sexual exploitation is offered.[40] In light of the limited number of continuing education courses, it can be assumed that a large number of investigators have had no education or training on the topic of trafficking in human beings for labour exploitation.[41]
- Judges and prosecutors: In Germany, there are very few public prosecutor's offices specializing in trafficking in human beings; typically, cases of trafficking in human beings are worked on by units specializing in organized crime.
- In general, training sessions and continuing education courses for public prosecutors and judges are voluntary and there are only very few offered on the topic of trafficking in human beings for labour exploitation.[42]
- Financial Control of Illegal Employment (FKS): In continuing education for FKS staff, no special focus is placed on Sec. 233 StGB. For all FKS employees there are mandatory basic training sessions that convey knowledge on criminal offences related to the Act on Combating Illegal Employment (Schwarzarbeitsbekämpfungsgesetz), for which the FKS is responsible.[43]
- Labour Inspectorate: The labour inspectorate in Germany is de-centralized and organized by the Länder in over 100 units that have various names and tasks.[44] No regular training sessions for the agency staff on the topic of trafficking in human beings could be identified.
- Federal Agency of Migration and Refugees (BAMF): In 2011/2012, a one-year project to improve the identification of those affected by trafficking in human beings during the asylum procedure was carried out. As a result, special representatives for trafficking in human beings were established in the agency's branch offices.[45] Due to the high number of offices and continual re-structuring of the BAMF, however, it is unclear whether special representatives are currently active in all branch offices and whether regular decision-makers are sufficiently trained.[46]
- Foreigners Registration Offices, Deportation Detention Centres and Initial Reception Centres: In regard to these institutions/agencies, it is not known whether regular training sessions on trafficking in human beings are carried out. At each location, on-site specialized counselling centres hold training sessions if their capabilities allow or as a part of specific projects.[47]

Civil society actors are limited in their capacities. Projects that focus on training various professional groups often do not receive sustainable funding.[48] With the exception of the slight increase in identification in the context of the asylum procedure, no increase in identified victims can

38 e. g. see: Coalition agreement from the CDU, CSU and SPD, 2013, p. 73. www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf or 10th Conference of the Länder Ministers of Integration, 25/26 March 2015, pp. 26–27, www.thueringen.de/mam/th4/justiz/intmk/protokoll_10.intmk_kiel.pdf [Last accessed: 25 March 2016].

39 Rhineland-Palatinate Ministry of the Interior, Sport and Infrastructure, Chair of the Conference of Ministers of the Interior 2015, letter from 10 September 2015 in response to queries to the Conference of Ministers of the Interior.

40 Federal Criminal Police Service, response to written query from 18 March 2016.

41 GRETA (2015), p. 26, marginal number 78.

42 Detailed description of continuing education programme for public prosecutors: GRETA (2015), p. 26, marginal number 73.

43 Directorate General of Customs, Financial Control of Illegal Employment, response to written query from 17 February 2016.

44 Cf. Hoffmann, U./ Rabe, H. (2014), p. 8.

45 GRETA (2015), p. 37, marginal number 135.

46 No response to written query from 17 February 2016 to the BAMF.

47 e. g. Jadwiga Munich/Nuremberg; ISOM Project (finished), see: www.frauenhilfe-westfalen.de/menschenhandel_isom.php [Last accessed: 25 March 2016].

48 e. g. ISOM Project or Alliance against Trafficking in Human Beings for Labour Exploitation, see: www.buendnis-gegen-menschenhandel.de/ [Last accessed: 15 April 2016].

be seen. This can be viewed as an indication that there is not yet a broad sensitization in Germany that would allow for the identification of victims of trafficking in human beings for labour exploitation.

3.1.3 Support Structures

In 2008, the OSCE States committed to ensuring "that victims of human trafficking have access without undue delay to secure accommodation, psychological and medical treatment and counselling regarding their legal rights and the services available to them."[49]

The fact that support and counselling structures are not well-established for victims of trafficking in human beings for labour exploitation, in particular for male victims, has been discussed repeatedly over the last several years. Many of the existing specialized counselling centres for trafficking in human beings (FBS) primarily focus on the sexual exploitation of women. Most centres now also provide counselling for victims of labour exploitation, but often only for women; men are usually only counselled in individual cases. The possibilities for advising victims of trafficking in human beings for labour exploitation are limited, in part because of the lack of a mandate from the grant providers and thus a lack of resources.[50] In some Länder, however, a change can be seen in this area: In Hamburg, for example, the mandate of the existing specialized counselling centre for trafficking in human beings has been expanded to include labour exploitation and funding was increased. The project Invisible Alliance (Unsichtbar-Bündnis) against trafficking in human beings for labour exploitation was able to establish temporary counselling services in a few locations directed at all victims of trafficking in human beings for labour exploitation. Union or union-linked counselling centres – for example Fair Mobility (Faire Mobilität) or Work and Life (Arbeit und Leben) – have increasingly turned to the topic of exploitation of mobile / Eastern European employees in recent years, but they do not focus on trafficking in human beings.[51] They are different from the specialized counselling centres in particular because they are primarily focused on unfavourable and exploitative working conditions, unpaid wages or similar problems. Because these are mostly issues of labour law, a different approach is taken to counselling. In particular accommodation for male victims of trafficking for labour exploitation is a serious problem. This means that sometimes they must be sent to homeless shelters.[52] The newly established Federal-Länder Working Group on Trafficking in Human Beings for Labour Exploitation has set the objective of producing a concept for establishing support structures.

3.1.4 Compensation and Wages

A 2007 Ministerial Council Decision foresees that participating States consider legislation to offer victims of trafficking for labour exploitation the possibility to receive compensation for damage suffered, including, where appropriate, restitution of wages owed to them. Already a year before that the heads of state and government underscored the importance of offering victims of trafficking in human beings the possibility to be compensated for damage suffered.[53]

Compensation

The Council of Europe's convention also demands that its Member States provide for the right of the victim to be compensated by the perpetrator(s) and to receive state compensation; both are generally possible in Germany. Claims for damages against the perpetrator(s) can be filed in civil courts and in the context of the criminal proceedings as a so-called adhesion procedure (Secs. 403 ff. Criminal Procedural Order (Strafprozessordnung)).[54] Even if a right to compensation has been established by a court, however, it is not ensured that it can be executed and that the victims will actually have their compensation paid. One reason for this is that often no assets

49 OSCE (2008), MC.DEC/5/08/Corr. 1, No. 6.

50 KOK e. V. (2014) (unpublished).

51 Faire Mobilität (2015), p. 13 www.faire-mobilitaet.de/beratungsstellen/++co++873247a8-2487-11e5-8ad5-52540023ef1a?t=1 [Last accessed: 26 April 2016].

52 Arbeit und Leben, Input Dr. Zentner, B-L-AG MH/A, 1 March 2016.

53 OSCE MC.DEC/14/06, No. 5.

54 Criminal Procedural Order (StPO) in the version from 21 December 2015.

can be seized from the perpetrator(s).[55] Between 2010 and 2012, for example, only one conviction a year – and in one year five convictions – that was made for trafficking in human beings led to a seizing of assets.[56]

State compensation according to the statutory accident insurance[57] or the Victim Compensation Act (Opferentschädigungsgesetz, OEG)[58] are each linked to physical injury sustained from the act. If victims have an accident when working or the work causes physical injury, for example due to a lack of occupational safety, claims can be made to the statutory accident insurance. All persons are insured who are in an employment, training or service relationship regardless of the legality of the status of residency, the nationality or work permit validity.[59] Self-employed persons are excluded. Trafficking victims are usually included among the insured "as employees". Providing proof can be difficult if the person is registered as self-employed.[60] Due to a lack of information, no conclusions can be drawn about whether or the extent to which victims of trafficking for labour exploitation receive benefits. Random background discussions with specialized counselling centres for trafficking in human beings as well as union counselling centres for mobile/posted employees give the impression that statutory accident insurance still plays a very minor role in the area of trafficking for labour exploitation. In contrast, through the union counselling centres claims are more frequently filed using this insurance.[61]

Damages can also be claimed from state funding according to the Victim Compensation Act (Opferentschädigungsgesetz, OEG) if an assault occurred and the victim suffered physical harm. The OEG's area of application is limited to physical use of violence – the threat of violence is not understood as a physical assault according to case law.[62] Because trafficking victims are sometimes forced into an exploitative situation with psychological pressure and serious threats but without the use of physical violence, the OEG usually does not apply. Currently, a revision of the social right to compensation including the Victim Compensation Act is being pushed forward.[63] The plan is to include in the OEG's area of application forms of psychological violence that have not been (sufficiently) included in current victim compensation laws.[64] The extent to which repression faced by victims of trafficking in human beings can lead to compensation according to the new laws is also to be reviewed.[65] Currently, however, receiving benefits according to the OEG is a protracted process that is rarely successful; conclusions about whether victims of trafficking for labour exploitation receive or have received benefits according to the OEG cannot be drawn from the statistics.[66]

Unpaid Wages

Victims of trafficking for labour exploitation have a right to wages for the work they have done – regardless of whether they have a valid residence and/or work permit. Unpaid wages can be claimed through civil court proceedings with a labour court. A fundamental problem, though, is that without the support of a counselling centre, access to lawyers and court action is usually blocked. For many, the loss of a job is linked to immediate financial pressure that often

55 Rabe, H./Tanis, N. (2013), p. 36.
56 Response from the federal government to GRETA questionnaire 1st evaluation cycle (2014), Annex III, p. 8.
57 Social Code Seventh Volume – Statutory Accident Insurance, in the version from 21 December 2015.
58 Act on Compensation of Victims of Violent Crimes, in the version from 20 June 2011.
59 Cf. Kirstein, K. (2015), p. 151.
60 Kirstein, K. (2011), p. 252.
61 Result of telephone query: Fair Mobility, Counselling Centre for Posted Employees (Faire Mobilität, Beratungsstelle für entsandte Beschäftigte) Women's Information Centre Stuttgart, KOOFRA (22 April 2016).
62 Cf. LSG Niedersachsen – Bremen (Higher Social Court Lower Saxony – Bremen): Decision on 14 November 2013; file number L 10 VE 46/12.
63 Coalition agreement from the CDU, CSU and SPD (2013), p. 53.
64 Response from the Federal Ministry of Labour and Social Affairs to written query from 4 April 2016.
65 www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/werkstattgespraech-schmachtenberg-rede.pdf [Last accessed: 29 March 2016].
66 Weißer Ring: In 2013 only 3.5 % of all victims of violent crime received compensation according to the OEG; www.weisser-ring.de/fileadmin/content/OEG-Statistik/OEG_Statistik_2013.pdf [Last accessed: 29 March 2016]; see also GRETA (2015), p. 47, marginal number 179.

does not leave much time to file claims against the employer since the destitute victims are often forced to return to their country of origin. Pursuing wage and compensation claims is also possible from abroad, but it is much more difficult to do.[67]

In a study commissioned by the European Union Agency for Fundamental Rights on serious labour exploitation, two additional problems were named:[68] Firstly, for labour law disputes, the burden of proof rests with the plaintiff. In practice, it is often very difficult to prove the number of hours actually worked because undocumented overtime is often done. Secondly, there is a reporting requirement that obligates public agencies, including labour courts, to notify the Foreigners Registration Office about a person who resides in Germany without a valid residence permit. This can then lead to persons who do not have residence permits and who have not been identified as trafficking victims to decide against going to court to avoid criminal charges or deportation.[69]

3.1.5 Placement Agencies

In the 2013 addendum to the OSCE Action Plan to Combat Trafficking in Human Beings (THB), one preventive measure listed is controlling recruitment agencies and "promoting clear criteria (...) for the official registration of recruitment and placement agencies, and monitoring the activities of such agencies in an effort to prevent all forms of THB (...)".[70]

The demand for regulation and monitoring of placement agencies has also been expressed repeatedly in Germany.[71] Especially in the area of nursing care, increasingly persons from other EU countries, especially from Eastern Europe, are employed in private households nationwide. It is unknown how many persons are employed in this way. Estimates of non-governmental counselling centres are between 100,000 and 300,000 persons.[72]

This kind of employment can be found with an agency; besides the Federal Employment Agency's International Placement Services (ZAV), there are many private placement agencies. The offer also includes countries whose citizens are already part of the EU's free movement of workers such as Poland. The government agency reviews on the basis of written documents whether the position fulfils the legal requirements, that is, whether it is legal, before a placement is made.[73] The ZAV is of only marginal importance in the area of nursing care and domestic help, however.[74] Instead, at-home care assistants are often brought to Germany with private placement agencies.[75] In general, nursing assistants from EU countries can enter into a direct employment relationship with the employing family, or they can be self-employed or work as posted employees of a company based abroad.

According to the counselling centres' experiences, currently the most common model is posting employees; in this model, a partner agency employs the care-giver in the country of origin and sends them to work in Germany. Formally, the placement agency in Germany is only responsible for acquiring and supporting clients. Because the length of posts is usually no longer than three months, the migrants are not required to register with the authorities and therefore remain largely unknown to government agencies and registration offices.[76] There are only very limited possibilities for the authorities to monitor private households, for example with the Financial Control of Illegal Employment. According to experts' estimations, in the placement of nursing assistants and domestic help structures have been established that are geared toward circumventing existing

67 Hoffmann, L. (2015), p. 29.
68 Hoffmann, U./Rabe, H. (2014), p. 42.
69 GRETA (2015), p. 44.
70 OSCE (2013), PC.DEC/1107, III. 1.9.
71 cf. Rabe, H./Tanis, N. (2014), p. 66.
72 www.faire-mobilitaet.de/++co++ff422062-f49c-11e4-9c47-52540023ef1a [Last accessed: 29 March 2016].
73 cf. Rabe, H./Tanis, N. (2013), pp. 66–67.
74 Böning, M./Steffen, M. (2014), p. 15.
75 Hoffmann, U./Rabe, H. (2014), pp. 11ff.
76 Böning, M./Steffen, M. (2014), p. 23.

employee protection regulations.[77] In Germany the placement agencies do not need to register, which means that the federal government has no information on the number of private placement agencies active in Germany.[78]

3.2 Trafficking in Children

In 1990 the OSCE participating States already acknowledged the special importance of children's rights and protecting children and, at the Conference on the Human Dimension of the OSCE in Copenhagen, decided, "to accord particular attention to the recognition of the rights of the child, his civil rights and his individual freedoms, his economic, social and cultural rights, and his right to special protection against all forms of violence and exploitation."[79] In the following years in various decisions, the OSCE States have agreed explicitly on measures related to trafficking in children. The OSCE Action Plan refers both to the guidelines from the United Nation's High Commissioner on Refugees for the protection of unaccompanied minors as well as to the UN Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography and calls on the OSCE States to ratify and fully implement them.[80] In 2005, an addendum to the Action Plan was passed that focused especially on the topic of the special needs of child victims of trafficking for protection and assistance. The particular threat of trafficking in human beings for children was also emphasized by GRETA in the report on Germany in 2015.[81] Despite increasing attention to the topic, knowledge about the extent and forms of trafficking in children in Germany is still limited. The lack of meaningful data in regard to all forms of exploitation included in the additional protocol to the UN Convention on the Rights of the Child was also criticized by the UN Committee on the Rights of the Child in its concluding observations on Germany.[82] Figures on the number of minor victims of trafficking in human beings are very limited in the already mentioned situation reports from the Federal Criminal Police Service that describe the completed proceedings nationwide each year. According to these statistics,[83] in 2013 a total of 70 minors were identified as victims of trafficking in human beings for sexual exploitation according to Sec. 232 of the Criminal Code (StGB); of these, 9 were children under 14 years of age and 61 were adolescents between 14 and 18 years of age.[84] In 2014, it was a total of 57 minors; 5 of them were under 14 and 52 were between 14 and 17. As in the previous years, the large majority of minor victims were identified in Berlin, and according to the conjectures of the Federal Criminal Police Service this could be because Berlin has established a special office for combating trafficking in children.[85] For the years named there is no information whether minors were also affected by trafficking for labour exploitation.[86] To improve information on the actual occurrence rate of trafficking in children, in 2007 the Federal Criminal Police Service had already organized an interdisciplinary workshop on dark figure studies in the area "Trafficking in Children". A planned scientific study on the topic "exploitation of minors" has not yet been implemented, though.[87]

3.2.1 Trafficking in Children as a Criminal Offence

In the addendum to the Action Plan, the participating States agreed on the following recommended measures, among others: "Ensuring that child trafficking, including internal trafficking, is crimi-

77 cf. Böning, M./Steffen, M. (2014), p. 24.
78 Bundestag Printed Paper 17/8193, p. 2.
79 OSCE (2004), MC.DEC/13/04, p. 38.
80 OSCE (2003), PC.DEC/557, V. 10, p. 18.
81 GRETA (2010), p. 9.
82 UN Committee on the Rights of the Child, UN Doc. CRC/C/OPSC/DEU/CO/1, 24 February 2014, III. no. 7, p. 2.
83 In the previous year, the numbers were somewhat higher: 2010: 95 minors, 2011: 90, and 2012: 100 minors were identified, cf. GRETA (2015), p. 12.
84 BKA (2013), p. 6.
85 cf. BKA (2014), p. 6; BKA (2013), p. 6.
86 BKA (2014), p. 6.
87 198th Session of the Standing Conference of the Ministers and Senators of the Interior and of the Länder from 4–6 December 2013 in Osnabrück: Decision 10; www.innenministerkonferenz.de/IMK/DE/termine/to-beschluesse/13-12-06/Beschluesse.pdf [Last accessed: 29 March 2016]; ECPAT Deutschland (2013), p. 7.

nalized in accordance with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (...) in order to better address the need for protection and assistance of child victims of trafficking."[88]

As described in the introduction, child trafficking is criminalized in Germany and integrated into the offences on trafficking in human beings in Secs. 232, 233 ff. of the Criminal Code (StGB), whereby persons are liable to prosecution if they force another person to start or continue prostitution or an exploitative activity by taking advantage of a vulnerable situation or using intimidation. In order to do justice to the particular need to protect children and young adults, the offences in the UN Protocol were conceptualized such that for persons under the age of 21 no force must be used or a desperate situation must be taken advantage of. If the victim is a child, this is considered an aggravating circumstance. The definition of "child" differs from the UN Convention on the Rights of the Child and defines children as persons under 14 years of age.[89] An adjustment is planned, however.[90] The criminal offence of child trafficking according to Sec. 236 StGB does not correspond to the international understanding of child trafficking, as it only includes trafficking for adoption.

According to reports from the field, in the context of criminal prosecution of Sec. 232 StGB for minors, often the provision Sec. 180 StGB (Promoting sexual actions by minors) is used because the standard of proof is lower and it is thus easier to punish the perpetrators. In this type of criminal proceedings, however, the affected minors do not have the same rights to claims as victims of trafficking in regard to the residence permit or protected accommodation. In addition, the structures behind the actual offence of trafficking in human beings remain undetected.[91] Currently, the criminal prosecution and victim protection measures in the areas of child pornography, child prostitution and sexual exploitation of children (up to 18 years of age) are not evaluated in the context of trafficking in human beings. The police is considering bundling information on these areas.[92] An expansion of the information included in the national situation report "Trafficking in Human Beings" was decided by the Conference of the Ministers of the Interior in 2013[93] and is to be implemented starting in 2017; details about the planned changes have not yet been released.[94]

3.2.2 Support and Protection Systems

In a Ministerial Council Declaration in 2011, the OSCE States acknowledge "that child protection systems need to be strengthened in order effectively to help prevent, identify, and respond to child trafficking in all its forms, to provide appropriate assistance and protection in the child's best interest for cases of child victims of trafficking or those at risk of being trafficked, including through appropriate services and measures for the physical and psychological well-being as well as for their education, rehabilitation and reintegration."[95]

Many of these points were also brought up by GRETA in its report on Germany in 2015. The committee of experts recommended in regard to the particular vulnerability of children to trafficking that the German authorities place more emphasis on preventive and protective measures and improve existing co-operation measures. The committee also urged the authorities to establish support services for victims of child trafficking that are tailored to their special needs.[96] Existing counselling centres for those affected by trafficking in human beings also often counsel children, but they are not primarily focused on children

88 OSCE (2005), PC.DEC/685, p. 3 no. 1.
89 Reference to Sec. 176 StGB, where a "child" is defined as a person under 14 years of age.
90 Bundestag Printed Paper 18/4613.
91 ECPAT Deutschland e. V. (2015), p. 3.
92 KOK e. V. (2014), p. 12.
93 198th Session of the Standing Conference of the Ministers and Senators of the Interior and of the Länder from 4–6 December 2013 in Osnabrück: Decision 10; www.innenministerkonferenz.de/IMK/DE/termine/to-beschluesse/13-12-06/Beschluesse.pdf?__blob=publicationFile&v=2 [Last accessed: 29 March 2016].
94 Federal Criminal Police Service, information on the telephone 22 April 2016.
95 OSCE (2011), MC.DOC/1/11/Corr.1, p. 47.
96 GRETA (2015), p. 8.

and minors. A particular problem is that of accommodation, as there is a lack of shelters and secure living groups for differing age groups.[97] Important actors in the area of child protection are inadequately sensitized for the topic of child trafficking.[98] Co-operation and networking of the youth welfare offices, youth flats, counselling centres and specialized counselling centres for sexual abuse have not been sufficiently established, which makes it difficult to refer children to other services.[99] To improve this situation, the Federal-Länder Working Group and the aforementioned actors are currently developing a co-operation concept "Protecting Children and Youth from Sexual Violence and Exploitation".[100]

The 2013 addendum to the OSCE Action Plan names asylum-seeking children as group in need of special protection when combating child trafficking.[101] In the course of the general increase in refugees in Germany, the number of minors seeking protection is also high: In the first three months of 2016, around 30 per cent of all first asylum applications were submitted by persons under the age of 18.[102] According to experts' estimates refugee children and youth are not sufficiently protected from exploitation in shared accommodation because there not enough protected rooms and there continue to be gaps in identification.[103] To counteract this problem, the BMFSFJ has commissioned the development of training sessions to better identify minors in need of protection, among other measures.[104] Unaccompanied minor refugees can also be especially endangered. Since 2011, there has been a continual increase of refugees in this group.[105] Since 2005, a foreign child or youth that comes to Germany unaccompanied and for whom there are neither parents nor guardians in Germany must be appointed a guardian or caregiver.[106] In practice, however, criticisms include that the guardians are not sufficiently trained and, due to the high number of minors in need of supervision, it is very difficult to ensure effective representation.[107] In the context of reporting and discussions on missing minor refugees in the spring of 2016, it is also assumed that part of the missing minors could be affected by trafficking and exploitation.[108] There is no information available on the actual extent of the problem, though. Between 2013–2015, only one single case of trafficking of a minor asylum seeker was reported to the Federal Criminal Police Office.[109] As described under point 3.1.2., however, it is unclear whether a special representative for trafficking in human beings is active in every branch office of the Federal Agency of Migration and Refugees and whether regular decision makers and other personnel in this area have been sufficiently trained to recognize indications of child trafficking.

3.2.3 Other Forms of Exploitation

The 2013 addendum to the OSCE Action Plan emphasizes the importance of protecting those affected by child trafficking and underscores the particular vulnerability of children as victims of forced begging and exploitation in forced criminality. The OSCE States are called on to enhance "the capacity of police, social workers and other public authorities who may come in contact with children and other individuals trafficked and exploited in forced and organized begging to ensure prompt response to their particular needs, with the objective to immediately remove, where possible, victims from harmful and exploitative situations."

97 KOK e. V. (2014), p. 19.
98 cf. Döcker, M./Stamm, I. (2015).
99 ECPAT Deutschland e. V. (2013), p. 14.
100 ECPAT Deutschland e. V. (2015), p. 1.
101 OSCE (2013), III. 1.2, p. 3.
102 BAMF (2016), p. 7, author's calculation.
103 ECPAT Deutschland e. V. (2015): www.ecpat.de/index.php?id=396 [Last accessed: 24 April 2016].
104 www.unicef.de/presse/2015/schutz-fuer-fluechtlingskinder-deutschland/98698 [Last accessed: 25 April 2016].
105 For 2015, the Federal Agency of Migration and Refugees recorded an increase of over 200% in comparison to 2014; www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Asyl/um-zahlen-entwicklung.pdf?__blob=publicationFile [Last accessed: 23 April 2016].
106 Sec. 42 Social Code, Eighth Book Children and Youth Services (SGB VIII) in the version from 22 December 2011.
107 Lauth, M. (2010), p. 139.
108 BumF (2016).
109 Bundestag Printed Paper 18/8087, p. 8.

Currently, exploitation in forced criminality or begging is not included as part of trafficking in human beings by German criminal law. In the context of implementing EU Directive 2011/36, a reform in this regard is being pushed forward. In its state report on Germany, GRETA criticizes that combating child trafficking is frequently limited to the area of sexual abuse while other exploitative purposes of child trafficking are neglected.[110] No conclusions about the actual prevalence of these forms of exploitation can be drawn. According to experts in the field, the existing support system does not seem suited to identifying children who are forced to beg or to steal or commit other criminal acts.[111]

3.3 Collecting Data / Rapporteur

3.3.1 Collecting Data and Research

The OSCE views data collection and analysis as an important element in combating trafficking in human beings and supporting those affected and urges participating States "(...) to improve research and the system of data collection and analysis, with due regard to the confidentiality of data, (...) to better assess the character and scope of the problem and develop effective and well-targeted policies on trafficking in human beings."[112]

This OSCE recommendation is still relevant ten years later. Both the monitoring committee for the UN Convention on Eliminating All Forms of Discrimination against Women (CEDAW)[113] as well as the expert committee on the Council of Europe's Convention on Action against Trafficking in Human Beings[114] criticized the lack of data in Germany in 2008 and 2014, respectively. Both committees emphasized the importance of a coherent data collection system for effective policies and view the foci of data collection to be both in the area of prosecution and in implementing victims' rights, e. g. claims for damages, including information on the effectiveness of measures and results achieved. In 2007, in the context of a consultation with the OSCE Special Representative for Trafficking in Human Beings, the federal administration at the time had already pointed out the poor data situation and the problem of dark figures in Germany.[115] And yet, there are still no comprehensive surveys or serious estimates about the actual extent of trafficking in human beings in Germany.

At present, statistical data collection is limited to prosecution; information beyond that is only collected selectively, not systematically or in a way that allows for comparison. Conclusions about the victims' assertion of their rights such as those related to compensation or health care services cannot be drawn.

The most comprehensive figures are the data from the Federal Criminal Police Service that have already been cited numerous times. The Federal Criminal Police Service's situation report "Trafficking in Human Beings" depicts annual developments and trends in the area of trafficking in human beings from a police perspective on the basis of the completed investigations reported by the Länder criminal police agencies. Because these are only cases that were reported to the police, the informative value is necessarily limited. The same applies to the Police Criminal Statistics (polizeiliche Kriminalstatistik, PKS) that are compiled by the Federal Statistical Office. It records illegal acts reported to the police including criminalized attempts, the number of suspects investigated and a series of other information on cases, victims and suspects.[116] A third collection of statistics in this area are the criminal prosecution statistics that include sentences according to criminal offences and are broken down according to the sex and age of the convicted.[117] Due to differing methods of data collection, these statistics cannot be compared or can only be compared to a limited extent. There are no process statistics on

110 GRETA (2015), p. 24.
111 Cf. Czarnecki, D./Maurer, M. (2015), p. 128.
112 OSCE (2006), MC.DEC/14/06, p. 2, no. 3; see also OSCE (2003), IV 1.1, p. 9.
113 UN, Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/DEU/CO/6, 12 February 2009, nos. 47–48.
114 GRETA (2015), p. 55.
115 OSCE/ Office of the Special Representative (2008), p. 62.
116 www.bka.de/DE/Publikationen/PolizeilicheKriminalstatistik/pks__node.html [Last accessed: 29 March 2016].
117 www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzu_g/StrafverfolgungsstatistikDeutschland.html [Last accessed: 29 March 2016].

any forms of trafficking in human beings including child trafficking.

Another section of human trafficking cases can be seen in the statistics of various non-governmental counselling centres. These cases are only in part the same as those reported by the police. Victims turn to refugee, migration or women's counselling centres or counselling centres for labour exploitation with various concerns. If the regional network works, they are referred to non-governmental offices specialized in combating trafficking in human beings. But here, too, there is as yet no unified system of data collection, and the way the individual counselling centres count cases differs. Other, governmental offices collect their statistics on trafficking in human beings in ways that do not allow for comparison, such as the nationwide hotline for violence against women[118] or the Federal Agency of Migration and Refugees.[119] The individual surveys are also not collected or analysed centrally. Beyond this, there are several other offices whose core mandate does not include trafficking in human beings but who also come into contact with victims, e. g. customs, the labour inspectorate, pension agencies or foreigners registration offices. None of these agencies records cases of trafficking in human beings in a way that could contribute to getting the whole picture.

3.3.2 Rapporteur

Data collection for improvements in combating trafficking in human beings is closely linked to the establishment of a central office that can develop and implement an overarching concept and that can measure and analyse developments in the area of trafficking in human beings and the effectiveness of the measures taken. In numerous Decisions, the OSCE States have agreed "to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements."[120]

In 2007, the then OSCE Special Representative broke this down further and described the added value of such a position: "Establishing a National Rapporteur or equivalent mechanism is an important step toward implementing 1) comprehensive qualitative and quantitative data collection, research and analysis of the trafficking situation in the participating State concerned, and 2) a systematic analysis of the effectiveness of measures and policies undertaken to prevent and combat THB [trafficking in human beings]."[121] The Council of Europe's Convention on Action against Trafficking in Human Beings also recommends establishing such a position.[122] The EU Directive against Trafficking in Human Beings (2011/36/EU), which has thus far not been implemented by Germany, obligates states to set up such a mechanism.

The OSCE does not give more detailed guidelines for this type of position but instead allows states to decide which form is most appropriate and effective given the circumstances.[123] A mechanism must have a certain degree of independence, however, in order to be able to evaluate state measures critically.[124] According to the OSCE Special Representative, the following five purposes must be fulfilled:

- Nationwide systematic and strategic collection of data by governmental agencies, service providers and, in as far as it is possible and appropriate, NGOs;
- Systematic monitoring and evaluating of the outcomes of measures against trafficking in

118 BMFSFJ (2016) Hilfetelefon Gewalt gegen Frauen Jahresbericht 2015 [Hotline for violence against women, Annual report 2015], p. 62, www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/dritter-jahresbericht-hilfetelefon,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf [Last accessed: 29 March 2016].

119 In its annual migration report, the BAMF states the number of persons who have a special residence permit because they were victims of trafficking in human beings: www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Migrationsberichte/migrationsbericht-2014.pdf?__blob=publicationFile [Last accessed: 29 March 2016] and records how many people were identified during the asylum process as victims of trafficking in human beings (not public; written query was sent to BAMF); see also GRETA (2015), p. 39, marginal number 135.

120 OSCE (2003), PC.DEC/557, p. 19.

121 OSCE/ Office of the Special Representative (2008), p. 57.

122 In its concluding observations for Germany in 2012, the UN Human Rights Council also recommended that Germany regularly evaluate the effects of all initiatives and measures against trafficking in human beings, cf. UN, Human Rights Council, UN Doc. CCPR/C/DEU/CO/6 from 12 November 2012, no. 13.

123 OSCE/ Office of the Special Representative (2008), p. 62.

124 OSCE (2015), p. 92.

human beings at the national and international levels including an assessment as to how and why the measures are effective in combating trafficking in human beings;
- Expert analyses as the foundation for developing measures against trafficking in human beings;
- Identifying gaps in research to address practical problems;
- Reporting in such a way that policies, strategies and practical measures to combat trafficking in human beings can be improved.[125]

Up to now in Germany, no concrete measures have been taken by the federal government to establish a rapporteur or equivalent mechanism. Despite critique from various civil society organizations[126] and the Bundesrat,[127] the current draft legislation to implement EU Directive 2011/36/EU does not include a rapporteur. Existing committees – such as the two Federal-Länder working groups on trafficking in human beings or the respective regional committees – only carry out individual elements of the rapporteur's tasks listed above. This is how an exchange of information and an identification and analysis of specific problems in combating trafficking in human beings takes place. Queries and surveys on certain topics are carried out and guidelines and joint approaches to solutions are created. However, they do not fulfil the OSCE's requirements for a mechanism to monitor the activities on combating trafficking in human beings. To ensure that the human rights-based approach of the OSCE decisions is ensured in national implementation, a systematic assessment is necessary. In its report, GRETA reaches the conclusion that currently in Germany there "(...) is no independent evaluation of the impact of anti-trafficking activities."[128]

4 Conclusion

Many OSCE decisions on trafficking in human beings and support for victims have been implemented in Germany. Although the focus of this chapter was on areas in which there is still a need for action, it should not be forgotten that in particular in the area of victims' rights, in recent years many improvements have been made in the support structures and with the co-operation of various actors. Work is continuing on the implementation of the OSCE commitments, which are often also reflected in international treaties.

In summary, it can be said that trafficking in human beings is set down in German criminal law as a criminal offence against a person's freedom, and these laws are also applied in legal practice, albeit with limited success up to the present, particularly in cases involving minors and in the area of trafficking for labour exploitation. This problem is to be confronted with a comprehensive legal reform that is also to criminalize additional forms of exploitation. Established support and co-operation structures exist that must continue to be built up and expanded for some target groups and forms of exploitation. Here positive developments can also be noted although as yet no over-arching strategy has been created. Getting access to unpaid wages and compensation is possible in principle and is legally regulated, but in practice it is often difficult. At least for the area of state compensation, an improvement is planned. Despite clear indications of far-reaching exploitation by placement agencies, including in the area of household nursing care, little state action toward regulating the private placement agencies can be seen. A growing awareness of child trafficking victims is apparent.

Concepts are being developed to improve co-operation among relevant actors so that they can better protect minors in refugee accommodation. There are not yet sufficient support structures that consider the needs of children who have been victims of trafficking in human beings and place the well-being of the child at the forefront. There is also a clear need for action in sensitizing all professions that might come in contact with victims. A lack of awareness can be seen that makes identification of victims much more difficult or even completely prevents it. Germany is also lagging behind on the requirements in the OSCE commitments on

125 OSCE/ Office of the Special Representative (2008), p. 64.
126 German Institute for Human Rights (2015).
127 Bundesrat Printed Paper 641/13 Decision from 20 September 2013, p. 2.
128 GRETA (2015), p. 25, marginal number 67.

data collection and analysis of the measures taken against trafficking in human beings.

The OSCE States have repeatedly emphasized the importance of a human rights-based approach in combating trafficking in human beings. Even though human rights are given a high priority in Germany, a human rights-based approach that places trafficking victims' human rights at the centre of all efforts to prevent and combat trafficking in human beings and at the centre of protection and support[129] has not yet been sufficiently implemented.

5 Bibliography

Böning, Marta/Steffen, Margret (2014): Migrantinnen aus Osteuropa in Privathaushalten. Problemstellungen und politische Herausforderungen [Migrants from Eastern Europe in private households. Problems and political challenges]. Verdi (ed.).

Bündnis gegen Menschenhandel zum Zweck der Arbeitsausbeutung [Alliance against trafficking for labour exploitation] (2015): Menschenhandel zum Zweck der Arbeitsausbeutung – Eine Auswertung staatsanwaltschaftlicher Ermittlungsakten und gerichtlicher Entscheidungen [Trafficking in human beings for labour exploitation – An analysis of state prosecutor's offices' investigation files and court decisions]. Berlin: Friedrich Ebert Foundation.

Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess, KOK e. V. (German NGO Network against Trafficking in Human Beings) (2014): Bericht zur Bewertung der Umsetzung des Übereinkommens des Europarats zur Bekämpfung des Menschenhandels durch die Vertragsparteien in Deutschland [Report to assess the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings by the Contracting Parties in Germany].

Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) (2015): Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, GRETA (2015)10, Strasbourg, 20 March 2015.

Czarnecki, Dorothea/Maurer, Mechtild (2015): Kinderhandel – die Ausbeutung von Kindern in Deutschland [Child trafficking – exploitation of children in Germany], in: Menschenhandel in Deutschland: eine Bestandsaufnahme aus Sicht der Praxis [Trafficking in human beings in Germany: Taking stock from practitioners' perspectives]. KOK e. V. (ed.), Berlin: Ruksaldruck GmbH und Co.KG, Berlin: KOK e. V.

Döcker, Martina/Stamm, Ingo (2015): Kinderhandel in Deutschland – Aufgabe und Herausforderung für die Kinder- und Jugendhilfe [Child trafficking in Germany – Task and challenge for child and youth services]. Berlin: Nachrichtendienst des Deutschen Vereins für öffentliche und private Fürsorge e. V. (News service from the German association for public and private care) (NDV).

ECPAT Deutschland e. V. (2015): Unaufgeforderte Stellungnahme von ECPAT Deutschland e. V. zum Entwurf einer Formulierungshilfe für die Empfehlungen des Ausschusses für Recht und Verbraucherschutz für ein Gesetz zur Änderung des Strafgesetzbuches – Verbesserung der Bekämpfung des Menschenhandels – und zur Ergänzung des 49. Gesetzes zur Änderung des Strafgesetzbuches vom 24. Juli 2015 [Unsolicited statement from ECPAT Deutschland e. V. on the draft of a formulation proposal for the recommendations of the Committee on Legal Affairs and Consumer Protection for legislation on the revision of the Criminal Code – Improvements for Combating Trafficking in Human Beings – and to revise the 29th Act on Amending the Criminal Code from 24 July 2015].

129 Cf. OSCE (2015), p. 37, based on: Office of the UN High Commissioner for Human Rights (2010): Recommended Principles and Guidelines on Human Rights and Human Trafficking.

ECPAT Deutschland e. V. (2013): Ergänzender Bericht im Rahmen des Staatenberichtsverfahrens zum Fakultativprotokoll zu dem Übereinkommen über die Rechte des Kindes, betreffend Handel mit Kindern, Kinderprostitution und Kinderpornografie [Supplementary report in the context of the state party reporting procedure on the optional protocol to the Convention on the Rights of the Child related to the sale of children, child prostitution and child pornography].

ECPAT International (2012): Global Monitoring Report Germany, 2nd edition.

Federal Statistical Office (2013): Rechtspflege: Strafverfolgung [Administration of justice: prosecution], special series 10, series 3: Wiesbaden.

Follmar-Otto, Petra/Rabe, Heike (2011): Menschenhandel in Deutschland – die Menschenrechte der Betroffenen stärken [Human trafficking in Germany – Strengthening the victims' human rights]. Berlin: German Institute for Human Rights.

German Institute for Human Rights (2014): Response of the German Institute for Human Rights to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties. Berlin: German Institute for Human Rights.

German Institute for Human Rights (2015): Aktuell 04/2015 Berichterstatterstelle Menschenhandel [Aktuell 04/2015 Rapporteur for trafficking in human beings]. Berlin: German Institute for Human Rights.

Hödl, Daniela (2015): Aufenthaltsrecht und Zugang zu Sozialleistungen für Opfer von Menschenhandel [Residency laws and access to social benefits for trafficking victims], in: Menschenhandel in Deutschland: eine Bestandsaufnahme aus Sicht der Praxis [Trafficking in human beings in Germany: Taking stock from practitioners' perspectives], KOK e. V. (ed.), Berlin: Ruksaldruck GmbH und Co.KG.

Hoffmann, Lorenz (2015): Von Arbeitsausbeutung bis Menschenhandel. Grundlagen und Praxistipps für die Beratung [From labour exploitation to human trafficking. Basic principles and practical tips for counselling]. Diakonie Deutschland (ed.), Meckenheim: DCM Druck Center.

Hoffmann, Ulrike/Rabe, Heike (2015): Severe forms of Labour Exploitation: Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States Germany, 2014: FRANET.
http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf
[Last accessed: 25 March 2016].

Lauth, Mechtild (2010): Maßnahmen für ein effektives Vorgehen gegen Kinderhandel in Deutschland [Measures for effectively working against child trafficking in Germany], in: Kinder und Jugendliche, Jahrbuch Menschenrecht 2010 [Children and youth, annual human rights report 2010] (ed.). Bielefeldt et al., Vienna: Böhlau.

Müller-Güldemeister, Susanne (2014): Handel mit Kindern: Ein Überblick über den Ist-Stand in Deutschland 2013 [Child trafficking: An overview of the current status in Germany 2013]. Berlin: IN VIA Katholischer Verband für Mädchen- und Frauensozialarbeit für das Erzbistum Berlin e. V. (IN VIA Catholic Association for Women's and Girls' Social Work for the Archdiocese Berlin).

Rabe, Heike/Tanis, Naile (2013): Menschenhandel als Menschenrechtsverletzung – Strategien und Maßnahmen zur Stärkung der Betroffenenrechte [Human trafficking as a human rights violation – strategies and measures to strengthen victims' rights]. Berlin: German Institute for Human Rights/KOK e. V.

E Elections

Voting Rights of Persons with Disabilities and their Right to Run in Elections

PD Dr. Hendrik Trescher

1 Introduction

1.1 Topic and Methods

Persons with disabilities often have difficulty accessing many areas of life – this includes participation in political life. In the OSCE commitments and in particular in the UN Convention on the Rights of Persons with Disabilities (UN-CRPD), which is explicitly referred to in OSCE documents,[1] there are calls for the complete implementation of the voting rights of persons with disabilities and the strengthening of their political participation. For this, states are called on to become active and dismantle existing barriers to participation.

This evaluation was carried out by researching available data material, in particular from studies and statements from self-representation associations. The results were compared in telephone interviews with affected groups[2] and heads of residential facilities for inpatient facilities for disabled persons. In addition, several parties in the Bundestag and Landtage[3] were asked about the number of representatives with disabilities.

1.2 OSCE Commitments

"To ensure that the will of the people serves as the basis of the authority of the government"[4], in 1990 the participating States already committed to "guarantee universal and equal suffrage to adult citizens".[5] The rights of citizens are thereby to be respected "to seek political or public office (...) without discrimination".[6] The participating States also commit to "provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groups and individuals wishing to participate in the electoral process".[7]

These commitments were once again reaffirmed in the Charter of Paris for a New Europe (1990), and an addition was made: "everyone also has the right: (...) to participate in free and fair election."[8] OSCE commitments refer generally to corresponding provisions in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights. Persons with disabilities are mentioned for the first time in the Moscow Meeting (1991) as a group whose human rights are threatened and who are in need of special consideration.[9] The OSCE States commit to "take steps to ensure the equal opportunity of such persons to participate fully in the life of their society."[10] The Ministerial Council Decision from Porto (2002) on commitments regarding elections refers to the publication "International Standards and Commitments: A Practical Guide to Democratic Elections Best Practice", compiled by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).[11] This guide includes practical recommendations for the voting rights of persons with disabilities. ODIHR has increased its efforts toward the political participation of persons with disabilities in recent years, in particular regarding the call for states to ensure unrestricted access to polling stations as a human right.[12] In the context of its activities as an election monitoring institution,[13] the ODIHR observes the extent to which states ensure that the election process is accessible.[14] ODIHR recommends that the participating States conceptualize and implement measures to support voters with disabilities, for example assistance in voting or technical sup-

1 OSCE/ODIHR 2015, p. 3.
2 Including the Federal Representative for the Concerns of Persons with Disabilities.
3 Lower Saxony, North Rhine-Westphalia, Hesse, Saxony.
4 DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE, nos. 7 ff.
5 ibid.
6 ibid.
7 ibid.
8 OSCE (1990), Paris, p. 4.
9 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE no. 41.1; see also OSCE/ODIHR 2015, p. 2.
10 OSCE (1991), Moscow, no. 41.2.
11 OSCE/ODIHR 2013.
12 OSCE/ODIHR 2015, p. 3; on this, see also OSCE/ODIHR 2013.
13 OSCE/ODIHR 2010.
14 OSCE/ODIHR 2015, p. 3.

port.[15] Beyond this, the parties must make their election platform accessible.[16] ODIHR criticizes that in the majority of states, persons with cognitive impairments are still denied the right to vote[17] and refers explicitly to the UN Convention on the Rights of Persons with Disabilities (CRPD).[18] The UN Convention on the Rights of Persons with Disabilities discusses participation in many ways and views participation as a cross-cutting topic. The ODIHR points out that the UN's CRPD has led to increased awareness that persons with disabilities should participate in the election process equally with persons without disabilities.[19]

1.3 Legal and Institutional Framework in Germany

Voting rights are regulated in Article 38 of the Basic Law (Grundgesetz, GG). The principles of universality and equality play a decisive role, the only restriction is that the person is at least 18 years old. Article 33 GG can also be viewed in conjunction with the general prohibition on discrimination in Article 3(33) GG, where it states: "No one may be discriminated based on his disability."[20] The Federal Election Act (Bundeswahlgesetz, BWG) states that certain persons, including people who are under extensive care, are excluded from the right to vote (Sec. 13) and the right to run as a candidate in an election (Sec. 15). In the Federal Election Regulations (Bundeswahlordnung, BWO), which puts the BWG into concrete terms, in Sec. 46 (Ballot Rooms) there are regulations on the polling stations adhering to accessibility guidelines. According to Sec. 57 (Voting for Voters with Disabilities), persons with disabilities have the right to submit their vote with assistance or with technical support. The Equal Treatment of Disabled Persons Act (Behindertengleichstellungsgesetz, BGG) states that persons with disabilities may not be discriminated against so that their equal participation in life in their society can be ensured. This is also guaranteed in the Social Code (Soziales Gesetzbuch, SGB IX) as part of the rehabilitation and participation of persons with disabilities, among other places in Sec. 1 Self-Determination and Participation in Life in Society.

Germany ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2009. A state co-ordination office for implementing the Convention was placed in the agency of the Federal Representative for the Concerns of Persons with Disabilities.[21] The German Institute for Human Rights was entrusted with the task of operating as a monitoring body according to Article 33(2) of the CRPD; for this purpose, it created the Monitoring Office on the UN Convention on the Rights of Persons with Disabilities.

2 Description of the Problems Using the Current Situation in Germany

With the CRPD, Germany is required by international law to ensure unrestricted voting rights for persons with disabilities. Article 29 of the CRPD states: "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to: a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected".[22] Exercising the right to vote and right to be elected is to be guaranteed by accessibility in the election process or by the possibility to use assistance, among other measures.[23] In Article 29b, the signing States commit to a general prohibition against discrimination and to actively promoting "an environment in which persons with disabilities can effectively and fully participate in the conduct

15 ibid.
16 OSCE/ODIHR 2003, p. 62; OSCE/ODIHR 2013.
17 OSCE/ODIHR 2015, p. 3.
18 ibid.
19 ibid.
20 GG Art. 3(3).
21 Representative for Persons with Disabilities 2016.
22 UN CRPD, Art. 29.
23 ibid.

of public affairs, without discrimination and on an equal basis with others".[24]

The leading agency for the implementation of the UN's CRPD is the Federal Ministry of Labour and Social Affairs (BMAS).[25] The National Action Plan on the implementation of the CRPD states: "The federal government promotes persons with disabilities being able to participate equally, effectively and fully in political life on an equal basis with others."[26] Among other measures, this includes accessibility in information and communication.[27] However, the partial exclusion of those persons with disabilities who are under care and those who live in psychiatric hospitals[28] has been maintained.[29] Associations for persons with disabilities, for example the Bundesvereinigung Lebenshilfe e. V. view this as a violation of the CRPD and advocate a revision of election law.[30] The Federal Ministry of the Interior commissioned a "Study on the Actual Situation of Persons with Disabilities when Exercising their Right to Vote and Right to Run in Elections" that was to be published in mid-June 2016. The study's objective is to find out which groups of people are affected by the exclusions to voting rights and to what extent they are affected.

Persons with disabilities encounter obstacles when participating in political discourse in Germany. These exist not only when exercising the right to vote but also when running for election. It is also problematic that those affected must first designate themselves as "disabled" in order to receive the respective support services. Here the question arises of the extent to which the election procedure could be adapted such that elections are accessible from the outset.

3 Assessment of the OSCE Commitments' Implementation

3.1 Access to Information

The right to vote and political participation are not limited to the voting process itself. Rather, the key to exercising this right is unrestricted access to information. For persons with disabilities, however, there are factual barriers to informing themselves about national and international political news. In addition, accessibility to election-specific information is limited. The election advertisements that were shown on television before the last Bundestag elections (2013) were for the most part not accessible.[31] There were no election advertisements in German Sign Language or plain language, nor were there advertisements with audio descriptions.[32] Election platforms (of the large parties) are primarily accessible in plain language or as an audio version at the federal level, but this is not often the case at the Länder or local level for financial reasons. This seems problematic because access is thus only granted to certain platforms of certain (large) parties. When election and party platforms are made accessible in plain language, there are also sometimes errors in the translation. In addition, persons with learning disabilities are often not consulted in the design process.[33] Television news agencies are also often not accessible but are limited to audio-visual

24 ibid.
25 German Institute for Human Rights 2016.
26 BMAS (2011), p. 86.
27 ibid., pp. 86 f.
28 According to BWG Sec. 13.
29 Gesetzesentwurf zur Umsetzung der Behindertenrechtskonvention und seinem Fakulatativprotokoll [Draft legislation on the implementation of the Convention on the Rights of Persons with Disabilities and its optional protocol], Bundestag printed paper 16/10808 from 13 December 2006, p. 64. A study by the European Union Agency for Fundamental Rights reaches the same conclusion regarding the political participation of persons with psychological health problems and people with intellectual disabilities (FRA European Union Agency for Fundamental Rights 2014). This partial exclusion is consistent with the ODIHR's recommendations, in which the removal of voting rights for certain groups of people is foreseen as a possibility (OSCE/ODIHR 2003, pp. 59 ff).
30 Lebenshilfe 2013, p. 2. See also Palleit 2011, p. 13; Waldschmidt/Karim 2013, p. 18.
31 Waldschmidt/Karim 2013, p. 16.
32 ibid.
33 Waldschmidt/Karim 2013, p. 15; Rademacher et al. 2013.

transmission and verbal language. For the hearing impaired whose native language is German Sign Language and written German is therefore a foreign language, there are only limited options for informing themselves about current events.[34] This also applies to people who rely on information in plain language.[35] Despite notes in the ordinance on creating accessible information technology according to the Equal Treatment of Disabled Persons Act,[36] online information on current events can often not be accessed without restrictions. In actuality, it is frequently the case that if anything is accessible at all, then it is only the start page for the respective internet sites.[37] There are also obstacles to the opportunity to attend campaign events. Information at the parties' information booths, as they can be found in pedestrian zones, for example, are dependent on the accessibility of the location and in regard to the information offered there, which is usually in written and verbal language. This also applies to election advertising that is sent directly to the voters.[38]

3.2 Right to Vote

In the Federal Election Regulations, it is regulated that "the ballot rooms are to be selected and set up according to the local circumstances such that participation in the election is made as easy as possible for all eligible voters, in particular persons with disabilities and other mobility restrictions. The local authorities are to provide information in a timely and suitable manner on which ballot rooms are accessible."[39] However, interviews revealed that the biggest obstacle in exercising the right to vote for people with disabilities are the polling stations, which are often difficult to reach and not accessible. A study by Aktion Mensch showed that polling stations are often set up exclusively for physical accessibility; guidance systems for the visually impaired or pictograms to better understand the voting process are often not available.[40]

In December 2011, 2.5 million persons were in need of nursing care in Germany.[41] One-third of all those in need of care are completely inpatient in 12,400 nursing homes across the country. Surveys shows that exercising the right to vote in the context of inpatient care for disabled persons is also linked to how much personnel is available at the time to assist the residents in reaching the polling station. For persons with disabilities (often intellectual impairments) living in institutions, the closed nature of their living situation and the heavy dependence on others are obstacles to participating in political discourse. According to the Federal Election Regulations, the only possibility is to set up a so-called mobile election committee in the institution itself so that the persons living in the institutions can vote on site.[42] In the Federal Election Regulations there are also provisions regarding disabled voters submitting votes.[43] Among other points, here it is regulated that persons with disabilities may be supported in submitting their

34 This problem also exists for persons whose native language is not German. That fact already makes it clear that it could make more sense to ask whether there is a need for a certain type of assistance as opposed to asking about the type of disability.

35 For example, the news programme Tagesschau is only made accessible in German Sign Language in the online media library or on a third channel (Phoenix). News programmes with audio descriptions that could be used by persons with visual impairments are completely lacking. News in plain language can also not be accessed using conventional media. There are special platforms such as nachrichtenleicht.de where the most important news items are summarized once each week in plain language (nachrichtenleicht, no year). The Norddeutsche Rundfunk also has a programme in plain language, but it is limited to regional news (Norddeutscher Rundfunk, no year).

36 Ordinance on Accessibility in Information Technology (Barrierefreie-Informationstechnik-Verordnung, BITV 2.0).

37 Kunert 2013; Waldschmidt/Karim 2013, pp. 15 f.

38 What is also problematic is that representatives from large parties often use standardized form letters. As a politician from a large party stated in an interview, these are usually formulated in elaborate written language.

39 BWO, Sec. 46.

40 Among others, Waldschmidt/Karim 2013, p. 13; Krauthausen 2013. The author is one of the polling station testers and criticizes among other aspects the height of the ballot boxes, the lack of pictograms and the fact that "no tactile guidelines or additional texts in braille are available" (Krauthausen 2013).

41 Monitoring Office for the CRPD (2015): Parallelbericht an den UN-Fachausschuss für die Rechte von Menschen mit Behinderungen [Parallel report to the UN Committee on the Rights of Persons with Disabilities], p. 24.

42 BWO, Sec. 8: "For submitting votes in smaller hospitals, smaller senior or nursing homes, monasteries, socio-therapeutic institutions and correctional facilities, if there is a need and if possible, mobile election committees are to be established."

43 BWO, Sec. 57.

vote by an assistant. This is also part of the OSCE commitments.[44] In practice, one problem is the provision of informal assistance such as ballot aids that have errors or do not fit on the ballots being provided for voters with visual impairments. Even though the costs for these aids are paid by the federal or Land government, enabling persons with disabilities to exercise their right to vote depends on the individual work of informal groups.

The lawmaker has recognized the issue of barriers to accessibility at polling stations and legislated them in Sec. 46 of the Federal Election Regulations.[45] The provisions are not far-reaching or decisive enough, however, to resolve the problems with voting described above because: (a) the accessibility called for in these regulations focuses primarily on mobility impairments, (b) voting is only to be made easier "to the extent possible" and (c) apparently not all polling stations must be accessible as a matter of principle – there is no general requirement for accessibility. This represents a legal restriction of the right to vote. It is also problematic that those affected must first designate themselves as "disabled" in order to receive the respective support services. Here the question arises of the extent to which the election procedure could be adapted such that elections are accessible from the outset. In 2013, the Federal Competence Centre for Accessibility reviewed the accessibility of polling stations and, based on this review, created recommendations for communities to ensure their polling stations are accessible.[46] These recommendations are to serve to sensitize election workers on dealing with persons with disabilities and are also distributed by the Federal Election Commissioner.[47] In part due to the fact that many polling stations are not (yet) completely accessible, the ODIHR recommends evaluating alternative voting scenarios such as the use of new technologies.[48] So far the federal government has not taken any steps in this direction, even though voting using an online portal, for example, would be an alternative worth considering not only for persons with disabilities but for all voters, and might even lead to a increase in voter turnout.

3.3 Right to Run in Elections

In Germany, political participation is typically done by working in parties, and these are usually organized locally. If a person wishes to be elected into a political office, they must therefore first work in a party.[49] Access to parties and election to offices is made more difficult by the physical inaccessibility of many public places (meeting locations of parties, town council, local advisory council, participation in political events, etc.) and the focus on verbal language[50] and written communication. To fulfil their constitutional mandate in Article 21 GG to contribute to the people's political opinion making, parties receive partial funding from the government. Support for persons with disabilities in the parties is not seen as a requirement for government funding, however, and no additional funds are provided for this purpose. There are not always enough support aids available.[51] It is also unclear who pays for the assistance for candi-

44 ODIHR: Existing Commitments for Democratic Elections in OSCE Participating States/ Progress Report, Warsaw, October 2003, p. 61.

45 (1) The local authorities shall determine a polling station for each voting district. In so far as is possible, the communities shall open polling stations in community buildings. The ballot rooms are to be selected and set up according to the local circumstances such that participation in the election is made as easy as possible for all eligible voters, in particular persons with disabilities and other mobility restrictions. The local authorities are to provide information in a timely and suitable manner on which ballot rooms are accessible.
(2) In larger voting districts in which the list of voters can be divided, voting can be done at the same time in different buildings or in different rooms of the same building or at different tables in the ballot room. For each ballot room or table, an election committee shall be formed. If multiple election committees are active in one ballot room, the local authorities are to determine which committee is responsible for ensuring the room is quiet and orderly."

46 BKB 2013.

47 Federal Election Commissioner 2015.

48 OSCE/ODIHR 2013, pp. 5 ff. "NVT [New Voting Technologies] may also have the potential to increase access for voters with disabilities and voters who speak minority languages" (ibid., p. 5).

49 In theory it is also possible to run for a position without a party (BWG Sec. 20(2) sentence 1; German Bundestag, no year); but the probability of actually being elected is much lower.

50 Rhetoric plays an important role in politics, something that represents a barrier to participation for persons in need of speech assistance.

51 A politician who was interviewed told about one of the large parties represented in the Bundestag and the Landtag in question (not from one of the city-states) which only had one mobile audio induction loop available that is loaned out across the Land as required.

dates with disabilities during the campaign.[52]

Political participation also takes place as civil society engagement, though, not least in the form of organized representation of one's own interests. The CRPD Alliance (BRK-Allianz), an association of non-governmental organizations, warned in their parallel report to the CRPD state report from the federal government in 2011, however: "Self-representation organizations of persons with disabilities are not promoted institutionally but receive at most limited-time project funding that usually serves other project goals than that of political interest representation."[53] The CRPD Alliance calls for self-representation organizations being supported institutionally so that persons with disabilities can exercise their rights to participation as set down in the CRPD. It further states: "Besides regulations on accessibility, political and social participation opportunities for utilizing assistance and compensation for disabilities must be created."[54]

3.4 Definition of Disability based on Deficit

In broader society, disability is still primarily perceived as a deficit.[55] For example, a politician interviewed stated that parties often do not believe that a person with a learning disability can win a mandate because it is assumed that the electorate would have serious reservations based on the learning disability. In contrast to this perception of disability, which views it as a deficit, the politician Michael Gerr, who has a physical disability and is a member in the city council of Würzburg and Head of the Federal Working Group on Disability Policies stated: "I have lived with a disability since I was in a car accident over 20 years ago, and I have not experienced it as a limitation but as a personal enrichment."[56] The awareness must grow in society at large so that persons with disabilities are not primarily perceived in light of their disability.

Another issue is a certain blurring of the term "disability". The categorization according to the degree of disability also does not necessarily indicate which practical assistance needs the respective persons have. It is possible that persons with the same degree of disability need differing support. That is why statistical surveys can only reach tentative conclusions about actual barriers since many people with very different assistance needs are combined under the collective term "persons with disabilities".

It is unclear how many persons with disabilities are represented in the individual German parliaments. This is partially related to the lack of clarity with the term, which also has an effect on the data collection.[57] This research showed that in the Länder parliaments in Hesse, North Rhine-Westphalia, Lower Saxony and Saxony as well as in the Bundestag fewer than 1 per cent of the parliamentarians in each body are considered disabled, but these numbers have only limited reliability.

52 During the evaluation, the case of one person became known who was deaf and ended up not being able to run for an office because it could not be clarified (in time) who would cover the costs for assistance services during the campaign.

53 http://www.brk-allianz.de/attachments/article/93/parallelbericht_barrierefrei_layoutfassung.pdf

54 http://www.brk-allianz.de/attachments/article/93/parallelbericht_barrierefrei_layoutfassung.pdf

55 On this, see among others Trescher 2015, 2016.

56 Gerr, no year.

57 For example, one person interviewed emphasized that in their party, "officially" no persons with disabilities were represented. Whether a representative has a disability or not was discovered in collegial interactions and not at the party level.

Table 1: Number of Parliamentarians with Disabilities

	Federal Government	Hesse	North Rhine-Westphalia	Lower Saxony	Saxony
Number of Parties	4	5	5	4	5
Number of Parties in which Persons with Disabilities are Represented	1	0	2	1	1
Number of Parliamentarians with Disabilities	3	0	2	1	1
Total Number of Seats	630	110	237	137	126
Per cent of Parliamentarians with Disabilities	0.48%	0%	0.84%	0.73%	0.79%

Disability is treated as a private matter and is thus not necessarily known if the party is asked whether their members are considered disabled.

There is draft legislation on the unsatisfactory definition of the term "disability" in Sec. 3 of the Equal Treatment of Disabled Persons Act (BGG) that is to be passed by parliament in 2016 to make the term conform to the requirements of the UN's CRPD.[58] The new version of the law has the objective of increasing participation of persons with disabilities in society including accessible political participation.[59] The term "disability" is to be re-defined: it is to be not only primarily individual and deficit-oriented but as a condition that results from impairments in conjunction with barriers related to the environment or attitudes.[60]

To implement these new legal provisions, societal changes will be necessary to clear the, in part, negatively connoted perception of disability. The equal participation of all persons in society is only possible if the living situations of all persons are respected from the outset and all are included. Points of contact between persons with and without disabilities must be created to dispel fears and prejudices in society.

The draft legislation[61] on the Equal Treatment of Disabled Persons Act also foresees the creation of a participation fund for the financial support of self-representation associations[62] (the National Action Plan also provides for strengthening the participation of associations for disabled persons). With this, the federal government reacts to

58 German Bundestag (2016): Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Weiterentwicklung des Behindertengleichstellungsrechts [Draft legislation from the federal government. Draft of a law on the further development of the Equal Treatment of Disabled Persons Act]. Printed Paper 18/7824.

59 ibid.

60 https://www.bmas.de/DE/Presse/Pressemitteilungen/2016/gesetzesentwurf-weiterentwicklung-behindertengleichstellungsrecht.html;

61 German Bundestag (2016): Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Weiterentwicklung des Behindertengleichstellungsrechts [Draft legislation from the federal government. Draft of a law on the further development of the Equal Treatment of Disabled Persons Act]. Printed Paper 18/7824 from 9 March 2016.

62 ibid.

calls from the BRK-Allianz in their parallel report to the First State Report of the Federal Republic of Germany.[63] This could lead to the creation of compensation for disability-related additional demands, e. g. costs for communication aids that are necessary for carrying out the tasks of organizing persons with disabilities.[64]

4 Conclusion

In summary, it can be said that in Germany political and legal efforts toward fulfilling the OSCE commitments have been made to strengthen the political participation and voting rights of persons with disabilities. Still, the further dismantling of barriers revealed in the right to vote and right to run for election, including the legal exception to the voting rights for some persons with disabilities, remain on the political agenda. State party financing could be used as a steering tool to promote political engagement by persons with disabilities in the parties. More points of contact should still be created between persons with and without disabilities. If participation is sensible, the recognition of people as legal subjects and legal entities of human dignity is expressed. The recognition of persons with disabilities as politically active is particularly important for historical reasons. Not least, participation can contribute to increasing the acceptance of political decisions."[65]

5 Bibliography

BRK-Allianz (2015): Alliance of German Non-governmental Organisations on the UN Convention on the Rights of Persons with Disabilities. Response from the BRK-Allianz on the List of Issues (CRPD/C/DEU/Q/1) in relation to the state report from Germany. www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Parallelberichte/Stellungnahme_der_BRK-Allianz_auf_die_Antwort_der_Bundesregierung.doc (Last accessed: 21 April 2016).

BRK-Allianz (2013): Allianz der deutschen Nichtregierungsorganisationen zur UN-Behindertenrechtskonvention. Für Selbstbestimmung, gleiche Rechte, Barrierefreiheit, Inklusion! [Alliance of the German non-governmental organisations on the UN Convention on the Rights of Persons with Disabilities. For self-determination, equal rights, accessibility, inclusion!] First report from civil society on the implementation of the UN Convention on the Rights of Persons with Disabilities in Germany.

Dahesch, Keyvan (2010): Behinderte in der politischen Arena [Persons with disabilities in the political arena]. In: deutschlandfunk.de. http://www.deutschlandfunk.de/behinderte-in-der-politischen-arena.1184.de.html?dram:article_id=185415 (Last accessed: 23 March 2016).

Federal Competence Centre for Accessibility (BKB) (2013): Informationen über die Barrierefreiheit von Wahlräumen. Empfehlungen für Gemeinden [Information on the accessibility of voting rooms. Recommendations for communities].

Federal Ministry of Labour and Social Affairs (2011): Unser Weg in eine inklusive Gesellschaft. Der Nationale Aktionsplan der Bundesregierung zur Umsetzung der VN-Behindertenrechtskonvention [Our path to an inclusive society. The National Action Plan from the federal government on the implementation of the UN Convention on the Rights of Persons with Disabilities].

63 BRK-Allianz 2013.

64 German Bundestag (2016): Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Weiterentwicklung des Behindertengleichstellungsrechts [Draft legislation from the federal government. Draft of a law on the further development of the Equal Treatment of Disabled Persons Act]. Printed Paper 18/7824 from 9 March 2016.

65 http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Positionen_nr_3_Partizipation_ein_Querschnittsanliegen_der_UN_Behindertenrechtskonvention.pdf

Federal Ministry of Labour and Social Affairs (2013): Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen. Teilhabe – Beeinträchtigung – Behinderung [Participation report from the federal government on the living situations of persons with impairments. Participation – Impairment – Disability]. https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a125-13-teilhabebericht.pdf?__blob=publicationFile (Last accessed: 28 March 2016).

FRA European Union Agency for Fundamental Rights (2014): The right to political participation for persons with disabilities: human rights indicators. http://fra.europa.eu/sites/default/files/fra-2014-right-political-participation-persons-disabilities_en.pdf (Last accessed: 24 March 2016).

Gerr, Michael (no year): Grüne Fraktion Würzburg [Green Party Würzburg]. http://gruene-fraktion-wuerzburg.de/cms/index.php/stadtratsfraktion/michael-gerr (Last accessed: 31 March 2016).

Kunert, Heiko (2013): Bundestagswahl und Barrierefreiheit: So zugänglich sind die Webseiten der Parteien [Bundestag election and accessibility: This is how accessible the parties' websites are]. http://www.hamburger-wahlbeobachter.de/2013/04/bundestagswahl-und-barrierefreiheit-so.html (Last accessed: 15 March 2016).

Krauthausen, Raúl (2013): Das Wahllokaltest-Finale [The final polling station test]. https://www.aktion-mensch.de/blog/beitraege.html?tags=barrierefreiheit&currentPage=5 (Last accessed: 15 March 2016).

Kruse, Klemens (2013): Welche Barrieren behindern das selbstbestimmte Wählen? [Which barriers prevent self-determined voting?] In: Selbsthilfe [Self-help] 1/2013, p. 13. http://www.barrierefreiheit.de/tl_files/bkb-dowloads/Projekte/barrierefreie_wahlen/artikel_welche_barrieren_behindern_das_selbstbestimmte_waehlen.pdf (Last accessed: 24 March 2016).

Monitoring Office for the UN Convention on the Rights of Persons with Disabilities (2015): Parallelbericht an den UN-Fachausschuss für die Rechte von Menschen mit Behinderungen anlässlich der Prüfung des ersten Staatenberichts Deutschlands gemäß Artikel 35 der UN-Behindertenrechtskonvention [Parallel report to the UN Committee on the Rights of Persons with Disabilities on the occasion of the evaluation of the first state report from Germany according to Article 35 of the UN Convention on the Rights of Persons with Disabilities].

Office for Democratic Institutions and Human Rights, ODIHR (2003): Existing Commitments for Democratic Elections in OSCE Participating States/ Progress Report, Warsaw. (cit.: OSCE/ODIHR 2003).

Office for Democratic Institutions and Human Rights, ODIHR (2013): Guidelines for Reviewing a Legal Framework for Elections, 2nd edition, Warsaw. (cit.: OSCE/ODIHR 2013).

Office for Democratic Institutions and Human Rights, ODIHR (2015): Contribution to the Office of the United Nations High Commissioner for Human Rights' Study on best practices, experiences and challenges and ways to overcome them with regard to the promotion, protection and implementation of the right to participate in public affairs. (cit.: OSCE/ODIHR 2015).

Palleit, Leander (2011): Gleiches Wahlrecht für alle? Menschen mit Behinderungen und das Wahlrecht in Deutschland [Equal voting rights for all? Persons with disabilities and voting rights in Germany]. In: German Institute for Human Rights, Policy Paper no. 18, 2nd revised edition.

Rademacher, Nina/Lederer, Daniel/Martin, Sarah (2013): Genauer Blick auf Wahl-Programme in Leichter Sprache [A closer look at the election platforms in plain language]. URL: https://www.aktion-mensch.de/blog/beitraege.html?tags=barrierefreiheit&currentPage=5 (Last accessed: 15 March 2016).

Rösner, Hans-Uwe (2014): Behindert sein – behindert werden. Texte zu einer dekonstruktiven Ethik der Anerkennung behinderter Menschen [Being disabled – becoming disabled. Texts on deconstructive ethics of recognition of disabled persons]. Bielefeld: transcript.

Schubert, Klaus/Klein, Martina (2006): Das Politiklexikon [The political dictionary], 4th updated edition. Bonn: J.H.W. Dietz Nachf. GmbH.

Schultze, Rainer-Olaf (2010): Partizipation [Participation]. In: Nohlen, Dieter/Schultze, Rainer-Olaf (ed.): Lexikon der Politikwissenschaft, Band 2 N-Z, Theorien, Methoden, Begriffe [Political science dictionary, volume 2 N-Z, theories, methods, terms], 4th updated and revised edition. Munich: C.H. Beck, pp. 723–725.

Trescher, Hendrik (2015): Inklusion. Zur Dekonstruktion von Diskursteilhabebarrieren im Kontext von Freizeit und Behinderung [Inclusion. On the deconstruction of barriers to participation in discourse in the context of freedom and disability]. Wiesbaden: VS.

Trescher, Hendrik (2016): Wohnräume als pädagogische Herausforderung. Lebenslagen institutionalisiert lebender Menschen mit Behinderung [Living spaces as a pedagogical challenge. Living situations of persons with disabilities living in institutions]. Wiesbaden: VS.

Waldschmidt, Anne/Karim, Sarah (2013): ANED 2013 Task 3 and 4 – Country reports on citizenship and political participation. Country: Germany.

F Transparency and Democratic Institutions

Transparency of Parties' and Representatives' Incomes and Political Interest Representation

Anne Rennschmid, LL.M.

1 Introduction

1.1 OSCE Commitments

The democratic imperative for transparency is key for all thematic fields of action by ODIHR in the area of democratic institutions (political parties, transparency and accountability for state action, good governance).

In the document on good governance and transparency (Dublin 2012),[1] reference is made to a public sector based on integrity, openness, transparency, accountability and the rule of law. The OSCE participating States believe that such a public sector has a central role in strengthening the citizens' trust in public institutions and the government. For this, comprehensive mechanisms for revealing income and assets of those who hold public offices are to be developed and implemented. It further states: "We also recognize other relevant regional anti-corruption monitoring mechanisms, such as the Council of Europe Group of States against Corruption (GRECO),[2] as effective tools, which can assist participating States as they fight corruption."[3] In the Decision on Combating Corruption (Sofia 2004),[4] the Ministerial Council encourages the participating States to sign and ratify the United Nations Convention against Corruption as soon as possible, in order to ensure its rapid entry into force, and implement it fully. Transparency in the public sector is seen as a key condition for state accountability (Maastricht 2003).[5] The Copenhagen Document from 1990[6] states: "To ensure that the will of the people serves as the basis of the authority of the government, the participating States will (...) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities".

Interest representation in political decision making processes – with a rather negative connotation more frequently referred to as lobbyism – is legitimate as an expression of pluralism within the democratic system. Interest representation must be done transparently, however, because the linking of economic and political interests can affect society's trust in politics. The expectation of the population that government members orient their actions on the common good according to the law and legislation is an indispensable requirement for the acceptance and functionality of parliamentary democracy and thus acts to prevent conflict.

The topic chosen here is therefore a key goal of the OSCE's human dimension.

Methods

This chapter is based on desk research of publicly available documents, in particular the reports of the Bundestag president as a national oversight body and the reports from the GRECO group of states. Besides this, information from civil society organizations was used as well as informational discussions with the Bundestag administration and civil society.

1.2 Legal and Institutional Framework in Germany

1.2.1 International and Constitutional Provisions

Germany has already signed the Council of Europe's Criminal Law Convention on Corruption (ETS 173) and its additional protocol (ETS 191) in 1999, but it has not yet ratified them. The ratification process is currently underway and is to be concluded by the end of 2016.[7] Germany is

1 MC.DOC/2/12/Corr.1.
2 Groupe d'Etats contre la Corruption.
3 MC.DOC/2/12/Corr.1, p. 4.
4 MC.DEC/11/04.
5 MC.DOC/1/03.
6 DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE, http://www.osce.org/de/odihr/elections/14304?download=true
7 Statement by the Federal Ministry of Justice and Consumer Protection, 11 April 2016.

a member of the GRECO group of states, which was initiated in 1999 for the purpose of mutual monitoring of the implementation of generally set anti-corruption standards in the Council of Europe's Member States. Germany has already been evaluated four times by GRECO (2002, 2005, 2009[8] and 2012[9]); each time, GRECO gave a series of recommendations for actions for German lawmakers and in 2011 even initiated warning procedures because the recommended reforms had repeatedly not been carried out.[10] The most recent report was published in October 2014, and the German government is to respond by the end of September 2016.

Since 2014, Germany has also been a Contracting State to the United Nation's Convention against Corruption. The late ratification of the Convention that had already been signed in 2003 can be traced back to the failure to tighten criminal regulations on bribing a representative.

The imperative for transparency is also set down in the German Basic Law (Grundgesetz, GG). According to Article 20(2) GG, each state organ in Germany must derive its legitimacy from the people. That is why state organs are accountable to the entire population. For this, transparency in the exercise of political power is an important prerequisite. To this end, the Federal Constitutional Court emphasized:[11] "Parliamentary democracy is rooted in the will of the people; trust without transparency that allows the people to see what happens politically is not possible." This also includes the possibility for citizens to monitor the financial practices of parties and representatives of the people.

1.2.2 National Law

Party financing

According to Article 21(1) of the Basic Law (Grundgesetz, GG), parties contribute to the shaping of the people's political will. Their internal order must correspond to democratic tenets. The parties must publicly account for the origin and use of their funds and assets in an annual report.[12] Details are regulated in the Political Parties Act (Partiengesetz, PartG) – including the partial state funding of the parties. Parties are permitted to accept donations (Sec. 25(1) PartG) because their funding is provided by a combination of public and private funds despite their constitutional mandate to shape the political will of the people (Article 21(1) GG).[13] According to the PartG, the president of the German Bundestag has the overall responsibility for setting the amount of state grants and monitoring party financing. He is supported in these tasks by the Bundestag administration. The Bundestag president himself is accountable to the Federal Audit Office (Sec. 21(2) PartG). As a parliamentary committee, the Bundestag's Committee of the Interior is responsible for the topic of party financing. Every two years, the Bundestag president must report on the "developments of party financing and the accountability reports from the parties" (Sec. 23(4) PartG). The PartG was last revised in December 2015. The next report from the Bundestag president is expected with a one-year delay in the autumn of 2016.

Members of parliament and the government

According to Article 38(1) sentence 2 GG, the individual members of the parliaments are autonomous representatives of the entire nation and are only subject to their own conscience. They are neither representatives of a party nor a certain specific interest or certain population group. The

8 Topics: "Criminalization of corruption and corruption prevention in connection to party financing".

9 Topic: "Corruption prevention in regard to representatives, judges and public prosecutors".

10 In the report from 29 December 2011, GRECO stated that only 4 of 20 recommendations of the "Third Round Evaluation Report" had been implemented (RC-III (2011) 9E). Especially the reform of the criminal offence of bribing a representative, which GRECO criticizes as being defined too restrictively, was called for several times.

11 BVerfGE 40, 296 (327).

12 The last accountability reports on political parties were announced on 17 March 2016 and on 13 May 2016 by the Bundestag president and includes the calendar year 2014; Bundestag Printed Papers 18/7910.

13 The amount of the partial funding is calculated by the proportion of the votes received in the most recent elections combined with the member dues, contributions from the elected officials, and donations collected. The state grants many not exceed the sum of funds collected by the party on its own. For election campaigns, the general regulations on party financing also apply.

rights and obligations of the members of parliaments are listed in the Members of the Bundestag Act (Abgeordnetengesetz, AgbG) and in the German Bundestag's Rules of Procedure (Geschäftsordnung des Deutschen Bundestages, GOBT).

Participation by Associations
With the Common Rules of Procedures for the Federal Ministries (Gemeinsame Geschäftsordnung der Bundesministerien, GGO), there is a possibility for associations to represent interests in the legislative procedure: According to Sec. 47 GGO, the respective ministry is to call for statements from affected associations. The Bundestag president manages a list on which associations can be included to receive permanent passes for the Bundestag. Sec. 44a(2) AbgG prohibits corrupt behaviour of the members of the Bundestag. The practice of political interest representation by associations or lobbyists beyond this is as such not explicitly legally regulated.

2 Description of the Problems Using the Current Situation in Germany

2.1 Party Financing

In 2014, companies and associations donated around EUR 15 million to the parties represented in the Bundestag. According to the non-governmental organization abgeordnetenwatch, this can be taken from the announcement of the accountability report from the parties.[14] According to this source, EUR 33 million were taken in by the parties with so-called sponsoring agreements, e. g. with booth fees at party conferences or from advertisements in party-internal publications.

Party donations over EUR 50,000 are considered large donations in Germany. According to Sec. 25(3) PartG, donations that "exceed the amount of EUR 50,000 in an individual case must be immediately reported to the president of the German Bundestag. The president publishes the donation with the donor's information in a timely manner as a Bundestag Printed Paper." This formulation is unclear because it raises questions about what the terms "individual case", "immediately", and "in a timely manner" mean. What can also be problematic is the separation of large donations to avoid the obligation to report them immediately. According to information from abgeordnetenwatch, in 2014 seven companies and associations made donations to the CDU, CSU and SPD that in part far exceeded EUR 50,000 and therefore should have been subject to the reporting obligation. However, the donations were split up during the year such that each individual donation was below the EUR 50,000 limit.[15]

Another form of financial income for the parties is so-called sponsorship, which is not an official term from the Political Parties Act. The sponsors, who might fund a party event, aim to achieve marketing advantages with the financial donation by having their name announced as a sponsor of the party event, e. g. with sales booths. With an event that draws the attention of the media, the sponsors aim to draw business. In this case, it is in the interest of the sponsors for there to be transparency in what they receive as consideration for their donations. It is more problematic from a democratic perspective if the consideration is not transparent.

There is no legal obligation to publish individual sponsors and the amount of their donations. The public can therefore usually not tell what the parties receive in income from sponsoring. In his last report, the president of the Bundestag pointed out that the importance of sponsoring has increased in general for the income situation of the larger political parties.[16] Income from sponsoring is given only in numbers by the parties in their accountability reports and shown as nameless total sums in the category "Income from events, sales of printed publications and other activities that draw income". The parties are not legally limited in choosing their contracting partners, as they are with their donors. There is a risk that parties and

14 https://www.abgeordnetenwatch.de/blog/2016-04-06/parteispenden-veroffentlicht-das-sind-die-grossten-spender-2014#sthash.7I7S-rmIO.dpuf
15 ibid.
16 Bundestag Printed Paper 18/100, p. 41.

donors take advantage of this loophole to avoid a possible reporting obligation for donations.

2.2 Members of Parliament and the Government

Members of the Bundestag are generally permitted to work in addition to their mandate. Members are part of the constitutional organ Bundestag and are not considered part of civil service.[17] The democratic-representative status of the members of the Bundestag allows for the publication of information about the work they do in addition to their mandate.[18] There is no legal limit to additional income, and the representatives are not required to make exact figures available to the general public; instead the president of the Bundestag places the additional income in a category. If the additional income could point to possible links with interests, they must be reported to the president of the Bundestag, who publishes them (Sec. 44a AbgG).[19] Based on Art. 44b nos. 1 2 and 4 of the AbgG, the Bundestag has developed a code of conduct[20] on this point.

Despite the reporting obligation, it is possible for members of the Bundestag to work as "independent consultants" for unidentified clients. An example published by the non-governmental organization lobbycontrol is that of the Chair of the Bundestag Committee on Economic Affairs and Energy who is also active as a consultant and, since May 2014, has received between EUR 7,000 and EUR 15,000 each month from an unspecified mandate.[21] A possible link to interests can hardly be reliably excluded by such vague information about the work. In October 2015, 123 members of the Bundestag received income from at least one additional job.[22]

Politicians also often change to positions as interest representatives in companies and trade associations. This kind of seamless switch can give the impression that former members of the government used the knowledge gained and privileged access to decision makers granted during their time in office for their own economic interests. In the past three years, this kind of change in position has led to public discussions (for example the employment of the Federal Minister of Health by an insurance company, the consulting activity of the former Minister for Development Assistance to an arms manufacturer, the Minister of the Chancellor's Office's move to become a lobbyist for the Deutsche Bahn, and a State Minister in the Chancellor's Office's move to an automobile manufacturer as well as that of the Prime Minister of a Land to a pharmaceutical company).[23] For a long time, there were no legal regulations on a waiting period between public office and a position in the private sector.

2.3 Transparency in Interest Representation

To obtain a permanent pass for the Bundestag, interest representatives can have themselves entered on a list of associations, the structure of which was created in 1972.[24] The list, which was made for traditional forms of associations, no longer reflects the current reality of political interest representation, something also noted by GRECO.[25] Besides this, an informal practice has been established of passes being issued by the parliamentary managing directors of the parties. It was thus no longer transparent which lobbyists were going in and out of the Bundestag. The Bundestag administration only revealed which lobbyists had received passes for the Bundestag building from the parties

17 Pieroth in Jarass/Pieroth, Art. 38, marginal number 25, Grundgesetz-Kommentar [Basic Law commentary], 14th edition, 2014.

18 ibid.

19 The reporting obligations are meant to enable voters to inform themselves about possible links to interests and the representatives' independence in carrying out their mandate, http://www.bundestag.de/bundestag/abgeordnete18/nebentaetigkeit

20 Annext 1 of the Rules of Procedure of the German Bundestag from 2 July 1990 (Federal Law Gazette I p. 1237) last amended according to the Notice on 18 June 2013 (Federal Law Gazette I p. 1644).

21 Lobbycontrol, Lobbyreport 2015, p. 15, https://www.lobbycontrol.de/wp-content/uploads/Lobbyreport-2015.pdf

22 https://www.abgeordnetenwatch.de/blog/nebeneinkuenfte2014

23 https://www.lobbycontrol.de/wp-content/uploads/Lobbyreport-2015.pdf

24 The president of the German Bundestag manages the Public List on the Registration of Associations and their Representatives. Associations entered on the list were permitted up to five passes for their representatives. The names of the association representatives with passes were included on the list.

25 GRECOEval4 (2014) Germany, p. 13.

after the Administrative Court of Berlin[26] passed a judgement forcing the matter.

3 Assessment of the OSCE Commitments' Implementation

3.1 Party Financing

One positive aspect is that there is institutional monitoring for party financing by the president of the Bundestag. The legally required accountability of the parties and the publication of the accountability reports provide basic transparency. What can be criticized, however, is the lack of possibilities for the supervising instance to take measures that would go beyond recommendations made by the Bundestag's president.

A reform of the legal reporting obligation for large donations and the legal regulation of sponsoring has been recommended for years by GRECO and the president of the German Bundestag. Up to now, though, the Bundestag has not been able to reach an agreement on the subject. They were not included in the Draft Legislation for the Revision of the Political Parties Act from December 2015.[27]

In the most recent report on the situation of party finances published in 2013, the president of the Bundestag explicitly criticized the lack of transparency in large donations to parties.[28] In the report, he recommends that lawmakers create stricter regulations of large donations to prevent them being split up to avoid the reporting obligation. The current, weak legal requirements for transparency have made this type of abuse easy. Since 2009 the Council of Europe's group of states against corruption, GRECO, has repeatedly recommended to German lawmakers that they develop a more global approach to party financing that also ensures that money from the parliamentary groups and foundations are not used for general party tasks and that violations of reporting requirements for donations are sanctioned.[29]

In regard to sponsoring, the president of the Bundestag warns that "the widespread unease about insufficient transparency in this sensitive social area must be taken seriously", and regulations on sponsoring need to be included in the Political Parties Act.[30] This would mean that in the future there would also be limits and reporting obligations in this area. In its 2009 recommendation to legally regulate sponsoring, GRECO used the Common Rules[31] of the Council of Europe States as its basis. The ODIHR handbook on political parties (sections 172–175) also refers to the Common Rules and emphasizes that parties in a democracy are accountable to the population. Striving for political influence has a particular lack of transparency in so-called "patron sponsoring".[32] The sponsor avoids the public but uses material means to obtain privileged access to parties and influential politicians. This can occur by non-public funding of party events or formal dinners with party and government members. There is a risk that this type of contribution is falsely published in the parties' accountability reports (or that it is not reported at all).[33]

Based on this information, the existing legal obligation for the parties to only have to book such contributions as non-specific income is not adequate for preventing abusive financial practices.

26 http://www.lda.brandenburg.de/media_fast/5955/VG_Berlin_2_K_176_14.pdf
27 Bundestag Printed Paper 18/6879.
28 Bundestag Printed Paper 18/100, p. 38.
29 Greco Eval III Rep (2009)3E, Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland [Evaluation report on the transparency of party financing in Germany], https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf
30 ibid.
31 Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns (Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies).
32 On this, see the Bundestag's Research Services, WD 1–3000–028/11, p. 8.
33 ibid.

In contrast, the majority of the members of the Committee of the Interior were of the opinion that the legal regulation of sponsoring would go too far.[34]

3.2 Additional Income for Representatives

The OSCE document on good governance and transparency (Dublin 2012) calls for the public to be informed about Bundestag members' additional income.

To this end, in 2007 the Federal Constitutional Court stated in a verdict that established a principle[35] on the reporting obligation for additional income: "Only the fact that the members of the Bundestag have such a time commitment when responsibly carrying out their mandate that it is usually not possible for them to make a living another way justifies their claim to receiving a full salary from taxes paid by citizens. [Additional jobs] offer numerous opportunities to use the political influence of a Bundestag mandate [...] for a profit, and it is precisely from these opportunities that a particular danger to the independence of exercising the mandate and to a willingness to make the mandate the focus of work arises."

Since October 2014, members of the Bundestag must report their additional income in ten categories[36] instead of only three as was previously the case. And yet the sector of the additional work can still remain relatively vague (e. g. "consultant"). That is why civil society[37] demands that at least the industry in which the clients or customers work must be revealed. Here, though, it would have to be ensured that this kind of reporting would still uphold the requirements of lawyer-client privilege. Paid lobby work should be entirely prohibited for members of the Bundestag.

The determination that members of the Bundestag have violated their obligations according to the Members of the Bundestag Act is published as a Printed Paper, possibly with additional sanctions, according to Sec. 44a AbgG (Fines). The sanction foreseen by this provision is only the publication of the rule violation. The intended political sanctioning mechanism can only be effective, however, if citizens are aware of the sanctions.[38] That is why the determination of a violation should also and additionally be published directly with the information on the member of the Bundestag in the Bundestag's Official Handbook or on the member's website.

The non-governmental organization abgeordnetenwatch calls for a limitation to the professional activity of a former member of government and parliamentary secretaries of state if they become active in an area that is connected to their previous service immediately after ending their term in office. There is a risk that politicians in high government positions could open up career options for themselves by doing favours for certain companies and institutions.[39] Even the appearance of corruption on the part of members of government must be avoided. The lawmakers recognized this problem, and in June 2015 introduced new legal waiting periods. The regulations can be found in the Act governing the Legal Status of Parliamentary State Secretaries (Gesetz über die Rechtsverhältnisse der parlamentarischen Staatssekretäre) and in the Act governing Federal Ministers (Bundesministergesetz). Now if there are cases of a feared conflict of interest, the president of the Bundestag can set a waiting period of up to twelve months, or in exceptional cases up to 18 months. During this waiting period, the affected person is paid a bridging salary. Civil society has criticized the regulations as insufficient and demands a waiting period of three years.

34 See Bundestag Printed Paper 18/100, p. 7 with reference to Bundestag Printed Paper 17/8200, pp. 6 ff.

35 Judgement from 4 July 2007, 2 BvE 1/06.

36 Category 1 includes one-time or regular monthly income between EUR 1,000 and EUR 3,500, Category 2 income up to EUR 7,000, Category 3 income up to EUR 15,000, Category 4 income up to EUR 30,000, Category 5 income up to EUR 50,000, Category 6 income up to EUR 75,000, Category 7 income up to EUR 100,000, Category 8 income up to EUR 150,000, Category 9 income up to EUR 250,000, Category 10 income over EUR 250,000.

37 https://www.lobbycontrol.de/wp-content/uploads/Lobbyreport-2015.pdf

38 Van Aaken, ZaöRV 65 (2005), p. 437.

39 https://www.abgeordnetenwatch.de/blog/2016-04-05/wer_auf_einen_gesetzgebungsvorschlag_einfluss_nehmen_will#sthash.pN0OnrQe.dpuf

3.3 Transparency in Interest Representation

The democratic state's institutions can be seen as a kind of competition structure for shaping political will, which is meant to ensure that as many interests as possible are considered equally when deciding on the common good.[40] The participation of all parts of the population in as equal a way as possible in political decision making – or the equal representation of their interests – is an important prerequisite for conflict prevention. It is problematic, however, that usually financially strong actors can more effectively push their interests through than interest groups representing public concerns such as the support of socially weaker or discriminated parts of society as these groups are often also financially weak.

GRECO calls for "the transparency of the parliamentary process be further improved, e. g. by introducing rules for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process."[41] The introduction of a binding lobby register and a so-called legislative footprint were already discussed in the Bundestag in the previous legislative period.[42] This kind of "footprint" is to be included in draft legislation and inform about which external persons (lobbyists, associations, lawyers, companies) assisted in creating it. On this point, as well, parliament was not able to reach an agreement on a regulation. According to the Federal Constitutional Court,[43] for transparency in the legislative process it is important that the entire process is transparent for citizens and that the result is decided on in full view of the public. The goal is to strengthen the public's trust in the Bundestag and its members.[44]

In February 2016, the Council of Elders decided to tighten the rules of access for associations in parliament and to limit the number of passes. The unchecked issuance of passes by the parliamentary party leaders is thus to be prohibited in the future. Each association must re-register. It may only submit an application if it is represented in the capital city and will receive a maximum of two passes instead of the previous five.[45] The goal of the new regulation is to make the process more transparent and to give passes only to those interest representatives who are entered in the voluntary association register and are thus also recognizable as such. Individual companies cannot be included in the association register. Because parties are not to be able to issue passes with the introduction of the new association list, overall there is more transparency.

4 Conclusion

With the introduction of new legal regulations in the previous two years, the federal government has only in part fulfilled the aforementioned, repeated recommendations from the president of the Bundestag and the Council of Europe's group of states against corruption. Important topics such as sponsoring or the effective monitoring of reporting requirements and sanctions for violations against these requirements remain only vaguely regulated or unregulated because the parliament could not reach an agreement. This becomes particularly clear in the last amendment to the Political Parties Act, which has been in effect in the new version since January 2016. Here almost none of the committees' recommendations can be found. The calls for more transparency in party funding and lobbying thus remain. The regulations valid up to the present in this area cannot be viewed as fully compliant with what the OSCE Decisions described in the beginning of this section foresee and to which Germany has committed itself as a participating State. This includes the implementation of the GRECO recommendations. There continues to be a need for improvement in

40 Fritzsche, Alexander, Die "Verhaltensregeln für Mitglieder des Deutschen Bundestages" [Code of conduct for members of the German Bundestag], HFR 8/2004, p. 37.

41 GRECOEval4 (2014) Germany, p. 14.

42 e. g. Bundestag Printed Paper 17/2486.

43 BVerfGE 40, 296 (327).

44 ibid.

45 German Bundestag, Merkblatt zum geänderten Antragsverfahren von Bundestagsausweisen an Mitarbeiter von Verbänden und deren Interessenvertreter [Informational sheet on the revised application process for Bundestag passes to staff of associations and their interest representatives], 19 February 2016 https://www.bundestag.de/blob/409838/b1b7767b2ec708e4f26b55870329a71c/merkblatt-data.pdf

ensuring equal opportunities for the articulation of varying political interests in society.

5 Bibliography

Bundestag Printed Paper 18/100, 18 December 2013: Bericht über die Rechenschaftsberichte 2010 und 2011 der Parteien sowie über die Entwicklung der Parteienfinanzen gemäß § 23 Absatz 4 des Parteiengesetzes [Report on the accountability report 2010 and 2011 from the parties and on the development of parties' finances according to Sec. 23(4) of the Political Parties Act].

Bundestag Printed Paper 18/7910, 17 March 2016: Bekanntmachung von Rechenschaftsberichten politischer Parteien für das Kalenderjahr 2014 (1. Teil – Bundestagsparteien) [Notification of accountability reports from political parties for the calendar year 2015 (1st part – Bundestag parties)].

Bundestag Printed Paper 18/6879, 1 February 2015: Gesetzesentwurf der Fraktionen CDU/CSU und SPD, Entwurf eines ... Gesetzes zur Änderung des Parteiengesetzes [Draft legislation from the CDU/CSU and SPD parties, draft of a law on amending the Political Parties Act].

Bundestag Research Services (2011): WD 1–3000–028/11, https://www.abgeordnetenwatch.de/blog/2016–01–22/wir-veroffentlichen-die-liste-mit-allen-gutachten-des-wissenschaftlichen-dienstes

Fritzsche, Alexander (2004): Die "Verhaltensregeln für Mitglieder des Deutschen Bundestages" [The "code of conduct for members of the German Bundestag"], Humboldt Forum Recht (HFR 8/2004), http://www.humboldt-forum-recht.de/deutsch/8–2004/index.html

Groupe d'Etats Contra la Corruption (GRECO) (2009): Dritter Erhebungszeitraum Evaluierungsbericht über Deutschland zur Kriminalisierung [Third round evaluation report on criminalization in Germany] (ETS nos. 173 and 191, guideline 2), (Topic I), passed by GRECO at its 45th General Meeting (Strasbourg, 30 November – 4 December 2009).

Groupe d'Etats Contra la Corruption (GRECO) (2014): Dritter vorläufiger Umsetzungsbericht zu Deutschland: "Kriminalisierung (SEV Nrn. 173 und 191, Leitlinie 2)", "Transparenz der Parteienfinanzierung" [Third preliminary implementation report on Germany: "Criminalization (ETS nos. 171 and 191)", "Transparency in party funding"], passed by GRECO at its 65th General Meeting (Strasbourg, 6–10 October 2014).

Jarass, Hans-D. (2014): Kommentar zum Grundgesetz [Commentary on the Basic Law], 14th edition.

Van Aaken, Anne (2005): Genügt das deutsche Recht den Anforderungen der UN-Konvention gegen Korruption? [Is German law sufficient to fulfil the requirements of the UN Convention against Corruption?] Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 65 (2005), pp.406–446.

G Annex: About the Authors

Eva Küblbeck is an Associate Officer for the German NGO Network against Trafficking in Human Beings (KOK e. V.) Since 2012, she has also worked as a research associate with the German Institute for Human Rights with a focus on victims' rights / reporting to the European Union Agency for Fundamental Rights. She obtained a Bachelor (BSc.) and Master of Laws (LL.M.) studying Human Rights.

Dr. Kati Lang is a lawyer in Dresden with a focus on migration and criminal law and represents victims of right-wing violence in numerous proceedings. She completed her doctorate on the criminal-legal aspects of bias-motivated crime. She was an expert for the NSU committee of inquiry in North Rhine-Westphalia.

Anne Rennschmid co-ordinated the creation of this report as a Policy Advisor at the German Institute for Human Rights. Before that, she was active in the areas of migration, security and development policy with the German Red Cross, the Diakonie and in the OSCE office in Tajikistan, among other stations. She completed her law degree and legal clerkship in Berlin followed by a Master in Public International Law at the University of London.

Dr. Britta Schellenberg is a Senior Researcher at the Centre for Applied Political Research and a contracted lecturer at the Geschwister Scholl Institute of Political Science at the Ludwig Maximilian University of Munich. She was an expert for the NSU committee of inquiry in the German Bundestag and an election observer in Bosnia-Herzegovina. She studied German, English Studies, Jewish Studies and Modern History in Heidelberg, London and Berlin.

Dr. Monika Schröttle is a social scientist / political scientist with a focus on interdisciplinary women's, violence and disability research. Since 2014, she has been a visiting professor at the Faculty of Rehabilitation Sciences at the TU Dortmund University and head of the research focus "Gender research, disability research, human rights and violence" at the Institute for Empirical Sociology (IfeS) at the Friedrich-Alexander University Erlangen-Nuremberg. Since 2012, she has co-ordinated the European research network "European Network on Gender and Violence".

PD Dr. phil. Dipl.-Päd. Dipl.-Soz. Hendrik Trescher currently teaches and researches at the Institute of Special Needs Education at the Goethe University of Frankfurt on the topics of disability studies, inclusion and participation of persons with disabilities and pedagogy for cognitive impairments.

Imprint

PUBLISHER:
German Institute for Human Rights
Zimmerstraße 26/27 | 10969 Berlin, Germany
Phone: +49 30 259 359–0 | Fax: +49 30 259 359–59
info@institut-fuer-menschenrechte.de
www.institut-fuer-menschenrechte.de/en

Report I September 2016

EDITORIAL CO-ORDINATION:
Dr. Petra Follmar-Otto, Anne Rennschmid, LL.M.
TYPE-SETTING: Da-TeX, Leipzig
PHOTO: © Rainer Sturm / pixelio.de
PRINTED BY: Druckteam, Berlin
SUPPORTED BY: Federal Foreign Office, Berlin

OSCE
Deutschland 2016

**Deutsches Institut
für Menschenrechte**

Zimmerstraße 26/27
10969 Berlin

www.institut-fuer-menschenrechte.de

Commentary
by the responsible Ministries
on the independent evaluation report
of the German Institute for Human Rights:
The implementation of selected OSCE commitments
on human rights and democracy in Germany

September 2016

- ***unofficial translation -***

Preliminary note

Within the scope of Germany's Chairmanship of the OSCE in 2016, the Federal Foreign Office has commissioned the independent German Institute for Human Rights (DIMR) to conduct a voluntary and independent evaluation of the implementation of OSCE human dimension commitments in Germany. Germany is thereby continuing a practice that was introduced by Switzerland in 2014 and continued by Serbia in 2015. This practice is to be established permanently as a good exercise for future OSCE Chairmanships. The aim of the evaluation is a nuanced assessment of the implementation status of OSCE commitments in human dimension areas in Germany as well as recommendations for action.

The German Institute for Human Rights independently selected the thematic areas to be evaluated:

1) Tolerance and non-discrimination: Combatting discrimination and hate crime
2) Gender equality:
   - Data collection to prevent and combat violence against women
   - Pay equity
   - Women, peace and security: Germany's implementation of UN Security Council Resolution 1325
3) Combatting trafficking in human beings
4) Voting rights: Voting rights of persons with disabilities
5) Transparency and democratic institutions: Income transparency of political parties and representatives and of political advocacy groups

The extensive OSCE human dimension commitments are the benchmark for the evaluation.

The present document offers commentary on the evaluation report presented by the German Institute for Human Rights. It was compiled by the responsible Ministries of the Federal Government, including *inter alia* the Federal Ministry of the Interior, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Labour and Social Affairs, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Defence, and the Federal Foreign Office. Additionally, NGOs and civil society actors have commented on the evaluation report, creating an overall picture comprised of the triad of the evaluation report, the Ministries' commentary and the comments from civil society.

Civil society has been actively encouraged to comment on the evaluation report, and a Coordination Office has been supported for this purpose. The Federal Government thereby recognises that civil society interest groups play an important role in the implementation of OSCE human rights commitments. Through their expertise and knowledge, they are able to both support the government with implementation and offer important assessment of the implementation of these commitments in their country.

Introduction

The participating Federal Ministries thank the German Institute for Human Rights for the report it has submitted, which is a valuable contribution to the continual improvement of implementation of human rights standards in Germany. The evaluation and the recommendations contained within it will be integrated into the ongoing dialogue on human rights issues between the Ministries and civil society as well as the shaping of measures and activities.

The participating Federal Ministries welcome the constructive overall tenor of the report and its nuanced account of developments in recent years. The partially positive assessment of measures to date affirms the path that has been taken so far in the implementation of human rights standards and OSCE human dimension commitments in Germany. Further improvements and enhanced implementation of the commitments remain an important matter for the Federal Government.

The points of criticism that were expressed have been reviewed and assessed in detail by the Ministries of the Federal Government, and can be taken into account in keeping with this assessment.

Concern for reviewing the implementation of human rights standards in Germany in a nuanced way from multiple perspectives is also underscored by other reporting processes. Particularly noteworthy are the processes of submitting country reports to the specialised UN treaty monitoring bodies and the monitoring mechanisms of the Council of Europe and their contribution to the national implementation of human rights commitments. The forthcoming presentation of the 12th Human Rights Report of the Federal Government, which will cover the period from 1 March 2014 to 30 September 2016 and outline the focal areas of German human rights policy, also merits special mention in this regard. The report contains an Action Plan on Human Rights as a special section, which presents the Federal Government's priorities for 2017 and 2018.

In this light, the responsible Ministries would like to comment on the evaluation report as follows.

1) Statement on Chapter B – Tolerance and non-discrimination

Chapter B 2 mainly describes the starting situation.

Regarding the description of hate crime (*Chapter B 2.1*), it should be noted that figures for right-wing politically motivated crime are not a subset of the category of hate crime, but rather the opposite is the case: hate crime is a subset of the category of politically motivated crime.

The 117 per cent increase in 2015 concerns the category of hate crime – the subtopic "xenophobic" in all fields of phenomena. Not all xenophobic crimes fall under the category of "right-wing politically motivated crime". This figure is composed as follows: 8209 right-wing politically motivated crimes, 11 left-wing political crimes, 77 politically motivated anti-foreigner crimes, 232 other politically motivated crimes.

The statement that there is no valid data on attacks against people with disabilities and homeless people or homophobically or transphobically motivated attacks, and that only civil society monitoring is referred to here, is incorrect. In the field of hate crime, 222 offences in the sub-category of "sexual orientation" were reported in 2015, as were 19 offences in the subcategory of "disability". Offences against homeless people were recorded under the category of "social status", in which 320 offences were reported in 2015. The corresponding data on hate crime—broken down by sub-category—is available on the website of the Federal Ministry of the Interior: http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2016/05/pks-und-pmk-2015.html.)

Regarding the cases reported by MANEO, it should be noted that attacks as counted by civil society organisations do not always correspond one-to-one with criminal offences. In the case of homophobic and transphobic offences, however, the Federal Ministry of the Interior considers it likely that there are particular impediments to the reporting of criminal offences. That is why the Federal Ministry of the Interior plans to interconnect representatives of organisations that advocate for groups particularly affected by hate crime more comprehensively with the relevant police authorities.

The evaluation report's account of the radicalisation of society (*Chapter B 2.2*) is not analysed or described adequately. PEGIDA as a single phenomenon is mentioned relatively often, whereas numerous other phenomena showing contempt for human life, which have increased considerably in recent months (e.g. anti-ziganism), remain unmentioned. Right-wing populist demonstrations appear in many different formations (e.g. "Nein-zum-Heim" protests against refugee shelters, etc.). Radicalisation is evident in a growing propensity towards violence and the radicalisation of the "middle of society", which are becoming apparent above all in social networks and in confrontations relating to refuge and asylum.

The number of criminal offences against homes for asylum seekers (*Chapter B 2.3*) totalled 1031 offences, of which 923 fell into the category of "right-wing politically motivated crime", while 108 fell into the category of "politically motivated crime—other".

Regarding the discrepancies in statistics mentioned in *Chapter B 2.3*, the following should be taken into account:

- "Criminal offences" in statistics on politically motivated crime do not correspond one-to-one with "attacks".
- Criminal offences outside the perimeter of shelters are recorded in the statistics on politically motivated crime under the hate crime subcategory of "xenophobic" (since 1 January 2016, the new subcategory "against asylum seekers/refugees" has also existed to better distinguish offences). Such offences are not included among the 1031 offences "against shelters for asylum seekers" and must be added together with them.
- "Arson attacks" do not correspond one-to-one with the cases of arson in accordance with Sections 306 et seqq. of the Criminal Code (and offences causing explosions). In the 2015 statistics on politically motivated crime, 94 such cases of arson and 8 offences causing explosions were recorded. Additionally, there were 4 cases of attempted homicide through arson. The definition of arson in the Criminal Code requires that the act be objectively suited

to setting fire to significant parts of the building. For this reason, the act of setting fire to, for example, a rubbish container on the premises of a shelter for asylum seekers without the risk of the fire spreading is classified as criminal property damage and not as arson.

In order to get a better view of the trends named in *Chapter B 2.4*, politically motivated criminal offences "against the media" and "against officials" in the asylum context began to be recorded in separate statistical categories (subtopics) for the first time as of 1 January 2016.

In *Chapter B 2.6* the allegation is made that federal authorities, too, primarily investigated the victims, their relatives, and people "in the Turkish milieu" as well as members of minority groups (especially the Sinti and Roma). This description is incorrect. In fact, the investigations were initially carried out by various state-level (*Land*) prosecutors' offices. The Public Prosecutor General of the Federal Court of Justice did not take over the investigations until 11 November 2011, that is, after the NSU had revealed itself.

In order to support monitoring of hate crime by ODIHR (*Chapter B 3.1*), figures on all sub-categories of hate crime are reported to ODIHR regularly. At the Federal Ministry of the Interior, there is a National Point of Contact for reporting on hate crimes. The desk officer regularly takes part in the relevant ODIHR sessions and events.

The concerns expressed in *Chapter B 3.1.1* are not shared. The fact that criminal offences motivated by bias are to be recorded in every case is already evident from the definition of politically motivated crime, which explicitly states that an act targeting a person because of their political orientation, nationality, ethnicity, race, skin colour, religion, worldview, ancestry, physical appearance, disability, sexual orientation or social status is always also to be classified as politically motivated. The police officers making reports, who work with this definition, are thus thoroughly aware that a criminal offence need not be intended to serve the realisation of political goals (in a narrow sense) in order to meet the requirements of recording the act as politically motivated. Furthermore, this is made clear in the supporting technical documents with which police officers work (the catalogue of thematic areas, the instructions for completing forms, and additional explanatory documents).

The introduction of the current Police Reporting Service for Politically Motivated Crime (KPMD-PMK) in 2001 represented a move away from recording offences on the basis of the extremism concept. A key reason for this change was that deficiencies were previously seen in the recording of hate crimes. The new Reporting Service was therefore introduced with the particular goal that it would also be possible to record crimes that could not be classified under either of the two extremist fringes. Here the classification of phenomena into the areas of "right-wing politically motivated crime", "left-wing politically motivated crime", "foreign ideologies" and "other" only serves additionally to roughly classify offences ideologically, but covers the entire spectrum of bias-based criminal offences, including those that do not come from the extremist fringes.

Regarding the changes called for in *Chapter 3.1.1*, it should be known that a decision has already been made that beginning on 1 January 2017, Islamophobic, anti-Christian and antiziganist criminal offences will be recorded in separate categories (subtopics) in the statistics on politically motivated crime. The Federal Ministry of the Interior is seeking to implement the more meaningful statistics on

crime and the administration of justice which have been called for, and has initiated the possible measures in its area of responsibility, such that no need for further action is currently seen in the area of police statistics.

The contradiction between different figures in the area of homophobic and transphobic criminal offences that has been criticised does not exist: In 2014 a total of 184 criminal offences on the basis of sexual orientation were recorded. In the cited minor interpellation, in keeping with the question, only the selected groups of offences were presented.

At various points (*Chapter B 3.1.2, inter alia*), the report finds fault with the dearth of flow statistics for recording hate crime. In this regard, it should be noted that the Federal Government also fundamentally welcomes the introduction of flow statistics for criminological reasons. Flow statistics would make it possible to obtain information about the development and consequences of criminal activity and the impact of penal practices. However, it should be taken into account that over time, important differences in data collection by the police and the judiciary have arisen now and again, which to some extent causes significant problems with the amalgamation of data. Against this backdrop, the question of whether, how and, as the case may be, on what timeline flow statistics are to be introduced remains subject to further examination.

An initial step can be seen in the decision that has been made to send the files for certain serious politically motivated crimes (homicide, arson, causing an explosion) to the Federal Criminal Police Office for assessment after the case has been closed. The Federal Government is working to ensure that this regulation (No. 207 para. 2 and 3 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine) is expanded to cover all cases of politically motivated violence and that the Federal Criminal Police Office is thereby put in a position to assess and analyse data on the outcomes of cases in the area of politically motivated violence in a targeted way with regard to crime prevention and policy measures.

Regarding the description of civil society monitoring (*Chapter B 3.1.3*), it should be noted that some key actors have not been mentioned (the anti-Semitism watchdog group RIAS in Berlin and the Amadeu Antonio Stiftung regarding refugee shelters). Additionally, jugendschutz.net, which uses monitoring to collect data on right-wing extremism online, should be mentioned.

Regarding the number of attacks in eastern Germany mentioned in *Chapter B 3.1.3*, at the moment it can only be pointed out that the Conference of Interior Ministers is considering the question of how best to proceed further with the governmental analysis of old cases. Regarding the re-evaluation by the University of Potsdam, it should be noted that all homicides re-evaluated by Brandenburg occurred before the introduction of the Reporting Service for Politically Motivated Crime and therefore were measured by the police at the time (correctly) according to the extremism standard. The Moses Mendelssohn Centre at the University of Potsdam (MMZ) has, from today's perspective, measured them according to the further category of politically motivated crime and has retrospectively re-evaluated them in this context.

The blanket accusation made in *Chapter B 3.2.1* with respect to the set of issues related to the NSU, that "racist and stigmatising work conducted by the investigating authorities and security agencies" has not been adequately confronted, is repudiated.

With regard to the NSU complex, the Second Committee of Inquiry of the 17th Electoral Term of the German Bundestag agreed across all parties to adopt 47 recommendations for the police, the Office for the Protection of the Constitution, and civil society concerning the deficiencies with the security agencies that had been ascertained. These recommendations have—at least for the federal level—now been mostly implemented. They include recommendations on strengthening intercultural competence, on interacting with the victims and the loved ones of deceased victims, and on sensitisation to the areas of right-wing extremism and right-wing terrorism as well as on overhauling the definition system and catalogue of thematic areas for politically motivated crime.

In its final report, the Second Committee of Inquiry reiterates that the murders had recognisably racist characteristics and states, along other things, that the investigations did not aim in this direction enough (e.g. Bundestag Printed Paper 17/4600, p. 844): "In future investigation proceedings, the committee wishes to see, at the proper time, more courage to try new things and an impartial view of the facts that is less guided by complacency—particularly in regard to considering racist motives if such motives are suggested by the circumstances of the act or in view of the victims. The fact that those conducting investigations clung to experience-based knowledge despite indications to the contrary must be questioned critically within the police force."

Additionally, in the implementation of the Committee of Inquiry's recommendations, Section 46 (2) of the Criminal Code – as is mentioned in the evaluation report itself on page 25 (*Chapter B 3.3*) – has been amended to the effect that motives which are racist or xenophobic or otherwise show contempt for human life are now to be included in particular. Accompanying changes concern the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine, which are binding for the investigating authorities.

Furthermore, and finally, the process of confronting and coming to terms with authorities' actions in connection with the investigations concerning the National Socialist Underground (NSU) terrorist organisation is not a finished process. On the contrary, six Parliamentary Committees of Inquiry at *Land* level (Baden-Württemberg, Brandenburg, Hesse, North Rhine-Westphalia, Saxony and Thuringia) as well as a Bundestag Committee of Inquiry are currently addressing the failings of the respective authorities. The criminal proceedings before the Munich Higher Regional Court against the suspected NSU member Beate Zschäpe and the four suspected NSU supporters who are accused alongside her are still underway.

The optimisation of exchange of information among *Länder* and federal security authorities, and especially the identification of structures that cross *Länder* borders within the scope of the applicable regulations on data transmission, is the primary goal of the Joint Centre for Countering Right-Wing Extremism and Terrorism (GETZ-R), as deficiencies were seen in this area in the investigations of the NSU murders. Extremist criminal offences, however, are not the only topic addressed by the GETZ-R. For example, criminal offences against shelters for asylum seekers, which generally are committed

due to xenophobic/racist motives, are addressed on a weekly basis. Cooperation is based on the duties and authorisation rules of the participating security authorities.

The blanket accusations made in *Chapter B 3.2.2* that problematic investigation strategies exist and that public prosecutor's offices and courts do not handle the criminal phenomenon of hate crime appropriately are repudiated.

It is correct that starting points for improvements have arisen from the still-ongoing process of confronting and coming to terms with the NSU complex in particular. The Federal Government has recently got a series of reforms off the ground in order to counter the phenomenon of racism more effectively in criminal proceedings in general and to strengthen the rights of protection of those (potentially) affected (cf. the changes to Section 46 (2) of the Criminal Code and to the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine, mentioned in Chapter B 3.3 of the evaluation report).

The Ministers of Justice have also agreed to pursue racist and extremist criminal offences in a more systematic and better-coordinated manner. They have announced various measures focusing on more thorough exchange of information between the *Länder* and the Federal Public Prosecutor General as well as better statistical recording of hate crimes. Additionally, the *Länder* have had positive experiences with establishing special departments within their public prosecution offices to combat politically motivated crime. Such specialised public prosecutors will be particularly able to make an even stronger contribution to solving such crimes more effectively in future.

Federal Minister of Justice Heiko Maas has furthermore – like other members of the Federal Government and Federal Chancellor Angela Merkel – often spoken out publically and clearly against racist agitation. Federal Minister Maas has also focused particularly on the racism that is rampant on the Internet. For example, at his initiative Facebook has agreed to work more closely and intensively with private complaints offices and to ensure that their leads are given priority and are pursued quickly. At the invitation of the Federal Minister of Justice, a task force of Internet service providers, civil society organisations, NGOs and representatives of the field of policy has developed further proposals for effective long-term ways of dealing with online hate speech.

So that these online hate crimes can be effectively pursued, the Federal Ministry of Justice and Consumer Protection has provided information which explains in a simple and easily accessible way how reports calling attention to online hate crime are supposed to look. Concerning this matter, the Federal Ministry of Justice and Consumer Protection has also published an informational page on reporting hate crimes, entitled *Anzeigenerstattung - gemeinsam gegen Hassbotschaften* ["Reporting incidents – together against hate speech"], on its website.

Federal Minister of the Interior Thomas de Maizière is also taking decisive action against racism and hate speech. On 27 January 2016, he banned the Internet platform Altermedia Deutschland. Altermedia was one of the leading information platforms for the right-wing extremist scene in German-speaking countries. It received millions of page views per year. The operators of Altermedia disseminated racist, xenophobic, anti-Semitic, homophobic and Islamophobic content. On behalf of the Federal Public Prosecutor General, the Federal Criminal Police Office has investigated the

operators of Altermedia Deutschland for suspected formation of a criminal organisation in accordance with Section 129 of the Criminal Code.

The assessment in *Chapter B 3.3* (and in Conclusion, Chapter B 4) that Germany "has fulfilled the demand for a specific regulation on hate crime" through the revision of Section 46 (2) sent. 2 of the Criminal Code that was introduced by the act on the implementation of the recommendations of the Bundestag Committee of Inquiry into the National Socialist Underground of 12 June 2015, effective 1 August 2015, and therefore is largely meeting the OSCE standards at the legislative level, is welcomed.

The view is not shared, however, that the umbrella term "other motives showing contempt for human life" used along with the characteristics "racist" and "xenophobic" is inadequate, and that in particular additional forms of hate crime need to be named specifically, such as homophobic or transphobic motives or aims. The fact that the regulation accounts for further recognised bans on discrimination through the characteristic of "other [motives and aims] showing contempt for human life" is a matter of consensus and was expressly stipulated as such in the official legislative materials. Concretely, this especially concerns crimes which are directed against the religious orientation or—as called for in the mentioned chapters of the evaluation report— disability, social status, or sexual orientation of the victim (Bundestag Printed Paper 18/3007 on Article 2, p. 15).

The explicit naming of "racist" and "xenophobic" motives corresponds to the recommendations of several international bodies that are engaged with combatting racism and xenophobia (c.f. Bundestag Printed Paper 18/3007, loc. cit. p. 14 with further references). Here, contrary to what is suggested in the evaluation report, the term "xenophobia" does not, for example, take the perspective of racist perpetrators. On the contrary, the use of this formulation makes clear that the corresponding motives, which seek to marginalise people, are to be condemned and thus are to be taken into consideration in sentencing as a factor leading to a more severe punishment (Bundestag Printed Paper 18/3007, loc. cit. p. 15). Despite some overlap, the terms are also sufficiently distinct from one another. While "racism" originally denoted an — allegedly — biological or phenotypic background and rests on the foundation of a corresponding worldview, the additionally used term "xenophobia" encompasses behaviour that stigmatises people as "foreign" on the basis of certain criteria such as their appearance, background, language or other social conduct (Bundestag Printed Paper loc. cit. with further references).

Statistical data and data from legal practice on the application of the revised Section 46 (2) sent. 2 of the Criminal Code are not yet available because this revision has only very recently taken effect—as the evaluation report rightly emphasises.

Additionally, the following new regulations, which have been adopted within the area of responsibility of the Federal Ministry of the Interior, are not taken into consideration in the German Institute for Human Rights' account:

- since 1 January 2016, politically motivated criminal offences "against the media" and "against officials" in the asylum context have been recorded in separate statistical categories (subtopics),
- beginning on 1 January 2017, Islamophobic, anti-Christian and antiziganist criminal offences will be recorded in separate categories (subtopics) in the statistics on politically motivated crime,

- since summer 2015, the Police Service Instructions have stated that motives which are racist, xenophobic or otherwise show contempt for human life are always to be checked for in the investigation of evidence concerning violent crimes, and this checking is to be documented.

The following should be noted regarding the aforementioned initiative of the Federal Ministry to supplement and clarify the remarks in *Chapter B 3.4*: invitations to participate in the task force on how to deal with illegal hate speech on the Internet were accepted by the Internet service providers Facebook, Google (for its video platform YouTube) and Twitter as well as by the civil society organisations eco – Association of the Internet Industry, the German Association of Voluntary Self-Regulation of Digital Media service providers (FSM), jugendschutz.net, klicksafe.de, the Amadeu Antonio Stiftung (no-nazi.net) and the association Gesicht Zeigen! The outcome of this working group is the paper "Together against hate speech", in which the participating companies committed to doing more to combat illegal hate speech on their systems. The companies' implementation of the measures that were agreed upon is currently being evaluated.

Regarding the description of the basic and advanced training of the police and the judiciary in *Chapter B 3.5*, it should be noted that the substance of the suggestions by CERD and ECRI on the issue of the basic and advanced training of police officers, public prosecutors and judges is largely in accord with the demands that the German Bundestag Committee of Inquiry into the National Socialist Underground has made to work towards recognition, within the scope of prosecution, of potential right-wing extremist or xenophobic backgrounds to violent crimes against victims with an immigrant background.

The Committee of Inquiry's recommendations for the police on strengthening intercultural competence, on interacting with victims and the loved ones of deceased victims, and on sensitisation to the areas of right-wing extremism and right-wing terrorism have been taken on by the Federation and the *Länder* and have, in some cases as mandatory components, been integrated into training; special training offers have also been developed.

Advanced training on politically motivated crime takes the victims' perspective into account. The Federal Criminal Police Office holds trainings for reflection on the "victim-offender model", and has specially created a video for trainings on the topic of "Victims after the crime—expectations and perspectives". At the Federal Criminal Police Office, events are also held on the topic of migrants in Germany and migrants in the police force, as are advanced trainings on intercultural competence.

In the field of justice, the Federal Ministry of Justice and Consumer Protection is currently working together with the German Institute for Human Rights to plan a basic and further training project that goes beyond the previous offerings, the funding of which remains to be decided by the German Bundestag when it passes the next budget law. The object of this project is to develop and test specific further training modules on the issue of racism, taking the legal framework of human rights into account, and to provide them to the federal *Länder* to establish them as part of the existing basic and further training structures. Judges and public prosecutors are thereby to be supported in reacting appropriately to racist and hate-motivated crimes and dealing with the experiences of those affected by racism in criminal proceedings. At the justice summit mentioned in Chapter B 3.5 of the evaluation report, the responsible *Länder* ministers unanimously welcomed this project.

The assessment in *Chapter B 3.5*, that the topic of hate crime is not adequately addressed in judicial basic and further training is by the way not shared, cf. the conferences offered by the German Judicial Academy, which are correctly mentioned in the same chapter.

Regarding the description in *Chapter B 3.6* of counselling centres for those affected by hate crimes, the following comment is to be made: The Federation provides a minimum of 70,000 euros per federal *Land* per year to expand and support the work of counselling centres for those affected by hate crimes. At the same time, the *Länder* must contribute at least 20 per cent in co-financing. The regulation concerning the minimum level of funding was instituted because different *Länder* have very different needs (e.g. Berlin and Brandenburg extensively finance their own counselling centres for those affected by hate crimes and do not request any federal funding for this). Along with the funding for the counselling centres in the *Länder*, the Association of Counselling Centres for Those Affected by Right-Wing, Racist and Anti-Semitic Violence (VBRG) also receives additional funds for its work as an umbrella organisation within the scope of its structural development into a federal central agency. The formulation of the footnote suggests that the Federation only provides 70,000 euros per year in total for all counselling centres.

It is also noted that counselling centres also existed in western German *Länder* before 2015 (e.g. the victims' counselling centre Back Up in North Rhine-Westphalia) and that the western German *Länder* also take part in funding victims' counselling centres.

In order to change overall social conditions, the Federal Anti-Discrimination Agency has, *inter alia*, organised a salon on hate speech on the Internet and procured a legal opinion on possibilities for effective prosecution of hate crimes.

In this area, for example, specialised contact points of the Federal Police, the Berlin Police and the public prosecution office work together with the MANEO project against homophobic violence regularly at a "jour fixe".

The content of the remarks on the federal programme Social Cohesion through Participation ("Zusammenhalt durch Teilhabe") in *Chapter B 3.7.1* is incorrect and misses the intention of the programme. The essential substance of this federal programme is promoting the democratic work of associations and dealing with discriminatory and anti-democratic behaviour at all levels. To this end, the Federal Ministry of the Interior has since 2010 supported projects in nationally active associations and organisations in rural or economically underdeveloped areas through the programme Social Cohesion through Participation, and in doing so has built onto existing structures. The focus is on activists and volunteers who are trained, *inter alia*, to become democracy advisors within associations so that they are able to sensitise people within their own organisations to discriminatory and anti-democratic attitudes, offer advice in cases of conflicts with an extremist background, and initiate and support the development of prevention strategies. In doing so, the projects deal with all forms and phenomena of discrimination, especially including racial discrimination and homophobia and transphobia. Regular everyday conflicts within an association's work are the starting point for the project work. Therefore, reduction of it to the problem perception of political organisations and activities must be repudiated. The concrete project design takes place

within the associations and organisations according to their respective needs for action. Accompanying this, the project actors take part in coachings and supervision and qualification measures that are conducted by external service providers on behalf of the Federal Ministry of the Interior. The project is being evaluated and scientifically advised. In 2016, support for associations in handling the association-specific challenges connected to the current refugee movements is additionally being offered. As of the beginning of the next funding period in 2017, the programme will be opened up to projects in economically underdeveloped or rural regions throughout Germany.

The survey results cited as evidence are unfamiliar here. The results of the scientific advising, which also include surveys of project participants, are carefully evaluated and taken into account in the further conception and carrying out of the programme.

In accordance with the coalition agreement, the Federal Government is creating a new National Action Plan Against Racism (working title), which has been expanded to include the topics of homophobia and transphobia. This plan is currently being developed within the framework of an Interministerial Working Group on Preventing Extremism and Promoting Democracy under the lead responsibility of the Federal Ministry of the Interior and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and is to be completed in spring 2017.

Against the backdrop of the recommendations of the UN World Conference against Racism in Durban in 2001, this National Action Plan is also being developed with consideration of a consultation with civil society. A daylong event with numerous NGOs and civil society initiatives took place to this end on 5 July 2016. Ideas and experiences were gathered from civil society in a discursive exchange at various roundtables, *inter alia*, on the following spheres of activity: human rights policy, education and political education, social and political engagement, diversity in the workplace, basic and further training, strengthening (inter)cultural competence in social environments, assessing and dealing with racist criminal offences, research on and protection against discrimination and everyday racism. The suggestions and contributions from civil society are being reflected on and categorised in a Ministry- and topic-specific way in the further course of creating the plan. At the “Forum against Racism”, a discussion platform between NGOs and the Federal Government (chaired by the Federal Ministry of the Interior), the further process and respective states of affairs concerning the National Action Plan are being described and discussed, as was also usual in the past. The demands for transparency and information that were mentioned in the evaluation report (*Chapter B 3.7.1*) were thus already taken into account before April 2016.

The “No Hate Speech” campaign supported by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth began on 29 June 2016 as part of the “No Hate Speech Movement” initiated by the Council of Europe. The aim of the “No Hate Speech” campaign is, *inter alia*, to sensitise young people and to support them in championing human rights online and offline. The campaign is supported by the “No Hate Parliamentary Alliance” of the Parliamentary Assembly of the Council of Europe.

2) Statement on Chapter C Gender equality

Chapter C I: Data collection to prevent and combat violence against women

The report states in *Chapter C I.2* that the Protection against Violence Act and legal practice have not yet been subjected to comprehensive further evaluation. It should be noted here that in October 2002, shortly after the Protection against Violence Act took effect, the Federal Ministry of Justice and Consumer Protection commissioned the State Institute for Family Research at the University of Bamberg to carry out accompanying research on the Act to improve the civil jurisdictional protection against violent acts and harassment and to facilitate the transfer of a shared home in the event of a separation. The findings of the research project were published in 2005 in the series "Rechtstatsachenforschung" [studies of legal facts] by the Bundesanzeiger Verlag, the publisher of the Federal Gazette, and are available in bookstores (Dr Marina Rupp [ed.], "Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz" [Investigation of legal facts concerning the Protection against Violence Act], ISBN 3-89817-515-4). Based on the results of the study, a sub-working group of the Federal Government/*Länder* Working Group on Domestic Violence then compiled and evaluated feedback on the evaluation and on experiences with the Protection against Violence Act in practice. A sub-working group compiled a report dated 29 January 2008 on the results; this report contains considerations and recommendations that are to be incorporated into deliberations concerning the further improvement of the Prevention of Violence Act.

Judicial protection of children against violence is provided through custody measures and restrictions of rights of contact, culminating in the removal of contact. Concerning persons entitled to custody, children can be protected through protective orders as well as through interventions in custody rights in the event that orders and restraints should be insufficient (Sections 1666 and 1666a of the Civil Code). Orders corresponding to the content of a protective order against violence can also be issued: these include, for example, summons for a violent parent to vacate the home, accompanied by further prohibitions of proximity or contact (restraining orders) concerning the child. Restrictions on or the removal of the right of contact are possible if such restrictions are necessary to serve the best interests of the child (Section 1684 (4) of the Civil Code). This can be the case particularly in the event of violence or abuse. To protect the child, the family court can also order that contact is permitted only in the presence of a third party who is prepared to cooperate.

In *Chapter C I.2*, a 2004 representative study on violence against women in Germany by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and a 2014 study by the European Union Agency for Fundamental Rights are cited. By taking these two studies together, the conclusion is drawn that a significant reduction in violence against women in the past ten years cannot be discerned despite political activities. It should be noted here that this conclusion cannot be drawn by taking these two studies in conjunction. Both studies asked those surveyed about their experiences of violence over the entire course of their lives to date (beginning at age 16). The European Union Agency for Fundamental Rights study additionally asked about experiences of violence in the 12-month period directly preceding the survey. Beyond this, the time points of the experiences of violence were not documented. Thus, simply placing the aggregated figures of the two studies

alongside one another does not make any statement on changes in the prevalence of violence possible.

In *Chapter C I.3*, under the heading “Evaluation of the implementation of OSCE commitments”, it is stated that at the federal level, activities to combat violence against women and to collect data and information have thus far been conducted almost exclusively by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. On this matter, the aforementioned research project which was commissioned by the Federal Ministry of Justice and Consumer Protection is to be referred to. It should furthermore be noted that the Federal Ministry of Justice and Consumer Protection has the lead responsibility for the Protection against Violence Act, which is making a significant contribution to combatting violence against women in practice. A legislative process is currently underway through which the protection of victims under the Protection against Violence Act in the case of a settlement is to be further improved. Finally, the Federal Ministry of Justice and Consumer Protection and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth jointly publish an informational brochure on the Protection against Violence act, entitled "Mehr Schutz bei häuslicher Gewalt" [More protection from domestic violence].

Regarding research funding in *Chapter C I.3*, it should be noted that according to the division of responsibilities within the Federal Government, research funding for projects in the area of violence against women lies predominantly within the purview of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Because of its connection to the field of educational institutions, the Federal Ministry of Education and Research funds research projects on the sexual abuse of children and youth in the total amount of 35 million euros due to its own ministerial responsibilities according to the recommendations of the Round Table on the Sexual Abuse of Children on 30 November 2011 within the framework of educational and health research.

Under the sub item "Data collection by the police and courts" in *Chapter C I.3*, it is stated that a systematic assessment of data and analyses of court proceedings and their outcomes and of the protective measures taken in relation to domestic violence has not yet taken place. It should be noted that the *Länder* family courts responsible for matters of protection against violence record data on these proceedings in a nationally uniform way via judicial statistics. The cases opened and closed, subject of the proceedings, type of settlement and duration of the proceedings are thus recorded and the corresponding figures are analysed and published by the Federal Statistical Office annually in series 2.2 of technical series 10. The judicial statistics, however, do not contain any information about the protective measures taken in specific cases.

The criminal prosecution statistics published annually by the Federal Statistical Office (series 3 of technical series 10) also report those convicted and sentenced for criminal offences under the Protection against Violence Act. Regarding the data in question, however, it is also to be taken into consideration that in cases in which those convicted or sentenced have violated more than one law through one act (Section 52 of the Criminal Code) or multiple acts (Section 53 of the Criminal Code), the prosecution statistics only record the criminal act that carries the most severe legal punishment. The number of persons convicted or sentenced for violations of the Protection against Violence Act may therefore be higher than what can be shown in the figures concerned. Regarding the other criminal offences that come into consideration in connection with violations of the Protection against

Violence Act, no information can be provided (also not by approximation) about the extent to which the available data also relates to cases of violations of the Protection against Violence Act.

Regarding the criticism of the lack of flow statistics in the field of domestic violence as well, reference is also made to the above comment on Chapter B 3.1.2.

Editorial clarification: The joint press conference on the issue of violence in partner relationships that is planned for November 2016 will be held by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Criminal Police Office and not, as the report states, by the Federal Criminal Police Office and the Federal Ministry of the Interior.

Chapter C II Pay equity

The statements in *Chapter C II.1.2* that in Germany there are no sufficient provisions for the implementation of equal pay which would be specifically binding on wage bargainers are incorrect in their judgmental generality. A disadvantage in remuneration on the basis of gender is impermissible; this is expressly regulated by the Section 2 (1) no. 2 of the General Equal Treatment Act. This provision explicitly refers to collective bargaining agreements. According to Section 15 (1) of the General Equal Treatment Act, those affected by a violation of the prohibition of discrimination may demand compensation, which may also encompass payment of the lost remuneration if applicable. The existing legal commentary on the General Equal Treatment Act criticises it for the fact that the requirement of equal pay only arises from the difficult-to-grasp overall picture of Section 7 (1), Section 2 (1) No. 2, Section 3 and Section 8 (2) of the General Equal Treatment Act. Because of its special importance to employees, the requirement of equal pay should be expressly and transparently regulated in its own specific law, thereby reflecting the importance that legislators attach to the requirement of equal pay.

Regarding *Chapter C.II.2* it should be noted that the “basic right to equal pay between men and women” which it mentions does not exist in the sense of an individual benefit entitlement under the Basic Law. Article 3 of the Basic Law chiefly imparts a right of defence against unequal treatment, which is oriented to the state. Article 3 (2) sent. 2 of the Basic Law furthermore obligates the state to realise the equal status of men and women in fact.

The adjusted gender pay gap of 7 per cent that is mentioned in this chapter and the unadjusted pay gap of 21 per cent that is also mentioned differ in their significance: the calculation of gross hourly pay in the case of the unadjusted pay gap takes into account not only data from full-time employees but also the earnings of those who do part-time work (for older employees), those who are partially employed, trainees and interns. It denotes the simple difference between the average gross hourly wage of men and women, expressed as a percentage of the average gross hourly wage of men. The adjusted pay gap allows for statements on the level of difference in the gross hourly earnings of women and men with comparable attributes. It denotes the difference in pay that results from comparing the pay of women and men with the same individual and occupational characteristics. The adjusted pay gap thus subtracts the portion of the pay gap that results from structural differences (endowment effects) such as, for example, the educational level, professions, and qualifications of men and women.

The adjusted pay gap thus has a different explanatory value than the unadjusted pay gap, which is derived from the simple difference in the average hourly wages of men and women and therefore does not reveal anything about disadvantages or about the level of discrimination in employees' wages. Statements about the level of discrimination on the basis of the adjusted pay gap can only be made tendentially.

The extent to which the pay gap is derived from intentional decisions to pursue a certain professional path remains unclear. What is also neglected is what share of the pay gap in Germany arises from fields without collective agreements. The chapter conveys the impression that the conclusion of collective bargaining agreements generally and systematically causes income disparities between men and women. For the public service in particular, this is not correct.

The transparency in payment systems that is called for already exists by and large for the public service at the federal level. Federal collective agreements and circulars are published on the website of the Federal Ministry of the Interior as well as in the Joint Ministerial Gazette.

The research project on collective agreements and equal pay of the University of Erlangen-Nuremberg and the Institute for Employment Research, which is mentioned in *Chapter C II.3.1*, has already been completed. The project mentioned in the report as a 'pay equity check' fostered the economic independence of women and men through the use of an equal treatment check within the scope of an EU-financed project and was developed by the Federal Anti-Discrimination Agency as an instrument to check whether men and women are treated equally in the workplace. The aim of the project was to support businesses in using the new instrument to check systematically whether men and women are treated equally in the company.

Chapter C II.3.2 mentions the legislation for greater pay equity that was developed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth during the current electoral term. This description is, however, imprecise. This law is intended to establish an obligation for companies that have 500 or more employees to comment on the advancement of women and pay equity according to legal criteria in their management reports created in accordance with the German Commercial Code. The essence of this draft law is employees' legal right to information about the standards and criteria by which their own pay and the pay of comparable jobs are determined, and about the classification and pay level of these comparable jobs (while preserving data privacy and anonymity).

Regarding *Chapter C II.4* it should be noted that disadvantages due to sexual identity are also covered in the area of protection of the General Equal Treatment Act (cf. expert's assessment by the Federal Anti-Discrimination Agency: Sexual harassment in the higher education context – gaps in protection and recommendations. Expert's assessment by Prof. Dr Eva Kocher/Stefanie Porsche, European University Viadrina, Frankfurt (Oder)).

Chapter C III: Women, peace and security: Germany's implementation of UN Security Council resolution 1325

It is generally to be noted that the Federal Government Action Plan to implement UN Security Council Resolution 1325 (2013-2016) is being discussed in the Interministerial Working Group on the implementation of Security Council Resolution 1325. The Working Group is comprised of representatives of the Federal Foreign Office, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of the Interior, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Defence, and the Federal Ministry for Economic Cooperation and Development. The Working Group is currently consulting on the implementation report for the Action Plan and its update. As laid down in the Action Plan, a report on its implementation is to be made to the German Bundestag at the end of its period of validity, that is, at the end of 2016. At least once a year, the Interministerial Working Group invites representatives of the civil society organisations working on this topic to speak about the implementation of UN Security Council Resolution 1325. In this framework, the updating of the Action Plan is also to be discussed. In 2016 joint sessions of the Interministerial Working Group with civil society took place on 4 July 2016 and 14 September 2016.

Regarding the updating of the Action Plan, it is planned for the implementation of UN Security Council Resolution 1325 to continue to be enshrined in foreign, security and development policy as a cross-cutting issue, and increasingly so, in order to make gender-sensitive peace and security policy possible. In this context, the Resolution is also to be taken into account in the framework of the guidelines for engagement in crisis areas and peacebuilding that are to be reworked. The new edition of the white paper in which the guidelines for security policy for the next ten years are formulated also mentions Resolution 1325. The successor Action Plan is to take into account the findings of the October 2015 UN Global Study on the implementation of UN Security Council Resolution 1325. The Federal Government also sees the implementation of UN Security Council Resolution 1325 in the framework of the 2030 Agenda that was adopted last year.

At a regional and international level, Germany continues to advocate for the implementation of UN Security Council Resolution 1325 within the scope of the EU, the OSCE, NATO and the United Nations.

Regarding *Chapter C III.1.2*, it should be noted that the Center for International Peace Operations is currently being expanded into a full sending organisation.

Regarding *Chapter C III.2.2*, it should be noted that the scope of Germany's commitment to development policy cannot be broken down into "relevant topical areas", of which fragile statehood is named as one among many. This also applies to the promotion of gender equality: it is considered an overarching task and attribute of all areas of German development cooperation and it is given high priority.

The proposed interpretation regarding extraterritorial application that is contained in General Recommendation No. 30, which is mentioned in *Chapter C III.2.2*, is — like the CEDAW General Recommendations in general — not binding under international law for the parties to the

Convention. Germany has, however, made a political decision to apply the requirements of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) extraterritorially as well in peacekeeping operations and in development cooperation.

Regarding the statement made in *Chapter C III.3.1* that in 2010-2013 only 10 per cent of all Federal Government expenditures to fund projects contributing to the implementation of Resolution 1325 were in the area of participation, even though particular importance is to be attached to the aspect of participation according to the National Action Plan for 2013-2016, please refer to the different in time periods in question. The 2013-2016 Action Plan specifically sought to counter the low level of importance placed on the aspect of participation in the years 2010-2013. Regarding the categorisation of individual focal points, it should generally be noted that different measures can contribute to several focal points at the same time, but are normally assigned to just one of them, which greatly limits the extent to which conclusions can be drawn about prioritisation among the focal areas. Regarding the statement that the National Action Plan does not include a strategic operative direction and lacks an orientation towards its impact, it should be noted that the National Action Plan has enshrined the topic of women, peace and security more firmly than before in German foreign, security and development policy as a cross-cutting issue. Regular impact monitoring and comprehensive reporting take place for the majority of the projects to implement UN Security Council Resolution 1325, which are implemented in partner countries, for example on behalf of the Federal Ministry for Economic Cooperation and Development.

Regarding *Chapter C III.3.3*, it should be noted that the conclusions based on previous studies on the progress of integrating women into the armed forces are by no means entirely negative. The number of soldiers who tend to see an increase in problems with female soldiers in everyday work is declining. The self-confidence of women in the armed forces regarding their capabilities is increasing, and female soldiers are noticing a normalisation of interactions between men and women. If, on the other hand, there is talk of a darkening mood regarding integration in the chronological comparison of the studies, it is apparent that the vast majority of these “felt” or “believed” impressions are the sensitivities of men who have problems with letting go of their stereotypes. Incidentally, against the backdrop of efforts to increase the appeal of the Federal Armed Forces and the backdrop of the underrepresentation of women in the armed forces, a staff element on equal opportunities in the area of competence of the Federal Ministry of Defence was established on 21 April 2015 under the Director-General for Personnel. Its mission is targeted to the general conditions for and participation in careers at the Federal Ministry of Defence and in its entire subordinate area. Gender-specific, systematic injustices are to be identified, analysed and dismantled as quickly as possible through the development and implementation of effective measures. As of 1 May 2016, the staff element on equal opportunities was expanded to include the topics of diversity and inclusion.

The conclusion drawn in *Chapter C III.4* that consideration for the dimension of gender in the context of violent conflicts is still left largely to development cooperation thus cannot, in the light of the above statements, be supported.

3) Statement on Chapter D: Combatting trafficking in human beings

The statement in *Chapter D.2* that the actual volume of trafficking in children may have increased due to the sharp increase in asylum-seeking minors is an expression of pure speculation, which is not documented by studies or sources.

The description in *Chapter D 2.1* of the applicable law and current legislative process for the implementation of Directive 2011/36/EU is abbreviated but essentially correct. It should be noted, however, that Section 233a of the Criminal Code (Assisting in human trafficking) does not, as stated in Chapter D 2.1, refer to acts of participation in or advancement of trafficking in human beings, and is also not a catch-all provision as stated in D 3.1.1. In fact, Section 233a of the Criminal Code, despite a heading that is misleading in this respect, represents for German law trafficking in human beings within the meaning of international legal instruments. As correctly described in Chapter D 2.1, trafficking in human beings is redefined in close correlation with international legal instruments in the new version of the provisions on trafficking in human beings.

The statements on trafficking in children are misleading. Despite its heading, Section 236 of the Criminal Code does not claim to cover the criminal law concerning trafficking in children as it is understood in international legal instruments. It only covers a sub-area of it. The evaluation report ignores further penal provisions such as, for example, Section 232 et. seqq. and Section 235 of the Criminal Code, which together with Section 236 of the Criminal Code ensure the full implementation of the corresponding international legal instruments such as the additional protocol to the Convention on the Rights of the Child.

The description of assessment by the authorities in the comments on residence permits for victims of trafficking is misleading. The report states that a residence permit “can” be issued, whereas the actual legal situation under the Residence Act envisages limited discretion (“should”).

In *Chapter D 2.2* the report states that there is a lack of legal possibilities when children are forced to take part in begging or in committing criminal offences. This is not correct, even if such behaviours are not yet currently punishable as trafficking in human beings. It should be noted that such behaviours may be punishable as coercion (Section 240 of the Criminal Code). If children (or adults) are induced to commit crimes, incitement to commit these crimes is possible, and as the case may be, the question of an indirect perpetrator can even arise when children who are not criminally liable for their actions are induced to commit crimes. The statutory offence of Section 171 of the Criminal Code should also be referred to, provided that the perpetrators are persons entitled to custody.

Regarding the question of whether refugee children are affected by trafficking in human beings, a survey conducted by the Federal Criminal Police Office concerning crimes committed against or by refugees for the period of 1 January 2014 to 31 January 2016 revealed that for this time period the federal *Länder* had no information that refugee minors were victims or perpetrators of trafficking in human beings in the area of sexual exploitation or in the area of labour exploitation or of exploitation through begging, through commission of crimes or through forced prostitution.

In *Chapter D 3.1.2*, the report addresses sensitisation offerings for various professional groups in connection with trafficking in human beings. In addition to the aforementioned further training sessions held by the police, in 2016 the Federal Criminal Police Office has also held conferences for case officers on the topic of trafficking in human persons for the purpose of sexual exploitation and trafficking in human persons for the purpose of labour exploitation, with up to 90 external participants. These also serve purposes of further training through their description of successfully conducted investigation proceedings, especially in respect of identifying those affected.

The appraisal that training and instruction for prosecutors and the judiciary on the topic of trafficking in human beings for the purpose of labour exploitation have been offered only on a "very limited scale" is not shared. The German Judicial Academy and the *Länder* regularly offer numerous events on these issues, such that sufficient training offerings exist. The piece of information contained in the report that prosecutors and the judiciary make use of these offerings on a voluntary basis is correct.

In *Chapter D 3.1.2*, the report also names the Federal Office for Migration and Refugees, stating that, "due to high numbers and continuous restructuring within the Federal Office for Migration and Refugees, it is unclear whether special representatives for trafficking in human beings are currently being utilised in all field offices", and that it is unclear whether regular decision-makers are receiving sufficient training. In this regard, footnote 46 notes that a written inquiry of 17 February 2016 was not adequately answered by the Federal Office for Migration and Refugees. The following position is taken on this:

- The structural concept of the Federal Office for Migration and Refugees envisages the utilisation of special representatives for victims of trafficking in human beings at all field offices.
- Currently, 48 special decision-makers for victims of trafficking in human beings are working at the 60 bureaus of the Federal Office for Migration and Refugees.
- Due to the high numbers of applicants, the hiring of a large number of new decision-makers and the development of new field offices, trainings for both longstanding and new special representatives for victims of trafficking in human beings are in preparation for 2016, such that the concept of utilising special decision-makers for victims of trafficking in human beings at all field offices can be maintained.
- The trainings that were held in 2011/2012 as part of the project to improve the identification of victims of trafficking of human beings, which is named in the evaluation report, were trainings for multipliers in order to ensure the sensitisation of all asylum decision-makers. Enlisting employees of the special consultation services for those affected by trafficking in human beings in trainings has also initiated interlinking so that victims – with their consent – can also be put in contact with these offices. Care and support for victims by special consultation services is very important not only in the interest of protecting victims (as necessary, accommodating them in safe housing) and of the criminal proceedings, but also in the interest of stabilising and guiding the asylum process. Subsequent to the project, corresponding special representatives were named.
- The trainings developed by the European Asylum Support Office (EASO), which all prospective decision-makers currently take part in, contain content for interacting with vulnerable groups. A special module on the topic of interacting with vulnerable groups has been available in German translation since the beginning of this year and has been in use for training special decision-

makers since July 2016. The decision-makers thereby acquire foundational knowledge for interacting with groups of people who are especially in need of protection, such as people affected by trafficking in human beings.

- Additionally, at the Federal Office for Migration and Refugees, all cases reported by asylum decision-makers in which there are indications of trafficking in human beings are registered. This process does not separately record the various forms of trafficking in human beings, but it can be assumed that the vast majority of the cases concern victims of trafficking of human beings for the purpose of sexual exploitation.
- No inquiry of 17 February 2016 regarding special representatives for trafficking in human beings has been received by the Federal Office for Migration and Refugees. There is reportedly an inquiry from April 2016, but this does not concern the report on the evaluation of the implementation of OSCE commitments.

As an addition to *Chapter D 3.2*, it should be noted that the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is currently working together with NGOs to develop a national cooperation concept to improve the protection of minors who are victims of trafficking in human beings. The aim is to ensure adequate protection measures and comprehensive aid measures for minors who are potentially or actually affected by trafficking in human beings, regardless of the purpose or form of their exploitation, and to improve cooperation among all actors who deal with minors who are potential or actual victims of trafficking in human beings.

Via ECPAT, the Federal Government also promotes training sessions for tourism trainees so that (prospective) specialists can be sensitised to the protection of children and training sessions for professionals who come into contact with potential victims of trafficking in children, as well as campaigns to sensitise the public (e.g. the “Don’t Look Away!” campaign).

Regarding the statements on trafficking in children, please refer to the comments on *Chapter D 2.1*.

In 2014, a Federal Government/*Länder* project group addressed the topic of trafficking in human beings and the sexual exploitation of children, and specifically made recommendations for improved data collection and forms of cooperation at the regional level. As a result, an expanded Trafficking in Human Beings Situation Report is being prepared beginning in 2017 with particular attention to minors.

The statement made in *Chapter D 3.2.2* that the Federal Criminal Police Office had only registered a single case of trafficking in asylum-seeking minors in 2013-2015 is taken out of context and conveys a false impression. The following formulation would express the situation accurately: in 2013-2015, the Federal Office for Migration and Refugees only detected evidence of a minor victim of trafficking in human beings in the asylum process in one case (and reported it to the Federal Criminal Police Office).

The report also questions whether special representatives for trafficking in human beings are currently working in all field offices of the Federal Office for Migration and Refugees and whether regular decision-makers or additional personnel in this area are adequately trained in recognising signs of trafficking in children. The following is to be noted regarding this matter: The Federal Office

for Migration and Refugees has no reliable figures or other information on trafficking in children. However, the especially vulnerable situation of minors, especially unaccompanied minors, is being taken into consideration by the Federal Office for Migration and Refugees. This situation is accounted for through various measures (especially through the employment of special representatives for unaccompanied minors). The topic of trafficking in children will be taken into account in the training sessions for special representatives for victims of trafficking in human beings that are currently being planned.

The following is also to be noted on the topic of unaccompanied minor refugees: Under German law, guardianship is to be ordered and a guardian to be appointed if a minor is not subject to parental custody or if the parents are not entitled to represent the minor either in matters affecting the person or in matters affecting property (Section 1773 (1) of the Civil Code). The legal foundation for ordering guardianship has existed since the Civil Code entered into force; its application to the area of unaccompanied minor refugees is recent. The main cases in which a minor is not subject to parental custody are the death of the parents and the withdrawal of custody by the family court. The second group of cases of parents who are not entitled to represent the minor occurs above all when parental custody is suspended. In most cases of unaccompanied minor refugees, parental custody is suspended because of a factual obstacle, Section 1674 of the Civil Code. This is the case when parents cannot in fact exercise parental custody for a long period of time, for example because they live abroad and cannot ensure the appropriate care, supervision and representation of the minor in another way.

The family court checks on a case-by-case basis whether these requirements are satisfied, for the determination of the suspension of parental custody and the appointment of a guardian signify a major intrusion in parental rights. In addition, the Youth Welfare Office is entitled and obligated in accordance with Section 42a (1) of the Social Code Book VIII to take a foreign child or a foreign adolescent into custody after an unaccompanied journey. While the child or adolescent is provisionally taken into custody, the Youth Welfare Office is entitled and obligated to undertake all legal acts that are necessarily for the well-being of the child or adolescent, that is, to ensure the child's or adolescent's representation for a temporary period (Section 42a (3) sent. 1 of the Social Code Book VIII).

If the requirements for guardianship are satisfied, the family court appoints a suitable guardian. If a person suitable as a voluntary sole guardian is not available, the Youth Welfare Office may be appointed as an "official guardian" as per Section 1971b of the Civil Code. This happens often in practice. The qualification of employees within the Youth Welfare Office who take on guardianship tasks within the Youth Welfare Office resides with the employment bodies (municipalities). Official guardians fulfil their task responsibly; knowledge that is specially needed for unaccompanied minor refugees, e.g. in migration law, must, however, be acquired in many cases. Numerous training courses are available for this.

Reliable statistics about the number of and reasons for disappearances of unaccompanied minor refugees do not (yet) exist; it is, however, to be assumed that a portion of this group of people can be attributed to multiple input of the same data and to independent onward travel, e.g. to the Netherlands or Sweden.

The statement in *Chapter D 3.3.1* that police crime statistics are compiled by the Federal Statistical Office is not correct. The police crime statistics for the Federal Republic of Germany are compiled by the Federal Criminal Police Office on the basis of the *Land*-level data provided by the 16 *Land* Criminal Police Offices.

Regarding the criticism of the lack of flow statistics in the field of domestic violence, please refer to the statement above concerning *Chapter B 3.1.2*.

Chapter D 3.3.2 correctly states that no national rapporteur on all forms of trafficking in human beings which is specially established for this purpose has yet been established in Germany. Contrary to what was apparently assumed in the evaluation report, however, in this respect a compulsory need to implement the establishment of an (independent) national rapporteur follows from neither Directive 2011/36 nor the Council of Europe Convention on Action against Trafficking in Human Beings. The affected Ministries under lead responsibility of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth have heretofore administered the function of "National rapporteurs or equivalent mechanisms" in accordance with Article 19 of EU Directive 2011/36 together and with a divisions of responsibilities. Since 2011, the Ministries have represented Germany in the EU Network of National Rapporteurs and Equivalent Mechanisms and have jointly communicated the information that is coordinated within the Federal Government by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth to the EU Anti-Trafficking Coordinator (EU-ATC) in accordance with Article 20 of Directive 2011/36.

In reference to the recommendations from the first GRETA monitoring process and in reference to the extension of the concept of trafficking in human beings to include further forms of exploitation, which is associated with the implementation of the Directive, the further development of structures for national reporting and for coordination of all strategies and measures on all forms of trafficking in human beings at the federal level might be sensible. The configuration of the corresponding reporting and coordination mechanisms is currently being discussed within the Federal Government and is to be discussed further in the Federal Government/*Länder* Working Group on Trafficking in Human Beings.

4) Statement on Chapter E Voting rights: Voting rights of persons with disabilities

Regarding *Chapter E 1.3 and Chapter E 2:* The principle of generality of voting in Article 38 (1) of the Basic Law is not restricted by the minimum voting age stated in Article 38 (2) of the Basic Law, but rather allows for objectively legitimate exceptions; this principle is not subject to any absolute prohibition of differentiation (decision of the Federal Constitutional Court: BVerfGE 132, 39 (47)).

In Germany, persons with disabilities naturally have unrestricted voting rights in accordance with the legal view (cf. Bundestag Printed Paper 16/10808, p. 63-64) expressed by the Federal Government with the ratification of the UN Convention on the Rights of Persons with Disabilities. The legal exceptions, which apply to all people, are in accordance with the UN Convention on the Rights of Persons with Disabilities.

The appointment of a custodian—even if comprehensive—does not lead to the loss of voting rights. For this to occur, it is necessary that by legal decision in the individual case (Section 1896 of the Civil Code), a custodian has had to be appointed to take care of all affairs, and not only by a temporary order. People who live in a psychiatric hospital are also not deprived of voting rights. This applies only to people who are in a psychiatric hospital because of an order in accordance with Section 63 in connection with Section 20 of the Criminal Code. It should also be noted that the application for a ballot to vote in a different, barrier-free polling place takes place directly at the municipal authority or by postal vote without the applicant having to state any reasons for doing so.

Regarding *Chapter E 3.1*, it should be noted that in the implementation of European legal standards, the *Länder* laid down for public service broadcasting in Section 3 of the Interstate Broadcasting Treaty that the broadcasters ARD, ZDF and Deutschlandradio and all operators of nationally broadcast programmes are to increase their inclusion of barrier-free offerings beyond their existing commitment within the scope of their technical and financial possibilities. In corresponding voluntary commitments, the broadcasters ARD and ZDF have both committed to facilitating barrier-free access to their broadcast and online programming.

With the introduction of the public broadcasting fee (*Rundfunkbeitrag*), persons with disabilities who are financially capable of paying the fee pay only a reduced sum of one-third of the broadcasting fee unless they are able to claim a reason to be exempted from the fee. Through this fee, the barrier-free offerings of ARD, ZDF and Deutschlandradio are to be further supported. The federal *Länder* and state media authorities periodically review the progress of developments in this area.

The mentioned Ordinance on Barrier-Free Information Technology applies only to federal authorities.

Regarding *Chapter E 3.2:* The exercise of voting rights in the context of in-patient services for persons with disabilities is not contingent on whether enough personnel are available to support people with disabilities in finding their polling station, for the exercise of the right to vote is not contingent on finding a polling station. Section 36 of the Federal Electoral Act envisages equal entitlement to the option of postal voting for all eligible voters.

The assertion that tactile voting templates created by associations for the visually impaired are sometimes faulty or do not fit onto the ballot is not substantiated and is not in line with the Federal Government's knowledge. The templates are created by the associations before each election without complaint and are paid for by the Federal Government. The fact that the tactile voting templates are created by the associations of those affected by visual impairments in consultation with the electoral authorities is not a deficiency, but rather a strength of the established process in Germany. The state harnesses the associations' knowledge and closeness to the issue while bearing the costs itself.

The assertion that a general commitment to barrier-free access cannot be found in German law and that this represents a legal limitation of the right to vote is contested. The regulation in Section 46 of the Federal Electoral Code stating that polling places are to be selected and equipped according to local conditions in a way that facilitates the ability of all eligible voters, especially persons with

disabilities and other persons with limited mobility, to participate in elections as much as possible means that barrier-free spaces are to be used to the extent that they are available. The right to vote may be exercised in a different, barrier-free polling place in the constituency, at the municipal authority or by postal vote. For this purpose, poll cards include advance notification of whether the polling place is barrier-free and under what telephone number of the municipal authority information may be obtained about the nearest barrier-free polling place (Section 19 (1) No. 2 and 7 of the Federal Electoral Code).

The assertion that those affected must first identify themselves as “disabled” in order to receive the corresponding support services is incorrect: the possibility of applying for a ballot to vote in a different polling place—for example, a barrier-free polling place—or in advance at a local authority or by postal vote is available to all voters *without* any requirement to give reasons for this.

Regarding alternative voting scenarios, it should be noted that the right to vote already envisages the possibilities of moving polling place staff, voting in a different polling place or at the municipal authority and voting by post. In Germany voting with voting machines and e-voting are, according to case law of the Federal Constitutional Court (decision of the Federal Constitutional Court: BVerfGE 123, 39, 71), only compatible with the Basic Law under strict conditions.

For persons with disabilities who have significant needs for assistance, that is, also for the assistance for people with disabilities who are running for office that is mentioned in *Chapter E 3.3*, work assistance is one of several components of a broad-ranging approach to personal assistance with the activities of daily living and with participation in working life and in social life. The disabled people themselves are the ones who assign the various personal assistance services; thus, personal assistance is also an expression of the right to self-determination and the right to express wishes and to make choices (Section 9 of the Social Code Book IX).

The amendment of the law regarding people with severe disabilities (Part 2 of the Social Code Book IX) introduced a legal entitlement of people with severe disabilities for the costs of necessary work assistance to be assumed by the integration offices (Section 102 (4) of the Social Code Book IX) as part of the accompanying assistance in working life. This is a monetary payment, not a contribution in kind that is organised by the public service provider. In fact, employees with severe disabilities have organisational and instructional competence themselves and are themselves responsible for this. The employee with a severe disability thus either hires the assistant themselves (employer model) or commissions work assistance from a provider of assistance services at their own expense (commission or service model).

Regarding *Chapter E 4 – conclusion:* The voting rights of persons with disabilities are not curtailed. The existing limitations on voting rights apply generally to all groups of voters. The state’s partial funding of parties exists to fulfil responsibilities in terms of the formation of political will that are assigned to the parties by the Basic Law in accordance with the principle of strict formal equality and therefore cannot be used as a means of control for the benefit of other objectives.

5) Statement on Chapter F Transparency and democratic institutions: Income transparency of political parties and representatives and of political advocacy groups

Even if the prescribed framework of the evaluation report does not allow for a comprehensive and well-founded description of and engagement with the key regulations concerning German political party financing law, individual phenomena such as, for example, political party sponsoring are arranged unclearly in *Chapter F* in terms of their economic and legal significance.

The reference to a secondary source such as "abgeordnetenwatch" in the description of functional situations (gifts from legal persons – amounts of major donations) can be regarded as methodologically dubious in such an evaluation report. The interpretation of the major donor behaviour described as manipulative evasion (dividing large donations into multiple smaller donations) contains an insinuation that gives the impression of a certain bias. The approach and points of critique of "Lobbycontrol" and "abgeordnetenwatch" should not be taken on in such a report without developing one's own position on the reasonableness of demands such as the legislative footprint.

The report seems to labour under the preconception that only advocates for companies are lobbyists, whereas NGOs, for example, are not lobbyists. Furthermore, the report offers no precise definitions of the terms 'lobbying' and 'lobbyists' which could be discussed.

The report's analysis of the concrete positions of GRECO, the Bundestag President and the Bundestag parliamentary groups is not complete and thus not fully correct. GRECO, for example, has refrained from its related regulatory recommendations in the course of the process of monitoring the implementation of its recommendations due to corresponding remarks by the Bundestag Committee on Internal Affairs.

In *Chapter F 1.2.1*, the statement by the Federal Constitutional Court on the transparency requirement of the Basic Law is placed in a general context. This statement by the Federal Constitutional Court, however, relates to the requirements concerning the legislative process for the compensation of Members of the Bundestag.

The heading of the point "Members of the Bundestag and members of the government" in *Chapter F 1.2.2* (also in Chapter F 2.2) is broader in scope than the content of these paragraphs. The statements only apply to members of the government if they are Members of the Bundestag at the same time. Insofar as their position as members of the government is addressed, the applicable waiting period regulation, for example, is not taken into consideration.

In *Chapter F 1.2.2* it is mentioned that the next report by the Bundestag President on developments in party funding and on the political parties' financial reports is expected with a one-year delay in autumn 2016. This delay arises from the most recent amendment of the Law on Political Parties in December 2015.

Regarding the list for associations that is mentioned in *Chapter F 1.2.2*, it is to be noted that in accordance with a German Bundestag decision of 21 September 1972, the President of the German

Bundestag maintains a public list on which associations that represent interests to the Bundestag or to the Federal Government can be recorded. In principle, only associations that have applied to be registered of their own initiative can be registered on the list. Institutions, bodies and foundations under public law and their umbrella organisations are not registered, nor are organisations that already engage in political advocacy at a national level. The same applies to associations affiliated with an already registered umbrella organisation and to individual clubs and individual enterprises. Registering is not connected with any rights or any obligations. In accordance with Annex 2 (4) of the Rules of Procedure of the German Bundestag, enrolment on the list does not constitute any right to be heard or be issued a Bundestag pass.

The evaluation report states that political advocacy that goes beyond registered associations is not specifically regulated under law. Here it is to be noted that Section 44a (2) sent. 2 of the Members of the Bundestag Act prohibits any Member of the Bundestag to "accept money or allowances with monetary value which are only granted in the expectation that the interests of the payer will be represented and asserted in the Bundestag". In accordance with Rule 1 (2) no. 4 of the Code of Conduct for Members of the German Bundestag, Members of the Bundestag also must inform the Bundestag President of activities as members of a board of management or other managerial or advisory body of a club, association or similar organisation. This also applies if activities in such bodies are not connected with any income. If income is derived from these activities, this income is in principle also to be declared (Rule 1 (3) of the Code of Conduct). Memberships and the income associated with them are to be published in the Official Handbook and on the website of the German Bundestag in accordance with Rule 3 of the Code of Conduct. In this way, established relationships between Members of the Bundestag and organised interest groups are disclosed. Rule 1 (2) no. 2 of the Code of Conduct contains the same disclosure requirement for activities as a member of company boards and Rule 1 (2) no. 3 contains the same disclosure requirement for activities as a member of an institution under public law.

The factual basis for the description of the income of political parties represented in the Bundestag in *Chapter F 2.1* is dubious. Only donations that exceed an annual total of 10,000 euros to one political party can be designated on the basis of statements of accounts. Income from sponsoring agreements is part of the income listed as a total sum in the category of income from events, distribution of printed matter and publications; therefore, its scope cannot be clearly delimited.

It is furthermore to be noted that political party donations exceeding 50,000 euros are subject to a stricter disclosure obligation in accordance with the Law on Political Parties. The formulations that are described as unclear in the evaluation report are unproblematic in practice: the "individual case" encompasses those donation payments to a political party by a donor which are to be ascribed to a unitary decision of the donor's will. In legal usage, "promptly" means "without culpable hesitation". The "timely" publication of these major donations has for quite some time taken place online within one to two business days after the receipt of the notification and by the next month at the latest as a Bundestag printed paper.

Political party donations that exceed a total value of 10,000 euros in one year are to be published with the name and address of the donor in the statement of accounts of the political party (Section 25 (4) of the Political Parties Act). The publication obligation cannot be circumvented by splitting up

donations because the publication obligation hinges on the total sum of donations from a donor to all divisions of a party in a calendar year. Single donations of more than 50,000 euros are published immediately.

The German term *Stückelung* used in the report to designate splitting up donations suggests that the donor and the donation recipient are aware of the intended total donation sum and have divided it into multiple donations to avoid disclosing it promptly. However, this requires evidence of a will to avoid the disclosure obligation. The publication obligation would exist all the same in the case of such behaviour.

So-called sponsoring, that is, the paid opportunity to advertise e.g. at a political party conference is not unregulated under German law on political parties. In accordance with Section 24 (4) no. 7 of the Political Parties Act, income from sponsoring is to be accounted for in the political parties' statements of accounts and published with them. If there is a gross disparity between the service of the sponsor and the return service, this is considered not to be sponsoring, but rather a donation within the meaning of Section 25 (4) of the Political Parties Act. The sponsor's service is then to be published in the statement of accounts as a donation in accordance with Section 24 (4) no. 3 and no. 4 in conjunction with Section 23 (2) sent. 3 of the Political Parties Act.

Regarding the disclosure obligation in relation to the activities and income of Members of the Bundestag, as described in *Chapter F 2.2*, it should be noted that the Bundestag has in its rules of conduct established the requirement to disclose and publish activities and income without this being dependent on the presence of shared interests in an individual case.

In *Chapter F 2.3* (and in *Chapter F 3.3*) it is stated that the informal practice has been established of having Bundestag passes issued by the Parliamentary Secretary of the parliamentary groups and that being registered on the list of associations establishes the right to a Bundestag pass. This description is incorrect. The rules of access and conduct for the area of Bundestag property in the version of 30 June 2011 state that for lobbyists it is necessary for applicants to demonstrate through an application signed by a Parliamentary Secretary of a parliamentary group that they frequently must visit the building of the German Bundestag, not least in the interest of the parliament. While this rule has been criticised by certain associations such as "abgeordnetenwatch" and "Lobbycontrol", it has not been an informal practice, but has rather been regulated in a positive statutory manner on the basis of a decision by the Council of Elders.

It is furthermore to be noted that representatives of associations, companies and other organisations that are not registered on the public list no longer receive personalised Bundestag passes. The process of endorsement by Parliamentary Secretaries of a parliamentary group has been abolished.

Additionally, in February 2016 the access rules for lobbyists were altered by decision of the Council of Elders of the German Bundestag. Under the new rules, only lobbyists representing associations that are recorded on the list published in the Federal Gazette (public list) and have a representative office in Berlin — which indicates frequent entry — can receive personalised Bundestag passes. An association now can receive only up to two Bundestag passes rather than up to five, as was previously the case.

Inclusion on the public list does not provide a basis for the entitlement to be issued a personalised Bundestag pass. The aforementioned rule and the limitation of associations to two Bundestag passes were the subject of strong political will and were supported by all the parliamentary groups of the German Bundestag. Beyond this, the administration was asked to establish a strict standard for the scrutiny of application requirements in order to reduce the number of Bundestag passes issued as much as possible.

Independent of this, lobbyists are able to receive access to the property of the German Bundestag within the framework of the regulation of individual visitors in accordance with Section 2 (6) of the internal regulations for a legitimate reason (e.g. an appointment with a Member of the Bundestag or a parliamentary group, a visit to a meeting of a body or working group) following prior registration.

The statement made in *Chapter F 3.1* that there are only limited powers of intervention for supervisory authorities is incorrect. The Bundestag President can impose financial sanctions for erroneous statements of accounts, violations of transparency, and the acceptance of impermissible donations, and has since 1 January 2016 also been able to impose penalty payments to enforce the accounting obligation: In accordance with Section 23a (1)-(3) of the Act on Political Parties, the Bundestag President can check submitted statements of accounts, require confirmation from the political party's certified auditor, and commission a certified auditor of his/her choice, whom the political party must permit to access and inspect its records. In the case of inaccurate statements, state funds shall be reclaimed in accordance with Section 31a of the Act on Political Parties and the party shall be liable for penalty payments of twice to three times the respective amount in accordance with Sections 31b and 31c of the Act on Political Parties. Those committing such acts shall be punishable in accordance with Section 31d of the Act on Political Parties.

There is no risk of political parties and donors circumventing the publication obligations via sponsoring. Political parties' income from sponsoring is to be reported in the parties' statements of accounts and published along with these in accordance with Section 24 (4) no. 7 of the Act on Political Parties. If there is a gross disparity between the sponsoring and the political party's return service, this is considered to be a donation and is to be published in accordance with Section 25 (4) of the Political Parties Act.

The statement on GRECO made in *Chapter F 3.1* is incorrect. In 2009 GRECO did not recommend legally regulating sponsoring. Rather, it recommended that the conditions under which sponsoring to the benefit of political parties is permitted should be clarified. Since the hearing of the Bundestag Committee on Internal Affairs on 7 June 2010, GRECO has considered this recommendation to have been fulfilled and has not repeated it since the December 2011 Compliance Report.

In *Chapter F 3.2*, official duties from the parliamentary mandate are intermingled with those of a government member. It also is not known that violations of duties by Members of the Bundestag are communicated in a Bundestag printed paper. The reference to the waiting period regulation for members of the Federal Government is insufficient. In a case in which a conflict of interest is feared, it is not the Bundestag President but rather the Federal Government that can impose a blocking period of 12 months and in exceptional cases of 18 months.

It should also be noted that paid lobbying for Members of the Bundestag already is permitted only with restrictions (cf. remarks on Chapter F 1.2.2).

Regarding *Chapter F 3.3*, it should be noted that the introduction of a binding lobbyist register and a so-called legislative footprint in the Bundestag has been discussed both in the last electoral term and in the present electoral term.

The quoted statement by the Federal Constitutional Court relates, as mentioned above in the remarks on *Chapter F 1.2.1*, to the requirements concerning the legislative process for the compensation of Members of the Bundestag.

The account of the former process of issuing Bundestag passes via the Parliamentary Secretary of the parliamentary group is, as noted above regarding *Chapter F 2.3*, imprecise and incorrect.

Regarding *Chapter F 4 – Conclusion:* It is not the task of the Federal Government to legislate. To the extent that the parliament is affected, providing for the necessary regulations is a matter for the parliament alone.

In this chapter it is mentioned several times that there is no regulation of sponsoring. This is misleading in the sense that there is such a regulation for the federal administration in the form of the General administrative regulation to promote activities by the Federal Government through contributions from the private sector (sponsoring, donations and other gifts) of 7 July 2003. The sponsoring of political parties also is not unregulated. Political parties' income from sponsoring is to be accounted for in the parties' statements of accounts and published with them in accordance with Section 24 (4) no. 7 of the Act on Political Parties. The effective control of disclosure obligations in accordance with the Act of Political Parties also is not unregulated, nor are sanctions in the case of violations: in accordance with Section 23a (1) – (3) of the Act on Political Parties, the Bundestag President as a supervisory authority checks the political parties' statements of accounts. In the case of concrete indications of inaccurate statements, he/she can require confirmation by the party's certified auditor and commission a certified auditor of his/her choice. The party is to permit this auditor to access and inspect its records. In the case of inaccurate statements, state funds shall be reclaimed in accordance with Section 31c of the Act on Political Parties and the party shall be liable for penalty payments of twice to three times the respective amount in accordance with Sections 31b and 31c of the Act on Political Parties. Those committing such acts shall be punishable in accordance with Section 31d of the Act on Political Parties.

Summary of the Comments by Civil Society Groups and Organizations on the German Institute for Human Rights' Report 'Implementation of Selected OSCE Commitments On Human Rights and Democracy in Germany. Independent Evaluation Report on the Occasion of the German OSCE Chairmanship 2016'

August 2016

A. Introduction

At the beginning of June 2016, the German Institute for Human Rights presented a report entitled The Implementation of Selected OSCE Commitments on Humans Rights and Democracy in Germany, an independent evaluation report compiled on the occasion of Germany's 2016 Chairmanship of the OSCE (hereinafter referred to as the 'evaluation report') [1]. The report was commissioned by the Federal Foreign Office on the occasion of this year's German Chairmanship of the Organization for Security and Co-operation in Europe (OSCE). The German Institute for Human Rights independently selected the topics, criteria and methods.

Civil-society stakeholders then had the chance to comment on the report. This practice was introduced by Switzerland when it held the OSCE Chairmanship in 2014, Serbia upheld it the following year.[2] For the German Chairmanship 2016, the Center for International Peace Operations (ZIF) conducted a project to coordinate the process and produced this summary of the various comments made by civil society. It contains 15 contributions on different topics. They are accessible to the public via the website of the Federal Foreign Office and the German Institute for Human Rights.

For the most part, the results of the evaluation report were welcomed and supported. Like most of the comments, this summary focuses on areas where additions or corrections were put forward, or which were the subject of criticism.

Preliminary remarks

- In each comment, the stated authors bear sole responsibility for their remarks. This summary does not reflect the positions of the OSCE, Federal Foreign Office or ZIF.
- As far as possible, the structure of the summary follows that of the evaluation report.
- All analyses and recommendations refer exclusively to the situation in Germany.
- Wherever relevant in the context of this report, references are given when concrete commitments of OSCE participating States and/or material published by the OSCE and OSCE Office for Democratic Institutions and Human Rights are mentioned.
- Comments often refer to international agreements and their corresponding implementation and monitoring mechanisms which, in line with the fundamental agreements of Helsinki[3] and Copenhagen[4], are either part of the OSCE Acquis or complement the OSCE's activities. References are not given for these in this summary.
- By and large, remarks and opinions expressed in comments are written in direct speech. Quotations from the evaluation report and from the comments are signalled, however page numbers are not given.
- Gender neutral pronouns are used in the interests of readability.
- The terminology used to refer to specific groups complies with the practice of groups representing their interests: disabled people, black people, people of African descent, LGBTIQ (lesbian, gay, bisexual, trans*, intersex* and queer people), trans* people (transsexual, transgender, transition and other people whose gender varies from normative gender identity).

1 http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Implementation_of_Selected_OSCE_Commitments_on_Human_Rights_and_Democracy_in_Germany_09_2016.pdf.

2 For background information see the introduction to the evaluation report and http://www.humanrights.ch/en/switzerland/foreign-affairs/io/osce/) For documentation of civil society comments in Serbia see: http://www.helsinki.org.rs/doc/Self-evaluation%20report.pdf, for Switzerland: https://www.eda.admin.ch/content/dam/eda/en/documents/publications/InternationaleOrganisationen/osze/20150803-Self-Evaluation-OSCE%20-Chairmanship_DE.pdf.

3 Helsinki Final Act, 1. August 1975, http://www.osce.org/helsinki-final-act, point VII.

4 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, http://www.osce.org/node/14307, in particular see points 5.20 and 5.21.

List of abbreviations

CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention on Human Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
LSBTIQ	Lesbian, gay, bisexual, trans*, intersex* and queer people
NAP 1325	National Action Plan on implementing UNSCR 1325
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PMK	Politically Motivated Crime (Registration system)
UN	United Nations
UNSCR 1325	UN Security Council Resolution 1325 on Women, Peace and Security (S/RES/1325)
ZIF	Center for International Peace Operations

B. Field of action tolerance and non-discrimination: combatting discrimination and hate crimes

Comments made by civil-society groups and organisations[5]

- *Amnesty International*, Section of the Federal Republic of Germany, Alexander Bosch, themen@amnesty.de
- *Bundesverband Trans** – für geschlechtliche Selbstbestimmung und Vielfalt e.V. i. Gr. (federal trans* association – in favour of gender self-determination and diversity) , Board, info@bundesverband-trans.de
- *Human Rights Watch*, German office, Wolfgang Büttner, buettnw@hrw.org
- *Kaneza Initiative* for Dialogue and Empowerment, Elisabeth Kaneza, elisabeth@kaneza.org
- The *Lesbian and Gay Federation* in Germany, National Branch Office, Günter Dworek, lsvd@lsvd.de
- *Verband der Beratungsstellen* für Betroffene rechter, rassistischer und antisemitischer Gewalt VBRG e.V. (association of counselling centres for victims of right-wing, racist and Anti-Semitic violence) info@verband-brg.de
- *Working Group Anti-Racism* of the Forum Menschenrechte, Johannes Brandstäter, kontakt@forum-menschenrechte.de

In general most stakeholders, welcomed the independent and critical evaluation as well as the opportunity to issue a response. The *Working Group Anti-Racism*, *Amnesty International*, *Human Rights Watch* and the *Lesbian and Gay Federation* agreed with the majority of the evaluation report's content, though to varying extents. The *Bundesverband Trans** criticised the evaluation report for not sufficiently taking into account the concerns of trans* people in this field of action.

All organisations list a series of elements, points of criticism and demands, based on at times very specific topics that they consider to highlight the evaluation report's findings, or that they think should be added. At times they refer to documents other than the evaluation report, above all documents produced by the United Nations (UN) and the Council of Europe, primarily the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) and the European Convention on Human Rights (ECHR), as well as statements issued by the European Commission against Racism and Intolerance (ECRI).

The observation is made that the report does not go into sufficient detail regarding important aspects of combatting discrimination relating to numerous different sectors of society. Concrete steps need to be taken to better define, investigate and prosecute acts of hate crime as well as to protect victims. In this regard "individual OSCE commitments should be more consistently fulfilled" (*Verband der Beratungsstellen*). The evaluation report's "analysis of the legal and institutional framework" is criticised for being "incomplete in relation to certain points" and thus its conclusion for this field of action, namely that "at the legislative level, Germany is largely in line with OSCE standards", is called into question (*Working Group Anti-Racism*).

Discrimination

The *Working Group Anti-Racism* addresses this topic extensively, lamenting that the remarks made in the evaluation report "are mostly limited to the main aspects of hate crime" (similar: *Lesbian and Gay Federation*). There is a general lack of awareness regarding the definition of racial discrimination, particularly when it comes to actions not intended to inflict racial discrimination yet whose effects in reality do, the definition of which is enshrined article 1, paragraph 1 of ICERD. Based on the statement

5 *Amnesty International* (2016 report) and *Human Rights Watch* (2011 background paper) additionally refer to documents containing extensive analyses, documentation and demands relating to this field of action. The evaluation report refers to the *Human Rights Watch* paper. These additional documents are not included in this summary.

that the evaluation report does not address the relevant recommendations made to Germany by CERD, the Working Group calls for the legislation to be adapted accordingly, particularly to "strengthen protection against racial discrimination […] by replacing the term 'race' with 'based on race' in Germany's Basic Law and all Land constitutions as well as legislative texts and provisions. The Working Group also notes that the report fails to discuss additional Protocol No. 12 to the ECHR, which contains the current state of the ECHR and a more extensive list of grounds that constitute discrimination than the definition featured in German legislation. The Working Group calls on Germany to ratify the protocol, a step that has been pending since 2000 and has already been called for by the ECRI.

Due to the "lack of comprehensive anti-discrimination legislation" and because this matter is not addressed by the evaluation report – both assertions relate to more than just The General Act on Equal Treatment – the *Working Group Anti-Racism* sees the need for a review of the applicable legal provisions, in line with recommendations already made by CERD. It mentions Federal Police regulations regarding racial profiling (see below) as a specific area in need of improvement. Furthermore, the *Lesbian and Gay Federation* refers to "the complete elimination of legal discrimination" of LGBTIQ people, inter alia in article 3 of the Basic Law, paragraph 1353 of the German Civil Code and the Transsexuals Act (see section G).

With regard to the planned revision of the National Action Plan of the Federal Republic of Germany to Fight Racism, Xenophobia, Anti-Semitism and Related Intolerance and its mooted expansion to include homophobia and transphobia, the *Lesbian and Gay Federation* calls for a "transversal approach […] in line with the diversity of LGBTIQ and that takes multiple discrimination into account".

Racial Profiling

The *Working Group Anti-Racism* and *Amnesty International* criticise the absence in the evaluation report of the problem of racial profiling, despite its particular significance as a form of discrimination. They note that victims, particularly black people, are often subsequently subjected to racially motivated police violence (similar comments: *Kaneza Initiative*). Despite various critical comments made over the past two years, including by CERD, ECRI and the Council of Europe's Commissioner for Human Rights, as well as many cases recorded in reports issued by civil-society groups, "no measures have been taken to deal with the discriminatory use of police powers in the field of identity checks" – on the contrary, such incidences were even denied (*Amnesty International*).

Alongside a critical examination of the problem, the *Working Group Anti-Racism*, *Amnesty International* and, in less detail, the *Verband der Beratungsstellen* all call for a comprehensive review, in line with international standards, of all legislation that facilitates racial profiling well as for the removal of article 22, paragraph 1 of the Act on the Federal Police, as suggested by CERD.

Legislation on hate crime

Two associations expressly highlight the evaluation report's assessment that the wording used in article 46, paragraph 2 of the German Criminal Code (a result of the new version produced in 2015) and point 15 of the Richtlinie für das Straf- und Bußgeldverfahren (directive on fine and penalty proceedings) is inadequate as regards the investigation and sentencing of "racist, xenophobic or other bias-related" crimes:

> "The open, inconclusive rule […] leads to politically motivated inclusion or exclusion of affected groups and makes the standards used in applying the law too vague." (*Verband der Beratungsstellen*)

> "The failure to mention homophobic or transphobic motives [is] an active structural exclusion. [...] It is a fatally flawed approach for the German Government [...] to make homophobia and transphobia taboo and invisible in its legislation. [The expert opinions of specialists and civil society have been] completely ignored." (*Lesbian and Gay Federation*)

This is the basis of the demand for a reform of hate crime legislation, which takes into consideration a "set list of characteristics", as for example called for by some civil society counselling centres when article 46 of the German Criminal Code was redrafted in 2014.

In addition to this, the *Lesbian and Gay Federation* noted the problem, only briefly touched upon in the evaluation, of article 130 of the Criminal Code's definition of hate speech as a criminal offence in which LGBTIQ and disabled people are not included. In light of the exceptionally low number of article 130-based convictions of hate crimes targeting LGBTIQ people, the association proposes that "a supplementary clarification" be added to the report.

Monitoring and criminal prosecution of hate crimes

The evaluation report criticises the new "Politically Motivated Crime" (PMK) registration system used by the German authorities to monitor hate crime. This system forms the basis of the German Government's annual publication of data on the portal www.hatecrime.osce.org. The idea that gave rise to this system is questioned, namely of viewing crimes primarily as extremist attacks targeting basic constitutional rights and institutions, rather than attacks against a group of people characterised by specific, protected criteria. The report refers to various analyses and recommendations of the parliamentary committee of inquiry into the NSU, CERD, ECRI as well as those made by victims and civil-society groups. How serious they consider the shortcomings to be is clear from the sheer number and depth of the comments complementing the report, particularly regarding the issue of PMK and monitoring (*Working Group Anti-Racism*, *Bundesverband Trans**, the *Lesbian and Gay Federation* as well as when not otherwise indicated below, the detailed comments of the *Verband der Beratungsstellen*):

- Given that the criteria used to define Politically Motivated Crime have not been made public, this "categorisation process is [...] opaque and hardly comprehensible".
- The specific data is "too all-inclusive and […] therefore not meaningful enough [...] to describe the danger to specific groups and minorities". Alongside the issue of "Anti-Muslim and antigypsyist attacks" mentioned in the evaluation report, this is particularly the case for incidences directed at black people or people of African descent who, as members of a visibly distinguishable minority, are particularly affected by hate crime. However, due to the lack of data it is not possible to provide them with adequate protection (*Working Group Anti-Racism*, *Kaneza Initiative*). The same goes for offences committed against LGBTIQ people, where there is "scandalous underreporting" by international standards (*Lesbian and Gay Federation*), as well as especially against trans* people, because the category of 'sexual orientation/gender identity' "is of little use in providing clarification about or effective action against violence motivated by transphobia and especially intersexphobia" (*Bundesverband Trans**).
- The PMK system does not comply with international standards and the ODIHR considers this to be "a possible reason for why it is essentially impossible to ensure that data is comparable at the international level".
- Further reasons for why the accuracy of data should be questioned include the divergence between the data transmitted to the ODIHR by the German Government and statistics published in Germany, as well as "striking differences between independent and official statistics".
- This discrepancy "clearly shows that there is still huge 'under reporting' of cases of right-wing, racist and Anti-Semitic violence and it must thus be assumed that many crimes go unreported" (similar comments, in relation to LGBTIQ people: *Lesbian and Gay Federation*).
- The system used to record hate crime does not "sufficiently take into account cases of transversal and/or multiple discrimination" (*Working Group Anti-Racism*). Black people are particularly affected by multiple discrimination: "racism towards black people has not been taken into account

to date and therefore there are no procedures for combatting this form of racism." (*Kaneza Initiative*).

- As stated in the evaluation report, the procedural guidelines for processing and documenting criminal offences as defined under article 46, paragraph 2 of the German Criminal Code, which govern everything from first contact with the police to the passing of a verdict, are unsatisfactory. Particularly, not enough consideration is given to the perspective of victims.
- No financial resources are available to fund a nationwide, independent civil-society study as called for by the parliamentary committee of inquiry on the NSU.
- The premise of extremism underpinning the PMK system is problematic. This fundamentally flawed approach leads to the focus remaining wrongly directed at the "problem as one faced by society as a whole, and above all society's general responsibility to deal with right-wing, racist and Anti-Semitic violence and those affected by it" (similar comments: *Working Group Anti-Racism*, *Amnesty International*, *Lesbian and Gay Federation*). As regards the evaluation report, *Amnesty International* sees the need for it to "more fundamentally [… and] strongly" emphasise the problems with the concept.
- This focus on the idea of extremism prevents "the necessary examination of […] the existence of institutional racism within the German security services", which appears at best "indirectly" in the evaluation report when it discusses the NSU (*Amnesty International*, similar comments: *Working Group Anti-Racism*).
- With regard to the problem of racist violence perpetrated by the police, no independent investigation mechanisms exist, nor do any means for civil society to file complaints (*Amnesty International*, supported by the *Verband der Beratungsstellen*).
- The examination of the NSU failure, conclusions drawn from the affair and criminal prosecution of hate crime are all unsatisfactory. Beyond the evaluation report, it has been established that when it comes to cases of hate crime, which have risen sharply recently, the percentage of cases solved is "shockingly low" (*Working Group Anti-Racism*) and the intelligence services "still hinder the parliamentary, legal and journalistic investigation [of the NSU]."
  (*Verband der Beratungsstellen*, similar comments: *Amnesty International*).

For information regarding concrete demands, the exhaustive lists compiled by the *Verband der Beratungsstellen* can be referred to on behalf of all comments:

- It must be possible to make an international comparison of official statistics.
- The catalogue of criteria and definition system used as a basis for reporting [need to be] redrafted and made transparent". The set list of characteristics must reflect "the manifestations of right-wing violence present in Germany", i.e. "racism that falls under this category (particularly Islamophobia and Antiziganism), Anti-Semitism, violence based on sexual orientation and identity/against LGBT people, attacks on disabled people, acts of violence against homeless people/attacks on non-right wing and alternative people as well as violence against people who act to promote human rights and democracy and combat neo-Nazis and prejudices".
- Regulations on investigation and documentation must be enacted "that, in instances of doubt, oblige the investigating authorities to examine possible right-wing motives for crimes in a transparent and substantial manner".
- "It must be compulsory for the victim's perspective to be taken into account [...] in classification and documentation."
- Cases in which racist violence committed by the police is suspected must be investigated through independent mechanisms.
- There needs to be long-term, nationwide promotion of "independent monitoring of right-wing, racist and Anti-Semitic violence by independent civil-society organisations."

- Independent investigations into the "scale of the threat to and discrimination towards relevant groups and minorities" need to be conducted.
- "Federal and state-level civil-society initiatives that focus on the problem of institutional racism" need to be promoted.

Education and further training of the police and judiciary

With one exception all comments address the aspect of education and further training of the police and judiciary, a subject discussed in detail in the evaluation report, at times with reference to important recommendations made by international and national institutions, including OSCE commitments. The report's general conclusion that action needs to be taken is widely supported. The following additional remarks were made:

- Alongside the transfer of knowledge on how to recognise the "antidemocratic attitudes and prejudices" that provoke hate crime, in particular "there needs to be a significant increase in [...] acceptance towards and implementation of laws that protect against discrimination and promote general equal treatment" (*Verband der Beratungsstellen*).
- Groups affected and their needs should be given high importance in education and further training. "Special educational material on the topics of racism, discrimination and human rights" should be used (*Amnesty International*).
- "Education and further training barely addresses" the concerns of and threat to groups not explicitly mentioned in the Criminal Code's set list of characteristics. Relevant knowledge should be shared through special programmes on LGBTIQ-phobia (*Lesbian and Gay Federation*). There is a particular need for better education about "the proper way to handle gender diversity" (*Bundesverband Trans**).

Victim support and counselling

The *Verband der Beratungsstellen* is the main organisation to devote attention to victim support and counselling. Its comments go into more detail than the evaluation report in discussing how the development of centres providing counselling and support in former West Germany has been "neglected" to date. Due to insufficient federal and state structural development funds there is no nationwide, independent provision of these services. In order to fulfil "the OSCE commitments", "the relevant resources [...] should be provided free from cumbersome red tape". Based on the assessment that the existing resources and capacities have not been able to keep up with the sharp rise in cases of hate crime in the past year nearly anywhere and that "provision of [...] counselling and support is extremely limited, both in qualitative and quantitative terms, to the detriment of victims", the *Verband der Beratungsstellen* calls for facilities that can fulfil the need as defined by independent organisations. Priority should be given to projects that examine institutional racism or encourage migrants to collaborate and organise themselves.

In the Verband's view, the evaluation report's observation that the authorities do little to provide access to victim counsellors should be "stated in stronger terms". Given that the police and judiciary rarely advise victims of the availability of independent counselling, it demands that this be done "routinely" and "as soon as possible following an act of violence perpetrated by the police". The *Lesbian and Gay Federation* commented on the experiences of victims of hate crimes whose situation the police and security authorities pay as little heed to as they do the motives of the attacks (secondary victimisation), as well as progress made in this area. The Federation stated that improvements were "few and far between, and often brought about by individual actions". Alongside eliminating the causes through proper education and further training, the main need is for special police victim protection officers to be recruited to make it easier for victims to gain access to the services they require. Such positions should be created and equipped with the necessary resources at

the state level in particular (*Verband der Beratungsstellen*), for victim support communities and organisations (*Human Rights Watch*), and expressly for LGBTIQ people (*Lesbian and Gay Federation*).

Political measures for awareness-raising

A series of comments address the findings on public opinion, education, funding programmes and other related topics. The *Working Group Anti-Racism* was particularly critical here; its concerns and demands are included below but not listed separately:

- The evaluation report's method of measuring racism predominantly through the prevalence of individual prejudices is "entirely unsatisfactory". There is no analysis of the "dynamics of public dialogue", where racist remarks made by public figures and/or the fact that no one objects to such comments contribute to rising hate crime. Moreover, the report only implies the significance of institutional racism (see above), which stems from "an institution or system not actively preventing or dissuading unequal treatment".
- The evaluation report "omits [...] claims of a 'comprehensive state education policy' (OSCE) on preventing racism". Also worrying, given that school and pre-school education establishments play an important role in this task that takes generations to accomplish, is the fact that "they themselves are not free of discriminatory institutional structures".
- As recommended by CERD amongst others, there needs to be a broad understanding of racism as a "social and political problem" amongst the general public, brought about either by improving their awareness of institutional forms of discrimination, more effective countermeasures or explanations about diversity. There is often a complete lack of knowledge and sensitivity regarding groups of people affected by racial discrimination, such as black people.
- Alongside the problem of social media mentioned in the report, public service media outlets, being without any representatives of trans* or LGBTIQ organisations on their advisory boards, often report in a trans*phobic manner (*Bundesverband Trans**).
- Through their "hugely distorted hatemongering rhetoric", "Pegida" and other movements/groups create a platform for homophobic and transphobic rhetoric and actors. A federal and state-level programme should be set up specifically to counteract violence targeting LGBTIQ people (*Lesbian and Gay Federation*). Trans*/homophobia has proven to be an effective funding priority through the federal programme Live Democracy!, something that should be picked up in other programmes (*Bundesverband Trans**).
- The evaluation report's criticism that the federal programme Cohesion through Participation is based on the premise of extremism is expanded with the demand that racist discrimination be included in funding programmes on grounds other than extremism, and that all other dimensions of the phenomenon be listed, i.e. "as a human rights issue which has socio-political manifestations and can also be expressed in the form of institutional discrimination".
- The consultation process with civil society launched in July 2016 on the new National Action Plan is "very small scale" in light of current need. In particular, details regarding the participation of state and municipal stakeholders who play an important role in education remains "very vague" and it is clear that civil society at these levels has not been included.
- A recommendation is made for the government to act and commission long-term projects to monitor hate criminality as well as a comprehensive, independent study on the threat to and discrimination of minorities in Germany (*Verband der Beratungsstellen*). "Blatant gaps in research [...] regarding hate crime targeting LGBTIQ people" are remarked upon more clearly than in the evaluation report, and the corresponding steps are called for (*Lesbian and Gay Federation*).
- The Forum against Racism, briefly mentioned in the evaluation report, should not "be overvalued", because whilst it does indeed facilitate informal exchange, a proper brief, purpose and impact assessment are all lacking.

C.I. Field of action gender equality: collection of data on preventing and combatting violence against women

Comments made by civil-society groups and organisations

- *Bundesverband Trans** – für geschlechtliche Selbstbestimmung und Vielfalt e.V. i. Gr. (federal trans* association – in favour of gender self-determination and diversity), Board, info@bundesverband-trans.de
- The *Association of Women's Shelters*, info@frauenhauskoordinierung.de
- The *Lesbian and Gay Federation* in Germany, National Branch Office, Henny Engels, lsvd@lsvd.de

One of the evaluation report's footnotes to the section on data collection on preventing and combatting violence against women notes that "violence directed at transgender and intergender people due to their gender identity or their biological sex" is just as much a form of gender-specific violence as violence against women. In addition to this it states that "it is not mentioned by the OSCE commitments". In contrast to this, the *Bundesverband Trans** notes that trans* people are protected inter alia by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) "and constitutional regulations on equal treatment under the criterion of gender". In reference to this, it introduces its comments on gender equality with the fundamental criticism that the concerns of trans* people are not given sufficient consideration in the report's three sections on gender equality.

Only the *Lesbian and Gay Federation* and the *Bundesverband Trans** explicitly discuss concrete aspects of data collection in their comments. The former considers the representation to be "comprehensive and accurate", however does add to this that the data on victims' genders entered into the Racially Motivated Crime system in 2011 is insufficient (similar comments: *Bundesverband Trans**, see section B). The system does not allow for sexual orientation and gender identities to be described in all their diversity, making it impossible for example to issue a quantitative statement regarding lesbian or trans* women as victims of violence and thus to implement countermeasures on this basis.

As an even more fundamental point, the *Bundesverband Trans** criticises the shortcomings of research into violence against trans* women in Germany, who are especially affected by this problem. From attention given to the experiences of masculine trans* people from the period of their female socialisation, to the analysis of information from victims' associations, to gathering of data about violence against women and gender-based violence, it lists a series of points in need of intensive investigation and urgent action in order to improve data collection.

Preventing and combatting violence

Beyond the various points relating to data collection as a section of the report, the *Association of Women's Shelters* criticised the fact that the evaluation report "does not sufficiently discuss" the issue of the distress that violence causes to women. It refers to the importance of CEDAW, the presence of which in the OSCE Action Plan for the Promotion of Gender Equality[6] makes it a direct OSCE Acquis. It calls on the German Government to "address the problem of violence against women equally at all levels and in all reporting procedures", emphasising this demand by stating that this is the only way to demonstrate that "there is genuine political will to combat gender-based violence". In concrete terms, it lists three main shortcomings that an alliance of civil-society groups had recently incited the German Government to pledge to deal with within the framework of the CEDAW process: "the lack of sustainable funding for a system of support for women affected by violence; the (in)sufficient consideration in custody and access proceedings of violence in partner relationships; [as well as] the absence of an overarching concept of how to protect women and girls with disabilities from violence."

6 OSCE Action Plan for the Promotion of Gender Equality, 7 December 2004, http://www.osce.org/mc/23295, point 42.

The *Bundesverband Trans** calls for the anti-violence programme to be based on Resolution 2048 adopted by the Parliamentary Assembly of the Council of Europe (PACE) on "Discrimination against transgender people in Europe" (in the comment shortened to the Council of Europe's "Transgender Resolution") and for the Resolution to be implemented "in its entirety". Moreover, it sees a need for action in terms of the pending "ratification" of international agreements and commitments to eliminate existing "gaps in human rights protection": with regard to the EU, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (the comment omits particularities regarding the obligation to implement EU directives that do not require ratification as such), and with regard to the Council of Europe it refers to the Council of Europe Convention on preventing and combating violence against women and domestic violence.

C.II. Field of action gender equality: equal remuneration

Comments made by civil-society groups and organisations

- *Bundesverband Trans** – für geschlechtliche Selbstbestimmung und Vielfalt e.V. i. Gr. (federal trans* association – in favour of gender self-determination and diversity), Board, info@bundesverband-trans.de
- *Business and Professional Women* BWP Germany e.V., Waltraud Kratzenberg Franke, Katinka Brose, info@equalpayday.de
- *Deutscher Frauenrat* (National Council of German Women's Organizations), Susanne Kahl-Passoth, s.kahl-passoth@frauenrat.de, Hannelore Buls, h.buls@frauenrat.de, Ulrike Helwerth, u.helwerth@frauenrat.de
- The *Lesbian and Gay Federation* in Germany, National Branch Office, Henny Engels, lsvd@lsvd.de

The *Deutscher Frauenrat* and *Business and Professional Women* welcome the fact that the evaluation report deals with the topic of equal pay and support its statements and demands. Referring to concrete findings, both organisations stress the need to close existing gender-specific pay gaps and emphasise that this can only be achieved through a coherent, forward-looking policy on equality that covers all areas of society, beyond simply the existing individual measures. With reference to certain details, the *Deutscher Frauenrat* discusses aspects that "the German Government has so far excluded from its policy on women and equality" primarily because they overlap with other policy areas, i.e. fiscal policy, employment policy, family and care policy. The evaluation report's statement that the current pay gap (21 percent) is "significantly above the EU average" is amplified by the *Business and Professional Women'*s comment that Germany is "among Europe's stragglers".

The *Lesbian and Gay Federation* adds to the evaluation report's finding that there are no statistics on equal pay for trans* and intersex* people by noting that no such data is available for lesbians either. The fact that structural disadvantages for women in terms of pay and pensions also affect lesbians – potentially doubly for couples – as well as trans* people, particularly women who are visibly trans* and thus require particular consideration, is referred to by the *Lesbian and Gay Federation* and the *Bundesverband Trans**.

Employment and fiscal provisions

The *Deutscher Frauenrat* names 'mini jobs' (part-time, low-paid jobs), which offer the lowest level of social security protection, as one of the causes of unequal pay omitted in the evaluation report. These jobs have often become "the standard employment model" in the various sectors dominated by women. This, coupled with the option offered by joint taxation of spouses for couples to transfer the tax advantage to the main breadwinner, means women often take on such mini jobs, the wages of which are both particularly low and in many cases do not reflect the employees' qualifications or demands. To prevent such an "objectively unjustifiable low-wage policy being further tolerated", the organisation demands that the system of taxation of spouses be reformed, with the removal of income tax bracket five and an expansion of the number of part-time jobs that must provide social security protection. The objection often cited that this is impossible to implement is contradicted by the opinions of many people whose roles or family structures are consistent with current fiscal regulations and thus document "the structural imbalance that women face in the labour market".

Domestic care

The *Deutscher Frauenrat* sees a further cause of unequal pay in the principle of subsidiarity underpinning nursing care insurance, according to which the family providing care is supported and the burden placed on them relieved whilst a large part of the care is provided by the family itself. As the "nation's biggest source of care providers", female family members who provide care bear the main brunt: they carry out a role that is unpaid, yet difficult and burdensome, and by doing so their

professional activities are either directly limited/stopped or their ability to cope with the strain of work is reduced. Moreover, in the current nursing care insurance system, the decision to take on the provision of domestic care is by no means a voluntary choice for everyone. The organisation calls for a reform of nursing care insurance so that care is no longer provided as an unremunerated family duty.

Part-time employment

The *Deutscher Frauenrat* also takes a critical view of the evaluation report's reasoning that women earn less because they work part time in order to look after children or relatives. The fact that part-time jobs pay less not only conflicts with the reality that part-time employees are often more productive than their full-time colleagues, it violates the existing right of equal pay for equal work. The organisation thus calls on political decision-makers to create the regulations and mechanisms needed to fully implement this ban on discrimination.

Scope of legal regulations

The evaluation report's criticism of the limitation of the proposed equal pay act, meaning that the regulations would only apply to large enterprises with over 500 employees, is reiterated *by Business and Professional Women* and the *Lesbian and Gay Federation*. It is questionable because women often work in small and medium-sized enterprises and thus would not benefit from the effects of the legislation.

West and East Germany

The *Lesbian and Gay Federation* laments the lack of information regarding the respective pay gaps in West and East Germany: in former West Germany, the gap stood at 23 percent in 2015, in the former East though it was only eight percent. This is down to inter alia "better overall structural conditions", e.g. childcare and other role expectations. However, another factor is that men in East Germany often receive very low pay.

Labour market access for trans* people

Trans* people encounter an additional impediment in accessing the labour market because transsexualism is still classified as a mental and behavioural disorder in the World Health Organization's International Statistical Classification of Diseases and Related Health Problems (ICD-10), and because coming out and gender adaptation create many uncertainties in the workplace. The *Bundesverband Trans** points out that as a result of this, trans* people often find it particularly difficult to obtain more skilled and better paid positions. It calls for "measures to eliminate structural disparities between men and women in their employment profile" to be extended to trans* people. This should include incorporation of concerns specific to trans* people in regulations on individual aspects of employment policy and in equality policies as well as especially that equal opportunity commissioners be trained to ensure they have the awareness and skills they require.

C.III. Field of action gender equality: women, peace and security: Germany's implementation of the UN Security Council Resolution 1325

Comments made by civil-society groups and organisations

- *Bundesverband Trans** – für geschlechtliche Selbstbestimmung und Vielfalt e.V. i. Gr. (federal trans* association – in favour of gender self-determination and diversity), Board, info@bundesverband-trans.de
- *Deutscher Frauenrat* (National Council of German Women's Organizations), Susanne Kahl-Passoth, s.kahl-passoth@frauenrat.de, Hannelore Buls, h.buls@frauenrat.de, Ulrike Helwerth, u.helwerth@frauenrat.de
- The *German Women Lawyers Association*, geschaeftsstelle@djb.de, and *Women's Security Council*, Anna von Gall, agall@posteo.de, supported by: medica mondiale, Women's International League for Peace and Freedom (WILPF), Amnesty International – Section of the Federal Republic of Germany and Frauennetzwerk für Frieden e.V. (network of women for peace)
- The *Lesbian and Gay Federation* in Germany, National Branch Office, Henny Engels, lsvd@lsvd.de

Noting that incorporating civil-society expertise is an important aspect of implementing UN Security Council Resolution 1325 on Women, Peace and Security (S/RES/1325) and referring to the relevant OSCE[7] recommendations, the *German Women Lawyers Association*, the *Women's Security Council* and the organisations who support their comments all welcome the evaluation. In their comments, they discuss various details regarding the development of the National Action Plan on implementing UNSCR 1325 (NAP 1325) and Germany's agenda for women, peace and security – not addressed in the evaluation report. They criticise the tendency to take an isolated approach. This hinders effective implementation of the global agenda anchored in UNSCR 1325, Germany thus "largely ignoring the relevance of binding human rights frameworks". The *Deutscher Frauenrat* "completely" agrees with this comment.

The *Lesbian and Gay Federation* deems the evaluation report's portrayal to be "accurate and conclusive", yet does see a need for various additions. In particular it notes the absence of discussion about the fact that the CEDAW Committee chastises both public and private stakeholders for "repeatedly failing to sufficiently implement gender mainstreaming practices in their own fields". The *Bundesverband Trans** feels that trans* people and their concerns should have been taken into consideration in various areas addressed by the evaluation, namely participation in peacekeeping, organisations' human resources policies, gender mainstreaming, etc., because the group falls under the remit of CEDAW.

Development of NAP 1325

The *German Women Lawyers Associa*tion and *Women's Security Council* take the view that, contrary to 2014 OSCE recommendations and other international standards, the German Government fails to pay heed to the "concrete aspects of sustainable women, peace, security agenda implementation and ignores essential components for the development of an NAP [1325]". It has shows only a "modest willingness to seriously include" civil society in the development process of the second implementation phase, due to begin in autumn 2016. The organisations note the absence of an inclusive approach featuring more than just last-minute information, the opportunity to issue oral statements and "merely symbolic" consultations. They demand "coherent, targeted, sustainable and effective" measures and outline details of such measures.

7 OSCE Study on National Action Plans on the Implementation of the United Nations Security Council Resolution 1325, 22 October 2014, http://www.osce.org/secretariat/125727.

As regards the situation of female refugees, the *Deutscher Frauenrat* calls for this group to be taken into consideration in NAP 1325 as "active contributors to the development of (future) peace processes and the democratic reconstruction of their societies".

The *German Women Lawyers Association* and *Women's Security Council* also see need for action to incorporate the global agenda featured in UNSCR 1325 in other basic foreign and security policy strategies, namely the Guidelines on Civilian Crisis Prevention which are currently being drafted and will substitute the 2004 Action Plan for Civilian Crisis Prevention, ,as well as the White Paper on the Security Policy of Germany and the Future of the German Federal Armed Forces, published by the German Cabinet in July 2016. Referring to civil society demands, the *Lesbian and Gay Federation* underlines the evaluation report's assertion that it is necessary to extend the comprehensive approach beyond the concept of security to apply to a concept of human security too by incorporating UNSCR 1325 provisions in these key documents. Using examples from the new White Paper, it outlines in more detail than the evaluation report how, despite announcements to the contrary, the global agenda has not been properly taken into consideration.

With regard to the peace and security policy action plans, the *Bundesverband Trans** points out the importance of fostering local-level trans* initiatives in eliminating discrimination and violence against women. It calls in particular for the inclusion of relevant alliances and integrated approaches in the Development Policy Action Plan on Gender Equality 2016 – 2020 to optimise its effectiveness. In order for UNSCR 1325 to be fully implemented in all areas, the *German Women Lawyers Association* and *Women's Security Council* urge the German Government to follow the example set by other countries and set up a national coordination body.

The *German Women Lawyers Association* and *Women's Security Council* further criticise the insufficient resources and funding earmarked for the implementation of the global agenda. They consider a "comprehensive gender budgeting strategy" to be absolutely necessary for the next implementation phase of NAP 1325 for it to meet the standards that apply to the development and monitoring of government funds. It also criticises the first implementation phase of NAP 1325 for being "too vague in its formal monitoring and evaluation mechanisms". In order for future implementation to meet international norms, they call on the German Government to adopt corresponding monitoring standards.

Agenda for women, peace and security in Germany

As regards individual matters related to developing the agenda for women, peace and security, the *German Women Lawyers Association* and *Women's Security Council* refer to opinions and recommendations of the CEDAW Committee and note several areas where they see a specific need for improvement. These include introducing a "more explicit code of conduct" for the Federal Armed Forces regarding sexual harassment, abuse and exploitation, and that this be consistently implemented for example through preventative measures and remedies for those affected. Moreover accommodation and support services, etc. tailored to the specific circumstances and needs of female refugees, including victims of sexual violence, need to be provided. The gender dimension should be given more consideration in refugee policies, for example in the matter of family reunion.

Based on the example of the case heard at the Criminal Court of Stuttgart in September 2015, which resulted in the conviction of two military leaders accused of war crimes in the Democratic Republic of Congo but during the course of which sexual crimes could not be taken into account, the two organisations point to the significance of "an adequate investigation and prosecution strategy". This includes investigators capable of dealing with cultural and gender dimensions, appropriate treatment of survivors and proper outreach programmes. Finally, both organisations urge that when

decisions regarding arms exports are taken, the risk of the weapons being used to facilitate or support violence against women be considered.

With regard to the preparation of missions involving civilian, police and military staff, the *German Women Lawyers Association* and *Women's Security Council* call for more efforts to be made to make gender training courses mandatory.

The *Lesbian and Gay Federation* adds to the evaluation report's comments, based on a requirement of UNSCR 1325, calling for the German Government to introduce appropriate measures to its personnel policy to ensure the employment of women, especially at the level of senior management, by stating that in this regard "gender training and further training for all decision-makers" is essential.

D. Field of action combatting trafficking in human beings

Comments made by civil-society groups and organisations

- *KOK* – German NGO Network against Trafficking in Human Beings, info@kok-buero.de
- The *Lesbian and Gay Federation* in Germany, National Branch Office, Henny Engels, lsvd@lsvd.de

The *KOK* welcomes the inclusion of this topic in the evaluation report and supports most of its statements. It criticises that some of the forms of exploitation that occur in reality are not fully examined; these topics are not yet expressly covered by the German Criminal Code, something that could be changed with the current redrafting process. As regards the rights of trafficked persons, the *KOK* considers that despite some improvements "one cannot observe a human rights-based approach, which puts the rights of trafficked persons at the center of all measures". Activities implemented by political decision-makers and the authorities primarily focus on criminal prosecution of perpetrators. Alongside the key recommendation that equal attention be paid to considering and implementing victims' rights as to criminal prosecution, the *KOK*'s comment includes a series of demands regarding victim support and protection, something that could have a positive impact on their willingness to cooperate in the criminal prosecution process.

The *Lesbian and Gay Federation* supports the *KOK*'s comments about this field of action.

The right to protection in Germany for trafficked persons

The *KOK* makes two points regarding the legally stipulated period of at least three months, during which trafficked persons from non-EU states can decide whether they want to cooperate with law enforcement agencies. Firstly, in reality this reflection and stabilisation period, during which the trafficked person cannot be deported and receives access to social benefits under the Asylum-Seekers Benefits Act (the *KOK* points out that this is at times wrongly portrayed in the evaluation report), is all too often not fully respected. Moreover, the role played during this period by the law enforcement authorities in identifying the trafficked person or deciding whether they be allowed to remain is problematic. This places a strain on the trafficked person and makes it harder for them to decide whether they want to work with investigators, lawyers or courts. The *KOK* calls for the opinions of specialists with particular experience in dealing with trafficked persons to be given priority in determining the reflection and stabilisation period, and for at least three months to be granted as a general rule.

Support structures for trafficked persons

The *KOK* points to various legal and constitutional opinions questioning whether and to what extent responsibility for setting up and funding support structures (specialised counselling centres) lies with the Länder (federal states), as is described in the evaluation report, rather than the federal government. Moreover, it sees the need to correct the evaluation report's statement that these structures are "relatively well developed for female victims". This is generally true for the existing network of specialised counselling centres where in most cases female trafficked persons receive counselling; however it is far from the case in terms of how well individual centres are equipped and the number of centres in some regions. The comment depicts the lack of sufficient needs assessment and nationwide support structures through the example of support structures for (male) persons who are trafficked for labour exploitation. The *KOK* urges that structures providing support to the different groups of trafficked persons be equipped with proper resources that fulfil their needs.

Raising awareness as a pre-requisite to identifying trafficked persons

The *KOK* adds important groups such as specialised migration centres, counselling centres run by trade unions and language schools to the evaluation report's list of occupational groups who need to receive awareness-raising training on how to treat trafficked persons. It adds that the range of courses offered

by the Federal Criminal Police on trafficking for sexual exploitation was reduced in 2016, despite the fact that the pending legal changes to the German Criminal Code will actually require an increase. Furthermore, the *KOK* sees a need for improvement with regard to awareness-raising training and experience-sharing amongst employees of the Federal Office for Migration and Refugees. In connection with the revision of the Criminal Code, it calls for a systematic expansion of training to include all stakeholders who may be relevant.

Trafficked minors

In the *KOK's* view, the fact that the high level of vulnerability of trafficked minors is not specifically provided for in German legislation is a violation of the UN Convention on the Rights of the Child. For this group, the *KOK* considers it necessary to create regulations concerning residence permits that "focus on the best interest of the child" and apply to both the reflection and stabilisation period – which experts think in most cases needs to lasts significantly longer than three months – and for their cooperation in criminal proceedings. The same goes for how the authorities and other stakeholders deal with the problem of child trafficking, where the *KOK* advocates special training and knowledge in particular, as well as networks and cooperation with other authorities responsible for dealing with children and minors.

Other forms of exploitation

The *KOK* agrees with the report's statement that children are particularly affected by other forms of human trafficking in addition to sexual exploitation and thus require particular support and protection. However, it sees a deficit in the lack of discussion of the impact of other forms of exploitation – forced begging, exploitation for criminal activities, organ trade – on other groups. Above all, it is problematic because as these phenomena are not yet considered forms of human trafficking, victims often do not receive protection or support and are often even treated as perpetrators. To remedy this, legislation on human trafficking needs to be swiftly and comprehensively reformed and mechanisms need to be created tailored to individual requirements so that trafficked persons can be identified and offered support and protection.

Statutory accident insurance and recruitment agencies

The *KOK* considers it "unrealistic" for the evaluation report to state that statutory accident insurance plays a minor role in the area of trafficking for labour exploitation on the basis of a sample of four phone calls. It outlines its own findings and activities. On the role of the International Placement Services of the German Federal Employment Agency, especially in the recruitment of care workers and domestic staff, it points out that the verification of whether the position meets legal requirements is only based on written documents and not real conditions.

E. Field of action elections: voting rights of persons with disabilities

Comments made by civil-society groups and organisations

- *Interessenvertretung Selbstbestimmtes Leben* in Deutschland e.V. – ISL (representative body of autonomous living in Germany), Federal Association, Dr. Sigrid Arnade, sarnade@isl-ev.de

The *Interessenvertretung Selbstbestimmtes Leben* praises the "intensive research" that went into the evaluation report, "reflected in particular in the nuanced representation of the hurdles and possibilities relating to people's de facto ability to exercise their right to vote". It does however point out the lack of a nuanced portrayal of the problem of the blanket legal ban that disenfranchises certain groups of disabled people and laments that important human rights provisions are not taken into account.

Disenfranchisement

The evaluation report notes the view of disabled people's associations that the partial exclusion of disabled people who are under care or who live in psychiatric hospitals constitutes a violation of the UN Convention on the Rights of Persons with Disabilities. The *Interessenvertretung Selbstbestimmtes Leben* terms inadequate the report's remark that such a partial exclusion, observed inter alia by the European Agency for Fundamental Rights (FRA), complies "with ODIHR recommendations[8]", which offer the opportunity to withdraw the voting rights of certain groups.

Listing individual provisions of the Federal Electoral Act, European Elections Act and Land electoral legislation, it criticises the evaluation report for failing to mention important topics regarding statutory disenfranchisement. Referring to the UN Convention on the Rights of Persons with Disabilities (2009), an explanatory report to the Code of Good Practice in Electoral Matters adopted by the Venice Commission of the Council of Europe (2011) and a series of other international resolutions and recommendations from the past five years, it explains that the wholesale withdrawal of suffrage that the report "merely speaks of in neutral terms [...] are termed as against international law or discriminatory" in the context of key human rights mechanisms.

The *Interessenvertretung Selbstbestimmtes Leben* concludes that taken in isolation the OSCE's 2003 recommendations, used in the report to justify a wholesale statutory disenfranchisement of disabled people, cannot be used as a benchmark. Given that the recommendations were drafted before the UN Convention on the Rights of Persons with Disabilities and other recommendations were adopted, they themselves should in fact come under scrutiny in the evaluation report.

8 OSCE/ODIHR, Existing Commitments for Democratic Elections in OSCE Participating States, a Progress Report, 6 October 2003, http://www.osce.org/odihr/elections/42930.

F. Field of action transparency and democratic institutions: transparency of parties' and representatives' incomes and political interest representation

Comments made by civil-society groups and organisations

- *LobbyControl*. Initiative promoting transparency and democracy, Timo Lange, kontakt.@lobbycontrol.de
- *Transparency International Germany*, Working Group on Policy, Dr. Wolfgang Jäckle, wjaeckle@transparency.de

With regard to the transparency of parties' incomes, *LobbyControl* welcomes the discussion of problems regarding party donations and sponsorship. In terms of avoiding conflicts of interest for members of parliament and government as well as transparency in the field of political interest representation, the organisation names concrete aspects that need to be clarified and lists a series of measures that should be implemented to limit the influence exerted by donors, associations and other stakeholders on political representatives.

Transparency International Germany notes that all of its organisation's demands are featured in the report, which at times goes even further than they do. The comment doesn't remark on individual details and the organisation sees "no need for improvement".

Party financing

Whilst the report discusses this problem, *LobbyControl* considers the threshold of 50,000 euros, above which donations must be declared, as too high, regardless of whether it is watered down by the option of splitting up donations and the "unclear" wording of the Political Parties Act. Moreover, it criticises the negative impact on transparency of the fact that information about individual donors, whose contributions exceed 50,000 euros over the course of a year, can only be obtained with a delay of at times over 12 months from parties' financial reports.

The organisation also criticises the negotiated threshold of 10,000 euros a year under which donors names do not have to be disclosed, a subject not mentioned in the evaluation report. Due to this relatively high amount "the provenance of 76 percent of party donations from companies and associations remains unknown". Moreover, there is no obligation to disclose which branch of a party individual donations are allocated to, meaning there is no transparency regarding the proportion of donations in the overall budget of specific party sections.

LobbyControl calls for disclosure obligations to be amended so that party donations above 10,000 euros must be declared immediately and, in cases of donations above 2,000 euros, party financial reports must include details of the donor and section of the party a donation is earmarked for.

LobbyControl comments on the figure given in the evaluation report, based on information from the organisation abgeordnetenwatch (MP watch) obtained from the financial reports of parties represented in the German Bundestag, putting their income from sponsorship in 2014 at 33 million euros. It states that, due to the vague criteria applied to them, financial reports cannot be used for such a purpose. The figure is rather based on an amalgamation of figures collated in one category of "income from events, sales of printed materials and publications and other income-generating activities" – meaning that "the overall amount of income from sponsoring [... remains] unknown".

LobbyControl demands that party sponsorship be subject to the same transparency obligations on use as party donations. Trade-offs for party sponsorship should be clearly indicated. Furthermore, a "more consistent" evaluation of individual cases is called for to exclude a situation in which "excessive sponsorship payments having to be classified as hidden donations".

Members of parliament and the government

LobbyControl suggests that the topics of "the transparency and regulation of elected officials' additional activities and income" and "the regulation of employment of public officials following their time in office" be dealt with separately, despite the fact that they are combined in the evaluation report. This would prevent confusion e.g. when "Bundestag members' additional income" (section 3.2.) is examined under both topics. The organisation points out, inter alia, that the new 2015 provisions, cited in this section, of legislation governing the legal relationships of parliamentary state secretaries and in the Members of the Bundestag Act only apply to the Federal Chancellor, federal ministers and parliamentary state secretaries, and that the decision regarding a period of grace lies with the Federal Government and not with the President of the Bundestag, as stated in the report.

LobbyControl considers the topic of additional income and conflicts of interest of members of the German Bundestag to be "suitably described". It adds that assessment of whether specific remunerations are appropriate is "significantly hampered" by the fairly vague figures on the sum of the payments. The organisation feels that the report's request that members of the German Bundestag should give more precise information regarding the branches or sectors in which they carry out their additional activity could relatively easily be fulfilled by drawing on the existing codes of conduct. The implementation regulations for the President of the German Bundestag should simply get amended. As regards the application of article 6 of the code of conduct, on "connected interests on the committee", it outlines deficits regarding clear provisions on disclosing a conflicts of interest and the lack in practice of consequences of failing to do so. *LobbyControl* proposes that the German Bundestag should develop a rule on conflicts of interest stipulating that "members of parliament must refrain from participating in certain processes should there be a serious conflict of interest that cannot be resolved."

LobbyControl's criticism of the period of grace of three to five years in cases where public interests are concerned, provided for under section 105 of the Federal Civil Service Act, applied to a move to companies and associations of former senior public officials including former state secretaries and primarily relates to its insufficient application and lack of public understanding. The organisation demands that such changes be subject to an assessment by an independent body. The period of grace that, under certain circumstances, can apply to the Federal Chancellor, federal ministers and parliamentary state secretaries, is considered by *LobbyControl* to be "much too short". It also criticises the lack of punitive regulations as well as the low level of consideration given to the "particular problem of a move into activities explicitly involving political interest representation".

Transparency in interest representation

On the topic of transparency in interest representation, *LobbyControl* notes that contrary to the impression given in the evaluation report, the main topic is by no means access to passes for the German Bundestag. The organisation expressly contradicts the conclusion that more transparency would be achieved by limiting access to such passes, because admission to certain buildings does not necessarily have any particular influence on access to members of parliament and government representatives. Amongst the various important aspects of transparency in interest representation, the organisation particularly notes the call for the introduction of a "binding lobby register as a key element in comprehensive lobbying and transparency legislation".

G. Fields of action not included in the evaluation report

The human rights situation of trans* people

- *Bundesverband Trans** – für geschlechtliche Selbstbestimmung und Vielfalt e.V. i. Gr. (federal trans* association – in favour of gender self-determination and diversity), Board, info@bundesverband-trans.de

At the beginning of its comment, the *Bundesverband Trans** (association) details "past and present human rights violations [affecting trans* people] that require recognition and redress" and makes certain concrete demands. It notes that it had sent its basic comments to the German Institute of Human Rights in the form of a statement "at an early stage, when the topics [to be evaluated] were being chosen". Given that its concerns were not included in the evaluation report, it sees a need for "significant additions to and amendments of" the report.

With reference to international conventions as well as a decision of the European Court of Justice stipulating that trans* people are protected on the grounds of gender or other reasons and that discrimination against them "is recognised as discrimination based on gender", the organisation considers that all of the points in its comment fall "under the report's criteria":

- The system of having two categories of persons including the "lengthy and arduous" process of changing one's status and first name under the Transsexuals Act, which excludes the many forms of trans* people. The association calls for registration of a person's status to be abolished, or at least for "between the sexes categories" to be introduced which could be selected on the basis of autonomous decisions.
- The practice of courts to go "beyond the provisions contained in legislation" in procedures – little regulated by the Transsexuals Act - on establishing a trans* person's gender identity and to demand lengthy "pathologising" external assessments be carried out, at great cost to the person in question and with results which experts consider to be "not very insightful". With reference to Council of Europe and European Parliament resolutions as well as the Federal Constitutional Court, the association calls for an "immediate reform of the Transsexuals Act" in line with international human rights standards and with the substantial involvement of trans* people and inclusion of the expertise of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Anti-Discrimination Agency.
- The injustice of forced sterilisation, estimated by the association to have been carried out in 15,000 cases, that was compulsory when someone changed their gender status until 2011, until this provision of the Transsexuals Act was suspended by the Federal Constitutional Court. The association calls for compensation for victims of this violation of a person's general rights – established as such by the Federal Constitutional Court – and for a wide-reaching societal examination of this injustice.
- The process of diagnostic medical treatment of trans* people, which trans* people's organisations consider to violate human rights "according to applicable treatment standards", and which also comes under criticism from medical associations. With reference to the fundamental decision of the European Court of Human Rights on gender reassignment surgery, the association calls for an overhaul of guidelines in line with international standards, with the substantial involvement of trans* people.
- Shortcomings of The General Act on Equal Treatment in protecting trans* people, who are subject to above average levels of discrimination in the healthcare system, from authorities, in job hunting and in the social security system, from discrimination. This, however, is not adequately reflected in the number of complaints made due to reasons such as legal uncertainty. The association calls for a comprehensive reform of the law in order for protection against discrimination for trans* people to "be useful […] in practice".

Summary: Peter Wittschorek | August 2016
Center for International Peace Operations (ZIF) | www.zif-berlin.org
Translation: Federal Foreign Office