

Ref: CommHR/DM/sf 023-2019

Ms Andrea LINDHOLZ

Chairwoman, Committee on Internal Affairs and Community
Parliament of the Federal Republic of Germany

Strasbourg, 16 May 2019

Dear Ms Lindholz,

I am writing to you regarding the bill that aims at facilitating removals of people obliged to leave Germany ("*Geordnete-Rückkehr-Gesetz*"). The human rights of refugees, asylum seekers and migrants are a central aspect of my work as Council of Europe Commissioner for Human Rights. While I acknowledge that, as a matter of well-established international law, Germany has the right to control entry of non-nationals into its territory and return those not or no longer allowed to stay, I wish to reiterate that removals should take place in safety and dignity and must be carried out with transparency to ensure that the human rights of the persons concerned are respected at all stages.

I would like to address more specifically two elements of the bill.

Firstly, I am concerned about the proposed measure that classifies information relating to the practical steps leading to a removal, in particular the timing of planned removals, as state secrets. Although the provision only concerns public officials, I understand from the explanatory memorandum that members of civil society and NGOs might be prosecuted for aiding or abetting the disclosure of confidential information, when disseminating any information related to planned removals in the course of their various activities.

In this respect, I wish to reiterate the important role played by human rights defenders in making state policies and actions human rights compliant and authorities accountable. They are also instrumental in defending victims of human rights violations and ensuring their access to redress and remedy. In order for civil society organisations and their individual members to carry out their crucial work, they require the freedom to fully exercise their rights without unjustified interference.

In its Resolution 1551 (2007), the Parliamentary Assembly of the Council of Europe underlined that "the state's legitimate interest in protecting official secrets must not become a pretext to unduly restrict the freedom of expression and of information, (...) and the work of lawyers and other defenders of human rights."

In line with the NGOs' particular role of "watchdog" played in a democratic society, the European Court of Human Rights ("ECtHR") has repeatedly stressed that an association has to be able to impart facts of interest to the public, give them its assessment and thus contribute to the transparency of public authorities' activities to effectively perform its task (ECtHR, *Vides Aizsardzibas Klubs v. Latvia*, no. 57829/00, § 42, judgement of 27 May 2004).

In addition, the ECtHR emphasised, under Article 10 of the European Convention on Human Rights, that a penalty imposed for disclosing confidential information should not amount to a form of censorship. In the context of a debate on a topic of public interest, such a sanction is likely to deter people from contributing to public discussion of issues affecting the life of the community. In this regard, the proportionality between the sanction imposed and the aim pursued is of particular importance.

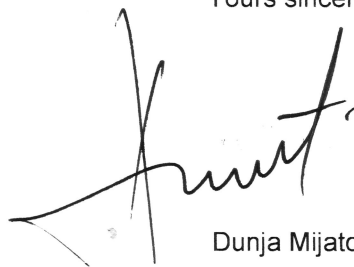
Consequently, I am concerned that the provision, as it stands, could have an impact on freedom of expression; it has the potential to criminalise NGOs' activities, and risks creating a chilling effect on freedom of information of the concerned organisations. I call on the Parliament to refrain from taking any measures criminalising, stigmatising or putting at any disadvantage individuals and NGOs providing humanitarian assistance to, and defending the rights of, refugees, asylum seekers and migrants, and to restore an enabling environment conducive to their work.

I am also concerned that migrants may be denied accurate information about the date and time on which they will be removed. I consider information regarding the timing of a removal as an essential element for ensuring that the rights of persons concerned are adequately protected. Similarly, both the Committee of Ministers of the Council of Europe, in its Twenty Guidelines on Forced Return, and the Committee for the Prevention of Torture (CPT), have highlighted the importance of information provision in the context of forced return. In its report to the German Government recently published, the CPT stressed that "a timely notification of the removal gives the foreign nationals concerned time to prepare for departure and organise their return, and particularly to inform the persons they need to let know and to retrieve their personal belongings." Making arrangements in the country of origin can indeed be an important means to ensure return in safety and dignity, in particular for vulnerable persons. I further note that lack of precise information about the moment of removal may deprive individuals of the possibility of seeking legal advice. In this context, I strongly encourage you to ensure that persons faced with removal will always receive timely and accurate information about the timing of their removal.

Secondly, it is my understanding that the bill intends to expand the grounds for detention of migrants pending expulsion. Immigration detention constitutes a far-reaching interference with people's right to liberty, and often has very harmful effects on migrants. There has been little evidence that expanding possibilities to detain migrants has necessarily led to more effective returns. In this regard, I have noted that the number of migrants in detention in Germany has more than doubled from 2015 to 2017, while at the same time the number of deportations carried out remained stable. Rather than looking at expanding detention possibilities, I thus encourage you to ensure that the government invests in accessible and effective alternative measures that allow the state to meet its migration control needs, whilst avoiding as much as possible the resort to detention. The recent report 'Legal and practical aspects of effective alternatives to detention in the context of migration' by the Council of Europe's intergovernmental Steering Committee for Human Rights (CDDH) shows that alternatives are not only an essential tool for safeguarding the human rights of migrants, but also, if properly implemented, a tool to increase the effective compliance with immigration procedures, when they are based on trust, communication and engagement between the migrant concerned and the authorities.

I would be grateful if you could ensure that all members of your Committee receive a copy of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', written in a cursive style.

Dunja Mijatović