

## **Preliminary remarks**

### **on sections II (Freedom of peaceful assembly) and III (Freedom of expression)**

Germany takes note of the Council of Europe Commissioner for Human Rights' remarks concerning the protection of freedom of peaceful assembly and freedom of expression in Germany. The memorandum reiterates a number of observations and concerns already expressed in the Commissioner's letter from June 2025 to the German Federal Minister of the Interior to which the latter has already responded<sup>1</sup>.

The Commissioner's visit provided an opportunity to discuss these issues face to face, explain the legal framework and its practical implementation and provide information on the situation in Germany. We thank the Commissioner for this opportunity and the constructive dialogue.

With regard to the alleged facts and concerns raised in the Memorandum, however, Germany again and firmly wishes to express its disagreement with allegations of unlawful acts by the German authorities.

The rights to freedom of expression, of association, of assembly as well as asylum and citizenship are fundamental legal rights in Germany (enshrined in the German Basic Law and to a large extent binding as European Union law) which are protected and defended by all government authorities. However, these freedoms are not unconditional, but instead reach their limits wherever they are directed against the rights of others and violate rules which are necessary for all to live peacefully together.

This applies to all expressions of opinion, assemblies and associations, including those in the context of pro-Palestinian protests. Any restrictions of these rights are based on individualised assessments of the specific circumstances and acts, applied by the competent authorities on the basis of the rule of law and are subject to independent judicial review.

As we will explain in more detail below, Germany sees no evidence that the above-mentioned rights have been violated by the German authorities.

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<sup>1</sup> <https://rm.coe.int/letter-to-federal-minister-of-the-interior-germany-by-michael-o-flaher/1680b64870>;  
<https://rm.coe.int/reply-of-german-minister-of-interior-to-the-commisisoner-s-letter/1680b678ee>.

## **Section II: Freedom of peaceful assembly**

Freedom of peaceful assembly is protected under Art. 8 of the German Basic Law, which provides that all Germans have the right to assemble peacefully and unarmed without prior notification or permission (Art. 8 (1) Basic Law). However, this right may be restricted by law and in accordance with the principles of legality, necessity, proportionality and non-discrimination<sup>2</sup>. Restrictions are e.g. possible when criminal law is violated, assemblies call for violence, hate or incitement, or challenge in any form Israel's right to exist. This applies to all assemblies, including assemblies in the context of pro-Palestinian protests.

According to section 15 of the Act on Assemblies and Processions and the corresponding provisions in the relevant law of the state where the assembly is to take place, an assembly can be banned in advance or dispersed after it has started in the event of an immediate threat to public security. However, banning or dispersing an assembly is always a last resort. If restrictions, such as certain requirements, are sufficient to counter the immediate threat, then ordering such restrictions takes precedence over imposing a ban. Violations of bans or of obligations under the law on assemblies can be punished as criminal or administrative offences (sections 21 to 29a of the Act on Assemblies and Processions and the corresponding provisions in the relevant law of the state in which the assembly takes place). In exceptional cases, this may also include the use of force by police officers. However, the use of force is always a last resort and is applied only in cases such as the violation of specific assembly restrictions, criminal laws or threats to public security. Such enforcement actions are typically announced in advance, and demonstrators therefore have the opportunity to avoid the use of force by behaving in a lawful manner.

Therefore, according to Germany's Basic Law and the corresponding state-level legislation on public assemblies, assemblies may be prohibited in advance, dispersed or subject to restrictions only if and to the degree necessary and appropriate to prevent imminent threats to public security – in particular to prevent criminal offences. This applies particularly to content-related measures which limit freedom of expression and assembly. These measures apply to the use of symbols of

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<sup>2</sup> Article 8 (2) of the Basic Law states that, for outdoor assemblies, this right may be restricted by law or pursuant to a law. The relevant regulations are found in the federal Act on Assemblies and Processions (Versammlungsgesetz). The power to legislate on matters related to the right of assembly rests with the federal states who are responsible for enforcing the laws on assemblies.

associations which have been banned by law in Germany, such as Hamas and Samidoun; the measures are also applied to prevent the use of slogans and chants which incite hate on religious or ethnic grounds. These are slogans and chants which call for people to be killed, injured or taken hostage, or which endorse or glorify such acts of violence. Calls for the destruction of the State of Israel and its inhabitants may also be grounds for bans, as may slogans calling for the use of violence.

All of these measures are grounded in the principles of proportionality and non-discrimination, which must be upheld to the fullest extent by all government authorities. German laws do not contain any standards that depart from the European Convention of Human Rights or other international human rights.

As the Commissioner has rightly pointed out, only a very small number of assemblies are prohibited, either because of concrete indications in advance that there will be calls for hate and incitement, in some cases even violence, in the context of these assemblies, and that criminal law will be violated; or because situations have arisen during the assembly which make it impossible to continue due to the conduct of assembly participants. The overwhelming majority of pro-Palestinian assemblies can take place, and the vast majority of public expressions of support for the concerns of Palestinians is not subject to criminal prosecution.

Current developments in the Middle East continue to have enormous potential to arouse strong emotions and mobilize Palestinian sympathizers worldwide, including in Germany, to act peacefully. But the situation unfortunately also serves as a motive and justification for some other actors to commit crimes in Germany. These anti-Israel and anti-Jewish rallies typically consist of a broad spectrum of participants who have nothing in common except pure hatred of Israel and the Jewish people. The unifying element, or "bridge narrative," is anti-Semitism and anti-Israel sentiment.

Overall, it can be stated that the Middle East conflict is being carried into society by the aforementioned groups in a highly aggressive and increasingly violent manner and is being played out on German territory. This is also reflected in the decreasing distance to terrorist groups such as Hamas, which is seen as the legitimate representative of the Palestinian people. Nevertheless,

the German authorities continue to act with the intention of enabling the assemblies while respecting the principle of proportionality. A ban is always the last resort. This approach and practice have been confirmed as being in accordance with all applicable laws in several court decisions and in several instances. At the same time, it must be emphasized that, as an expression of a resilient democracy, the police must be able to respond with proportionate countermeasures to aggressive and violent actions by demonstrators who have clearly exceeded the limits of peaceful protest.

In this regard, Germany would like to underline that the competences and actions of the police in Germany are not arbitrary, but regulated by law. Their legality is comprehensively monitored and controlled by the independent judiciary, both at the federal and state level. Furthermore, systematic training and awareness-raising measures on antisemitism are being implemented for police and judicial authorities contributing to an improved identification and handling of antisemitic incidents.

With regard to the recommendations of the Commissioner concerning the protection of freedom of assembly, Germany would like to stress that Germany's national law complies with human rights law and with the international human rights standards and guidance on freedom of expression, hate speech and hate crime. Germany would furthermore like to underline that all German authorities apply these legal standards and carefully weigh, in each individual case, the rights of the protesters against other groups' human rights to protection against hate speech and violence, as well as against the need to avert threats to public security and the democratic order. Germany expressly objects to any account that restrictions are based on "blanket assumptions or generalised fears" or "discriminatory assumptions or negative stereotypes". Furthermore, the principle of rule of law and proportionality are central pillars in the profound and worldwide highly appreciated and professional training of German law enforcement.

### **Section III: Freedom of expression**

Freedom of expression is a fundamental legal interest protected by Article 5 of the German Basic Law. It is not unconditional but can be restricted under the condition that any restriction is prescribed by law, pursues a legitimate aim, is strictly necessary and proportionate in a democratic

society. As has been pointed out with regard to the right to freedom of assembly, expressions are allowed and possible as long as they do not violate criminal law, do not call for violence, hate or incitement, or in this context challenge in any form Israel's right to exist. Germany would like to object to any allegations, that restrictions of expression where the aforementioned lines are crossed constitute excessive criminalisation of expression or are based on a distorted definition of antisemitism. With regard to the Commissioner's recommendation on prohibitions of slogans, symbols or other forms of expression in support of the Palestinian people, Germany would like to stress that such restrictions are limited to the use of slogans and chants which incite hate on religious or ethnic grounds or to symbols and slogans that are being attributed to organizations banned in Germany due to their extremist or terrorist nature. These are slogans and chants which call for people to be killed, injured or taken hostage, or which endorse or glorify such acts of violence. Calls for the destruction of the State of Israel and its inhabitants may also be grounds for bans, as may slogans calling for the use of violence. In this regard, Germany would like to underline that these restrictions are by no means blanket prohibitions, but based on profound decisions banning an organization and subject to judicial review on a case-by-case basis.

With regard to the application of the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism, Germany would like to again point out that this definition also allows for criticism of Israel and the Israeli government and that such criticism should not be regarded in every case as antisemitic. And the IHRA definition is not meant to be used as the basis for criminal prosecutions. The German government is not aware of any German authorities that view or apply the definition differently in individual cases.

Germany also emphasises that the IHRA working definition of antisemitism is not applied in a way that results in its distortion or misapplication to stifle freedom of expression and legitimate criticism, including of the state of Israel. Not only is it possible to criticise the Israeli government, and the government of every other country; we also consider critical engagement to be an important part of the democratic discourse which we greatly value. Critical or controversial views on Judaism or the State of Israel are equally protected by the freedom of expression; they are however subject to limitations provided by national laws in accordance with international human rights standards. Incitement to hatred or Holocaust denial for example are clearly prohibited.

While freedom of expression protects even sharp criticism, it does not extend to attacks on human dignity.

Regarding the allegations of the use of immigration and residency laws as a means for policing expression, including entry bans and deportation orders, Germany would like to underline that German immigration and residency law is in full compliance with international human rights law, European law as well as national constitutional law. It is applied by the competent authorities on the basis of the rule of law and its application is subject to independent judicial review. However, fundamental rights are not unconditional, but instead reach their limits wherever they are directed against the rights of others or constitute criminal acts. Therefore, criminal acts or acts of violence can be sanctioned to ensure public security, public order and the rights of others. But the peaceful exercise of the right to assembly or of the freedom of expression do not lead to measures with respect to persons' residence statuses.

#### **Section IV: Combatting racism and discrimination**

Protecting Jewish people in Germany is of utmost priority. In the Federal Republic of Germany, protecting Jewish institutions is primarily the task of the federal states. As part of their responsibility, the federal states assess the threat situation for Jewish institutions in their jurisdiction. On the basis of this threat assessment, they assign the applicable threat levels and take the necessary protective measures. The Federal Government assists the federal states by providing information and intelligence. Additionally, the federal government provided the Central Council of Jews in Germany (Zentralrat der Juden in Deutschland, ZdJ) with €22 million of special funding for structural and technical security measures at Jewish facilities in Germany following the attack on a synagogue in Halle (Saale) in 2019. The ZdJ is responsible for the concrete use of the federal funding, which is to be spent in consultation with the responsible state-level authorities. Jewish facilities that do not belong to member organisations of the Central Council are also eligible to apply for funding. In a survey recently conducted by the ZdJ, 93% of the Jewish congregations surveyed reported that they were satisfied with their working relationship with security authorities. At the same time, they expressed an increasing feeling of insecurity in Jewish communities and great fear of attacks in view of growing antisemitism.

In light of the rise in antisemitism and the increasing feeling of insecurity in Jewish communities as well as anti-Muslim hatred, Germany would like to draw attention to recent studies, particularly to illustrate the specific situation in Germany.

The responsible state criminal police offices (Landeskriminalämter, LKA) report politically motivated criminal offences to the Federal Criminal Police Office (BKA) via the Police Reporting Service for politically motivated crime, and these offences are recorded in a central database on case numbers. In 2024, the statistics recorded 21.773 offences in the category of hate crime, which includes not only antisemitic offences but also, for example, racist, misogynistic or anti-Islamic offences: 6.236 antisemitic offences were recorded, representing a 20,8 % increase compared with the previous year (5.164). This is also after the sharp rise in 2023 (the number has almost doubled between 2022 and 2023) the highest figure since records began. This is due to a particularly sharp increase in the category “Politically motivated crime - foreign ideology”. Around 30 % of hate crime cases were motivated by antisemitism and thus affected the tiny Jewish community in Germany, which accounts for only around 0,25 % of the German population.

1.848 cases of anti-Islamic crime have been recorded. This represents an increase of 26,2 % compared with the previous year 2023 (1.464). Between 2022 and 2023, the increase was already around 58,3 % (from 610 to 1.464 offences). The category “Right-wing politically motivated crime” accounts for the majority of anti-Islamic crimes, with 1.581 cases, or around 85,5 %.

In 2024, a further 4.616 offences were recorded in the category of “Racism”. This represents an increase of around 21,8 % compared with the previous year (3.786).

In its latest annual report, the civil-society Federal Association of Departments for Research and Information on Antisemitism (RIAS e. V.) describes the rupture represented by the events of 7 October 2023 and states that antisemitism continues to impact the daily lives of Jews (“Antisemitic Incidents in Germany 2024”)<sup>3</sup>.

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<sup>3</sup> Available at: [https://report-antisemitism.de/documents/04-06-25\\_Antisemitic\\_incidents\\_in\\_Germany\\_Annual-Report\\_Federal\\_Association\\_RIAS\\_2024.pdf?bcsi\\_scan\\_1203b131c7cc8c72=0&bcsi\\_scan\\_filename=04-06-25\\_Antisemitic\\_incidents\\_in\\_Germany\\_Annual-Report\\_Federal\\_Association\\_RIAS\\_2024.pdf](https://report-antisemitism.de/documents/04-06-25_Antisemitic_incidents_in_Germany_Annual-Report_Federal_Association_RIAS_2024.pdf?bcsi_scan_1203b131c7cc8c72=0&bcsi_scan_filename=04-06-25_Antisemitic_incidents_in_Germany_Annual-Report_Federal_Association_RIAS_2024.pdf).

In 2024, the RIAS reporting offices documented a total of 8,627 antisemitic incidents. That is an increase of nearly 77% over 2023, when 4,886 incidents were recorded. RIAS also records incidents that do not constitute punishable offences and therefore do not appear in the police statistics on politically motivated crime. These incidents nonetheless have a serious impact on their victims.

The RIAS report also shows the significant role of Israel-related antisemitism: With 5,857 cases, Israel-related antisemitism was the most common manifestation of antisemitism in 2024. Israel-related antisemitism, antisemitic post-colonialism and antisemitic anti-Zionism are widespread in German society. The Federal Government combats every form of antisemitism, regardless of the ideology it is based on. The Federal Government takes corresponding action to fight forms of antisemitism which are especially prevalent.

A recent study by the research association “MOTRA” (Monitoring System and Transfer Platform Radicalisation) illustrates the ongoing rise in antisemitism in German society: On a discourse level there are two conflicts embedded in the rise: Migration to Europe and the debates about refugees and migration on the one hand and the Middle East conflict on the other. The topic of migration is discussed since the mid-2010s, as part of a more extensive refugee migration. With it comes a discussion on the so-called 'imported anti-Semitism', which is intensified again under the impression of the recent rise in anti-Semitism in response to the massive outbreak of the Israel-Gaza war again.

The trends for rising antisemitic attitudes continued and intensified in 2025. The study shows significant increases in manifest forms of anti-Semitism compared to the previous year. The ratio of people who are manifestly anti-Semitic rose from 5.1% to 7.2% in the general population. There was also an increase in latent anti-Semitic sentiment attitudes, i.e. an openness to anti-Semitic prejudices. Here the prevalence rate increased from 3.5% in 2023 and 6.3% in 2024 to now 7.3% in 2025.

The finding that antisemitic attitudes are significantly more prevalent among people of the Muslim faith is confirmed in the MOTRA Study: There has been a rise of manifest anti-Semitic attitudes from 21,1% to 27,2% in the Muslim population with a migratory background. It should also be emphasized that this increase is most pronounced among younger people. In addition, a

correlation with the level of education becomes apparent: education acts as a strong protective factor against antisemitic attitudes.

As the figures show, the number of antisemitic offences has risen sharply since Hamas's terrorist attack on Israel on October 7, 2023, including, and particularly, in the context of demonstrations. We cannot allow this to happen, especially in Germany. Germany firmly opposes any form of politically motivated violence, and in particular any form of antisemitism.