ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Germany

UPR Session and Date of Review: 30th Session, May 2018

Background

Germany has been a participating State in the former Conference for Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1973 and has thus undertaken and has recently reaffirmed a wide range of political commitments in the "human dimension" of security as outlined in relevant OSCE documents.[1]

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Germany, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Germany and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Germany.

Overview of this Submission

This submission contains a brief overview of election related activities undertaken by ODIHR in the past four years.

The findings of ODIHR most recently observed (24 September 2017) parliamentary elections are summarized below.

The authorities in Germany and other sources have provided information to ODIHR most recently for its most recent (2015) annual report on *Hate Crimes: Incidents and Responses*. Extracts from this information are included below.

Finally, there is a short overview of ODIHR assessments and activities in the area of international co-operation and human rights mechanisms, human rights defenders, laws, administrative procedures and requirements governing the operation of NGOs, regulatory restrictions on freedom of peaceful assembly, access to information of public interest and whistleblowers and migration and Freedom of Movement.

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[1] Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

Election-related activities

ODIHR most recently observed the 24 September 2017 parliamentary elections and has deployed Election Expert Team (EET) for these elections.[2]

Based on the findings and conclusions of a Needs Assessment Mission (NAM) deployed from 12 to 14 July 2017, ODIHR has deployed an Election Expert Team (EET) for these elections. The EET was based in Berlin, from 11 to 28 September 2017, will publish its final report some eight weeks after the elections.

The NAM assessed the pre-election environment and preparations for the parliamentary elections and tasked the EET to assess the electoral process for compliance with OSCE commitments, other international obligations and standards for democratic elections, as well as national legislation, and in particular to the campaign finance system and the legal and campaign environment.

The NAM report noted confidence among most of the interlocutors in the integrity of the electoral process and the professionalism and impartiality of the election administration. However, some concerns were expressed about equal campaign opportunities and campaign finance regulations.

ODIHR will publish the final report of the Election Expert Team in the course of approximately 8 weeks after the conclusion of the electoral process.

Legislation reviewed by ODIHR

Upon request by authorities of a participating State, and OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and ODIHR supports states in their implementation of those commitments. In this context, ODIHR reports at http://hatecrime.osce.org/ to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR's data on hate crime is launched online each year on 16 November, covering information from the past calendar year. ODIHR also helps participating States design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

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[2] All previous ODIHR reports on Germany can be found: http://www.osce.org/odihr/elections/germany.

Information concerning Germany in the most recent (2015) edition of the annual hate crimes reporting[3] includes the following:

- **Overview of officially reported data**

Germany regularly reports hate crime data to ODIHR. Germany's Criminal Code contains a sentencing provision applicable to any crime in the Code. Hate crime data are collected as part of its framework addressing politically-motivated crimes. Data on hate crime and hate speech are collected together; however, authorities are able to disaggregate data on violent offences. Authorities responsible for data collection include the police at the state and federal levels and the Federal Statistics Office.

The annual 2015 figures included 3046 incidents recorded by police; data on prosecuted and sentenced cases are not available.

Police recorded 2447 hate crimes motivated by racism and/or xenophobia, 192 anti-Semitic hate crimes, 339 hate crimes against Christians and members of other religions, 80 hate crimes biased by victim's sexual orientation and gender identity and 5 hate crimes against people with disabilities and other groups.

Official figures recorded 2447 racist and/or xenophobic hate crimes, including 8 homicides, 977 physical assaults, 99 arson attacks, 913 incidents of damage to property, 359 cases of threats, 44 cases of theft/robbery, 2 cases of desecration of graves and 45 cases related to disturbance of the peace.

Official figures recorded 192 anti-Semitic hate crimes, 34 physical assaults, 115 cases of damage to property, 2 arson attacks, 17 cases of theft/robbery, 3 cases of desecration of graves and 21 cases of threats.

Official figures recorded 339 hate crimes against Christians and members of other religions, including 3 homicides, 85 physical assaults, 5 arson attacks, 154 cases of damage to property, one case of theft/robbery, 3 cases of desecration of graves, 6 cases related to disturbance of the peace and 82 cases of threats.

Official figures recorded 80 hate crimes biased by sexual orientation and gender identity, including 51 physical assaults, 10 cases of damage to property, 3 cases of theft/robbery, one case related to disturbance of the peace and 15 cases of threats.

Official figures recorded 5 hate crimes against people with disabilities and other groups, including 3 physical assaults and 2 cases of threats.

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[3] Available at http://hatecrime.osce.org/germany.

- **Overview of incidents reported to ODIHR by civil society**

• Bias Motivation	Attacks Against People		Attacks Against Property
	Violent Attacks	Threats	
Racism and xenophobia	8	2	5
Anti-Semitism	58	10	66
Bias against Muslims	2	1	2
Bias against Christians and members of other religions	6	3	17
Bias based on sexual orientation and gender identity	117	69	12
Total	**191**	**85**	**102**
Grand Total	**378**		

The following civil society organizations reported information on incidents to ODIHR

Racism and xenophobia

- The coalition of civil society groups Hate Crime Counselling Project reported 1,004 racist and xenophobic incidents, which included physical assaults, harassment, threats and damage to property.

Bias against Roma and Sinti

- The coalition of civil society groups Hate Crime Counselling Projects reported 32 anti-Roma incidents, which included physical assaults, harassment, threats and damage to property.

Anti-Semitism

- The Amadeu Antonio Foundation reported 12 physical assaults, including four assaults committed by groups; three threats; four incidents of damage to property; 15 incidents of vandalism and the desecration of graves in a Jewish cemetery.

Bias against Muslims

- Insaan reported two physical assaults, including an attack carried by a group on an elderly Sikh man mistaken for a Muslim, an incident of threats and two incidents of vandalism involving graffiti.

Bias against Christians and members of other religions

- Jehovah's Witnesses – Germany reported a physical assault on a man; one threat that also caused damage to the victim's vehicle; two incidents of damage to property, including one that involved the use of an air-gun and one targeting a place of worship; and six incidents of graffiti on places of worship.

Bias based on sexual orientation and gender identity

- MANEO reported 78 physical assaults targeting LGBT people, including eight that were classified as serious; 39 robberies; 9 burglaries; two incidents of damage to property; one case of vandalism; and 69 incidents of threats.

Bias against people with disabilities and other groups

- The coalition of civil society groups Hate Crime Counselling Project reported four incidents targeting people with disabilities, including physical assaults, harassment, threats and damage to property.

Roma and Sinti issues

N/A

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Migration and Freedom of Movement

Germany was among those OSCE participating States, which representatives of key national authorities participated in following events organized and led by ODIHR in the area of migration:

- The international conference "Exploring challenges to political participation of migrants in the OSCE region" organized by ODIHR in co-operation with the European University Institute (EUI) in Florence on 18-19 June 2015. This conference was organized with a view to raise awareness among OSCE participating States of the importance of including migrants in in democratic governance processes.[4]
- The regional expert meeting "Migration crisis in the OSCE region: safeguarding rights of asylum seekers, refugees and other persons in need of protection held in Warsaw on 12-13 November 2015.[5] The meeting provided a platform for a first-hand and working-level exchange of the latest information on the situation of asylum seekers, refugees and other persons in need of protection who cross or intend to cross the borders of OSCE participating States affected by the crisis along the Western Balkans migratory route.[6]
- The international conference "On migrants in an irregular situation, whose return or removal has been postponed, in line with OSCE commitments, international legal standards

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[4] Representatives of Austria, Canada, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Montenegro, Portugal, Romania, the Russian Federation, Serbia and Switzerland participated in this conference. The conference provided an opportunity for 26 participants (13 men and 13 women) from the state institutions of the above-mentioned participating States and academia to exchange good practices and analyze challenges and lessons learned in implementing OSCE commitments focused on political participation of migrants in the OSCE region.

[5] The expert panel meeting gathered representatives from the border and asylum authorities of Austria, Croatia, Germany, Greece, Hungary, the former Yugoslav Republic of Macedonia, Poland, Serbia, Spain, Switzerland and from diplomatic representations from Slovenia and Turkey, as well as experts from the Office of the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), Frontex, the OSCE Mission to Serbia, the OSCE Mission to Skopje and the OSCE Secretariat. Representatives from civil society organizations and academia also participated in the meeting. Participants offered examples of good practices from the OSCE region related to the exercise of freedom of movement, the dignified treatment of persons crossing borders and the protection of related human rights. They also explored possible ways to further improve the situation of asylum seekers, refugees and other persons in need of protection and to ensure the protection of their rights in line with international obligations.

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and good practices" held in Riga on 22 -23 March 2017. The good practices for managing situations where the removal or voluntary return of irregular migrants has been postponed and the rights and guarantees of such persons were the focus of the conference discussions.[7]

Access to information of public interest and whistleblowers

OSCE participating States that indicated their protections for access to information and/or whistleblowers included: Bosnia and Herzegovina, Georgia, **Germany**, Latvia, Lithuania, Montenegro, Slovakia and Sweden.

In Germany, while the Criminal Code punishes dissemination of propaganda and disclosure of State secrets in some cases, it also provides exceptions and special protections for media and journalists, including among others "that acts of aiding by a journalist shall not be deemed unlawful if these acts are restricted to the receipt, processing or publication of the secret."[8]

Regulatory restrictions on freedom of peaceful assembly

Several OSCE participating States informed ODIHR of their strong protections of the right to freedom of peaceful assembly. With regard to prior notification, Germany noted that it requires registration of outdoor public assemblies 48 hours prior to their public announcement, though only to facilitate authorities' preparation, and still without any permit requirement. Such a requirement of prior notification is in line with the ODIHR Guidelines on Freedom of Peaceful Assembly.

Laws, administrative procedures and requirements governing the operation of NGOs

Numerous OSCE participating States provided ODIHR with details of their regulations and protections of the right to freedom of association, including good practices. As good practices, several States, including Germany, noted that their laws provide for freedom of association without any restrictions or registration requirements, allowing human rights defenders freely and informally to associate, or to register in order to establish formal associations (as registered legal entities).

Protection of human rights defenders in other OSCE participating States and beyond the OSCE region

Germany identified several good practices including: high-level interventions in urgent cases; regular implementation of the EU Guidelines; granting financial support, refugee status and/or residence permits to at-risk defenders; and awareness-raising initiatives, such as regional conferences; among others.

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[7] It brought together 76 participants (47 women and 29 men), mostly officials responsible for migration management issues. Participants came from a range of OSCE participating States: Armenia, Austria, Azerbaijan, Belgium, Croatia, Estonia, Georgia, Germany, Latvia, Lithuania, Luxembourg, Moldova, Norway, Poland, Slovenia and Ukraine. Experts from the European Commission, the Council of Europe, the International Organization for Migration, the UNHCR Regional Representation for Northern Europe, and the Secretariat of the Council of the Baltic Sea States, as well as representatives from specialist civil society organizations and academia, also participated in this event.
[8] Criminal Code of Germany (StGB), Section 86 (1) and (3), and Section 353b (3a).

International co-operation and human rights mechanisms

The Czech Republic, **Germany**, Ireland and Switzerland noted that they regularly raise concrete cases of human rights violations against human rights defenders in the Human Rights Council, through national statements367 under item 4 (human rights situations that require the Council's attention) and item 10 (technical assistance and capacity building).

Other assessments and recommendations contained in ODIHR reports on thematic human issues

N/A