

**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 Human 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 Helsinki³ and Copenhagen⁴, 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 organisations⁵

- *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 Brandstätter, 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@frauenhauskoordination.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 Equality⁶ 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*, geschaefsstelle@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 OSCE⁷ 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 Association* 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 last 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 recommendations⁸”, 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

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