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**STATUS OF HUMAN RIGHTS IN GERMANY
FOR THE 44TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Federal Republic of Germany (Germany) for the 44th session of the Universal Periodic Review (UPR).

Background

2. Germany is located in central Europe and has an estimated population of 84.3 million people.¹ 26.7% of the population identifies as Roman Catholic, 24.3% as Protestant, 3.5% as Muslim, 4.8% as other, and 40.7% as belonging to no religion.²

3. Germany's last review was held on May 8, 2018.³ As a result of the review, Germany received 259 recommendations, 209 of which Germany supported.⁴ One recommendation that was made by Sweden, and noted by Germany, that the government "[r]eview paragraph 219a of the penal code, prohibiting information about and advertising on abortion, which, in practice, restricts the prospects for women to undergo an abortion if she so wishes."⁵ Additionally, it was recommended by Canada, and supported by Germany, that the government "[p]romote sexual and reproductive health and rights, including by removing barriers to safe and legal abortion services and post-abortion care."⁶ It was also recommended by Qatar, and supported by Germany, that the government "[c]ontinue efforts to combat human trafficking, ensure the rights of victims and provide protection and assistance to them."⁷

Legal Framework

Abortion

4. Under Article 2 of the Constitution of Germany, "[e]very person shall have the right to life and physical integrity."⁸

5. Under Section 218 of the Penal Code of Germany, abortion is permitted so long as it takes place no longer than twelve weeks after conception.⁹ After twelve weeks, abortion is only permissible if "the termination is medically necessary to avert a danger to the life of or the danger of grave impairment to the pregnant woman's physical or mental health and if the danger cannot be averted in another manner which is reasonable for her to accept."¹⁰

6. Additionally, Section 219 of the Penal Code of Germany requires those who are undergoing an abortion within the twelve weeks of pregnancy to attend counseling as this "serves to protect the unborn life."¹¹ Counseling helps mothers understand that, even at that early stage of the pregnancy, the unborn child has its own right to life. However, after the twelfth week, "the termination of the pregnancy can only be considered in exceptional

situations if carrying the child to term would impose a burden on the woman, which is so serious and exceptional that it exceeds the reasonable limits of sacrifice.”¹²

7. In June 2022, the German Bundestag abolished sec. 219(a) of the German Penal Code as part of a campaign to fully decriminalize abortion.¹³ Section 219(a) had prohibited individuals from publicly disseminating information that

offers, announces or extols

1. their own or others’ services for terminating pregnancies or supporting such terminations or

2. the means, objects or procedures which are suited to terminating pregnancies, making reference to this suitability

or publishes statements of such a nature incurs a penalty of imprisonment for a term not exceeding two years or a fine.¹⁴

8. Germany is a party to the International Covenant on Civil and Political Rights (ICCPR).¹⁵ Under Article 6 of the ICCPR, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁶ Germany also has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, Universal Declaration of Human Rights (UDHR), and the 1994 Cairo Conference on Population and Development.

Human Trafficking

9. Under Article 12(3) of the Constitution of Germany, “[f]orced labour may be imposed only on persons deprived of their liberty by the judgement of a court.”¹⁷

10. Under Section 232 of the Penal Code of Germany:

Whoever recruits, transports, transfers, harbours or receives another person by taking advantage of that person’s personal or financial predicament or helplessness on account of being in a foreign country, or that person is under 21 years of age, incurs a penalty of imprisonment for a term between six months and five years if

1. that person is to be exploited by way of

a) engaging in prostitution or performing sexual acts on or in the presence of the offender or a third person, or having sexual acts performed on them by the offender or a third person,

b) employment,

c) begging or

d) committing criminal offences,

2. that person is to be held in slavery, bonded labour, debt bondage or under corresponding or similar conditions or

3. an organ is to be illegally removed from that person.¹⁸

11. Furthermore, Article 8 of the ICCPR holds that “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude.”¹⁹

12. Germany is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.²⁰ Under Article 9 section 1 of this Protocol:

States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.²¹

Abortion

13. On demand abortion is allowed in Germany for up to twelve weeks as long as the mother receives counselling before an abortion is performed. After twelve weeks, abortion is permitted to save the life of the mother.²² Germany's laws have proven to be effective in protecting the life of the preborn as in 2021, Germany had the lowest rate of abortion since Germany first began keeping statistics in 1996.²³ However, even though the rates appear to be part of a decade-long downward trend, Germany's current abortion laws still allowed for 94,000 abortions to be carried out in 2021.²⁴ This shows that more can still be done to protect the lives of preborn children and women.

14. Although Germany allows for abortions, it rightly recognizes that abortion entails the deliberate killing of an innocent human being. This very notion is reflected in Section 219 of Germany's Penal Code which states that "[t]he woman must thereby be aware that at every stage of the pregnancy the unborn child has its own right to life."²⁵ This position, recognizing the dignity of the life of the preborn child, is also enshrined in numerous international documents. For example, the 1994 Cairo Conference on Population and Development, U.N. Member States have had an affirmative commitment to "reduce the recourse to abortion"²⁶ and to "take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*"²⁷ Additionally, the UDHR requires "recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world," and provides that "[e]veryone has the right to life"²⁸ As stated above, Article 6 of the ICCPR likewise states that "[e]very human being has the inherent right to life. This right shall be protected by law."²⁹ Similarly, the preamble to the U.N. Charter states that "the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the person"³⁰ Notably, these important and fundamental human rights instruments require protection of human life and none of them contain a "right to an abortion." Germany should strive to make its law on abortion comply with its obligation to protect the life of the unborn. Its current law on abortion has been shown to "reduce the recourse to abortion" as evident through Germany's record low rates of abortion.³¹ But, so much more can be done to ensure the unborn child's right to life as stated in Section 219.

15. Further, Germany's law on abortion is not an extreme position and is in line with or even more liberal than the majority of U.N. Member States. Currently, out of 193 U.N. Member States, a majority (109) of them have strict limits on abortion.³² Then, in the sixty-seven countries that have varying gestational limits for on demand abortions, the majority of those (fifty-two) have a gestational limit of twelve weeks or less, while some allow only up to fourteen weeks, or somewhere in between.³³ This shows that an overwhelming majority of U.N. Member States recognize that there is no international right to abortion.

16. In addition to protecting the lives of preborn babies, Germany also has a responsibility to protect women. This responsibility is reflected in the Penal Code which requires a woman to undergo counseling before receiving an abortion. It is critical that women understand the dangers of abortion because it has been documented that abortion can have a devastating impact on the health of the woman. For example, abortion can result in the perforation of the uterus or the laceration of the cervix.³⁴ Furthermore, abortion deprives women of the health benefits that come from continuing pregnancy, such as the elimination of the protective effect a full-term pregnancy has against breast cancer.³⁵ Abortion can also mask other dangerous symptoms, like an undiagnosed ectopic pregnancy.³⁶ In fact, the World Health Organization even acknowledges the complications of abortion in its recently published 2022 “Abortion care guideline.”³⁷

17. Furthermore, women who have undergone abortions have also experienced negative psychological side effects, from shame to drug abuse to suicidal thoughts.³⁸ All of these reasons show why Germany must make it a priority to protect both women and preborn children from the devastating effects of abortions.

18. Unfortunately, since the last UPR, Germany has begun taking steps to reverse the protections it has had in place for women and preborn babies. In June 2022, a law amending the criminal code repealed the ban on advertising abortion under Section 219a.³⁹ While Germany currently has not proposed measures to further change its laws regarding regulating abortion, we are concerned that the repeal of Section 219a could pave the way to expanding access to abortion in the country. Additionally, while rates of abortion are declining, the fact that 94,000 abortions were carried out in 2021 shows that more can still be done to protect the lives of preborn children and women.

Human Trafficking

19. In Germany, forced prostitution is becoming a growing concern.⁴⁰ Most of the victims being exploited are German, “but there were also immigrants involved from countries such as Bulgaria, Romania, and China.”⁴¹ Furthermore, one-third of victims are younger than twenty-one.⁴² The full scale of human trafficking in Germany is likely unrealized as “[p]reliminary proceedings were initiated in only 29% of the recorded cases.”⁴³ According to the executive director of the German NGO Network against Trafficking in Human Beings (KOK), “[t]his clearly shows that the extent of trafficking in human beings and exploitation is only inadequately recorded in the criminal statistics.”⁴⁴

20. In November 2022, KOK worked with the German Federal Criminal Police Office to create a “special training course on trafficking in human beings and sexual exploitation.”⁴⁵

21. In September 2022, German authorities coordinated with the Hungarian National Bureau of Investigation Unit to dismantle a “criminal network involved in human trafficking for sexual exploitation.”⁴⁶ Authorities were able to arrest two individuals in Berlin who recruited young Hungarian women to be exploited since 2017.⁴⁷ According to a report, “[t]he suspects recruited the females from vulnerable social and economic backgrounds for prostitution” around Berlin.⁴⁸ The traffickers tricked their victims by offering “accommodation, protection, and assistance with official documentation upon arrival in exchange for 50% of the girls income.”⁴⁹ After the victims agreed to this deal, the traffickers instead forced the victims to give them their entire income.

The suspects transported the victims from Hungary to Germany and housed them in flats rented by the criminal network. Once there, the suspects imposed a specific code of conduct, means of communication and working conditions on the victims, and dictated the pricing and location of the prostitution. The victims were sent to specific streets and areas of Berlin, which were controlled by the suspects.⁵⁰

22. In July 2022, officials from the United States Homeland Security Investigation (HSI) and the IRS Criminal Investigation (IRS-CI) conducted training sessions in Frankfurt, Germany, to “train German law enforcement counterparts on the latest investigative techniques to combat human trafficking.”⁵¹ Participants in this training session “learned how to recognize indicators and trace financial transactions linked to human trafficking.”⁵²

23. In 2021, “[p]olice and customs officials across Germany responded to some 510 cases of human trafficking.”⁵³ This was a 10% increase from 2020.⁵⁴ Additionally, in 2021, “[a]buse of children in trafficking cases rose even more significantly At least 237 children were affected, 23% more than in 2020. The kinds of crimes that fall under this umbrella include the creation of child sexual abuse imagery as well as forced prostitution.”⁵⁵

24. In May 2021, two suspects were arrested in Germany and Slovakia and were accused of “smuggling Vietnamese [people] into Germany and other European countries for large fees that they had to work off in massage parlors, brothels and other places.”⁵⁶ These individuals are believed to be part of a larger human trafficking network consisting of “several Vietnamese, one German, and two Slovaks – that brought Vietnamese people to Europe on fraudulently obtained visas.”⁵⁷ The suspects “are accused of demanding payments of between 13,000 and 21,000 euros (\$15,800 to \$25,600), which investigators suspect had to be worked off in nail studios, massage parlors and apartments used as brothels.” Further, according to prosecutors, “[a] Vietnamese man is suspected of giving hormone injections to women who worked as prostitutes in Germany to prevent them from getting unwanted pregnancies.”⁵⁸

25. In March 2021, approximately 169 German officers searched eight properties around Germany “as part of an investigation into a crime ring suspected of forcing Vietnamese people into prostitution after they were smuggled into the country.”⁵⁹ Three individuals were arrested and accused of “profiting from the illegal presence in Germany of eight women and two men who allegedly paid off debts to smugglers by working for the main suspect.”⁶⁰

26. To help combat human trafficking and provide aid to the victims, in October 2019, the Federal Criminal Police Office organized meetings on “[t]rafficking in human beings for the purpose of sexual exploitation.”⁶¹ These meetings were attended by 120 police officers who are actively involved in the fight against human trafficking, and they were able to exchange “information on the current problems and best practices concerning trafficking in human beings.”⁶² Further, since June 2019, training sessions have been carried out for “new special case officers for victims of human trafficking” by the Federal Office for Migration and Refugees (BAMF).⁶³ These sessions provided the authorities with the training needed to identify victims of human trafficking.⁶⁴

Recommendations

27. We want to commend Germany for acknowledging that the life of a preborn baby deserves protection and has its own right to life separate and distinct from its mother. However, through repealing Section 219a of the penal code, we are concerned that Germany may begin to expand access to abortion, putting the lives of women and preborn children at risk. Therefore, we ask that Germany resist any efforts to expand access to abortion and remain faithful to its commitment to protect the right to life of preborn babies. We also encourage Germany to follow through on its acknowledgement that a baby has a right to life during every stage of pregnancy by protecting babies even before the twelfth week of pregnancy.

28. Since Germany's last UPR, the government has commendably initiated efforts to provide up-to-date training for its officers so they are equipped to handle human trafficking cases. We want to encourage Germany to continue these efforts so that the perpetrators are brought to justice.

¹ *Germany*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/germany/> (Feb. 27, 2023).

² *Id.*

³ *Universal Periodic Review – Germany*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/de-index>, (last visited Mar. 6, 2023).

⁴ *Germany Infographic 30th*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/DE/GERMANY_Infographic_30th.pdf (last visited Mar. 6, 2023).

⁵ OHCHR, UPR of Germany (3rd Cycle – 30th Session): Thematic List of Recommendations, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/DE/MatriceRecommendationsGermany.docx> (last visited Mar. 6, 2023).

⁶ *Id.*

⁷ *Id.*

⁸ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GG] [CONSTITUTION] May 23, 1949, art. 2, https://www.constituteproject.org/constitution/German_Federal_Republic_2012.pdf (Ger.).

⁹ STRAFGESETZBUCH [StGB] [Penal Code], § 218(a), https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (Ger.).

¹⁰ *Id.* § 218(a).

¹¹ *Id.* § 219.

¹² *Id.*

¹³ Panagiotis Lampropoulos, *Germany Abolishes Nazi-era Abortion Information Law*, JURIST (Jun. 24, 2022, 10:51:24 AM), <https://www.jurist.org/news/2022/06/germany-abolishes-nazi-era-abortion-information-law/>.

¹⁴ StGB § 219(a), *supra* note 9.

¹⁵ *Ratification Status for Germany*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=66&Lang=EN (last visited Mar. 6, 2023).

¹⁶ International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [hereinafter ICCPR].

¹⁷ GG art. 12(3), *supra* note 8.

¹⁸ StGB § 232, *supra* note 9.

¹⁹ ICCPR art. 8, *supra* note 16.

²⁰ *A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=ind&mtdsg_no=XVIII-12-a&chapter=18&clang=_en (Mar. 7, 2023, 10:15:47 AM).

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- ²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Trafficking Organized Crime art. 9 § 1, *adopted* Nov. 15, 2000, 2237 U.N.T.S. 319, https://treaties.un.org/doc/treaties/2000/11/20001115%2011-38%20am/ch_xviii_12_ap.pdf.
- ²² Elizabeth Schumacher, *Germany Moves to Reform Abortion Law*, DW (June 24, 2022), <https://www.dw.com/en/germany-moves-to-reform-abortion-law/a-62014740>.
- ²³ *Id.*
- ²⁴ *Id.*
- ²⁵ StBG § 219, *supra* note 9.
- ²⁶ International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶ 8.25, U.N. Doc. A/CONF/F.171/13/Rev.1, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf.
- ²⁷ *Id.* ¶ 7.24 (emphasis added).
- ²⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl., art. 3 (Dec. 10, 1948) (emphasis added).
- ²⁹ ICCPR art. 6, *supra* note 16 (emphasis added).
- ³⁰ U.N. Charter pmbl.
- ³¹ *Abortions in Germany Sink to Record Low in 2021*, EVANGELICAL FOCUS (Apr. 12, 2022), <https://evangelicalfocus.com/europe/16330/abortions-in-germany-sink-to-record-low-in-2021>.
- ³² *The World's Abortion Laws*, CTR. FOR REPROD. RTS. (Sep. 27, 2022), https://reproductiverights.org/wp-content/uploads/2022/09/WALM_20220927_V1.pdf.
- ³³ *Id.*
- ³⁴ *Women's Right to Know: Abortion & Pregnancy Risks*, LA. DEP'T OF HEALTH, <https://ldh.la.gov/page/915> (last visited Mar. 7, 2023).
- ³⁵ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89, 1290 n.119 (2005).
- ³⁶ See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, THE UNCHOICE, www.theunchoice.com/physical.htm (last visited Mar. 6, 2023) (listing sequelae and referencing sources).
- ³⁷ *Abortion Care Guideline*, WORLD HEALTH ORG. & HUM. REPROD. PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>.
- ³⁸ Priscilla K. Coleman et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, 22 J. AM. PHYSICIANS & SURGEONS 113, 116-17 (2017), <https://www.jpands.org/vol22no4/coleman.pdf>.
- ³⁹ Lampropoulos, *supra* note 13.
- ⁴⁰ *Human Trafficking on the Rise in Germany*, DW (Oct. 7, 2022), <https://www.dw.com/en/human-trafficking-on-the-rise-in-germany/a-63375174>.
- ⁴¹ *Id.*
- ⁴² *Id.*
- ⁴³ Press Release, KOK, German NGO Network Against Trafficking in Human Beings Provides Previously Unrecorded Data on Trafficked Persons in Germany (Oct. 18, 2022), https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Pressemitteilungen/Press_release_KOK_Data_Report_2022.pdf.
- ⁴⁴ *Id.*
- ⁴⁵ KOK, COORDINATION AND NETWORKING AGAINST TRAFFICKING IN HUMAN BEINGS FOR HUMAN RIGHTS: ANNUAL REVIEW 2022 14 (2022), https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen/KOK/KOK_Jahresberichte/KOK_Jahresber2022_1-Seiter_en_RZweb.pdf.
- ⁴⁶ *Kingpins of Sexual Exploitation Gang Arrested in Berlin*, EUROPOL, <https://www.europol.europa.eu/media-press/newsroom/news/kingpins-of-sexual-exploitation-gang-arrested-in-berlin> (last visited Mar. 7, 2023).
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ *HIS, IRS-CI Train German, Swiss Officials on Human Trafficking Investigative Techniques*, ICE (Jul. 29, 2022), <https://www.ice.gov/news/releases/hsi-irs-ci-train-german-swiss-officials-human-trafficking-investigative-techniques>.
- ⁵² *Id.*
- ⁵³ *Human Trafficking on the Rise in Germany*, *supra* note 40.
- ⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Germany, Slovakia Arrests 2 in Raids on Trafficking Ring*, INDEPENDENT (May 13, 2021, 13:55), <https://www.independent.co.uk/news/germany-slovakia-arrest-2-in-raids-on-trafficking-ring-germany-vietnamese-slovakia-berlin-police-b1856988.html>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Germany: Woman Arrested in Forced Prostitution Probe*, AP (Mar. 17, 2021), <https://apnews.com/article/business-baltic-sea-berlin-arrests-germany-1a7d6742b0a7eb1606e60d5020b39090>.

⁶⁰ *Id.*

⁶¹ COMMITTEE OF THE PARTIES TO THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, REPORT SUBMITTED BY THE AUTHORITIES OF GERMANY ON MEASURES TAKEN TO COMPLY WITH COMMITTEE OF THE PARTIES RECOMMENDATION CP/REC (2019)06 ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 18 (2020), <https://rm.coe.int/cp-2020-10-germany/1680a09ae3>.

⁶² *Id.*

⁶³ *Id.* at 19.

⁶⁴ *Id.*