



Annual Civic Space Report - 2022

Germany

By Siri Hummel and Rupert Graf Strachwitz, Maecenata Institut für Philanthropie und Zivilgesellschaft

January 2023



Contents

Contents.....	2
Summary.....	3
Key developments	3
Institutional landscape, political and socio-economic.....	3
The regulatory environment for and implementation of civic freedoms	4
Talking politics, still a concern for tax-exempt CSOs.....	4
Registrations and suspensions of CSOs	5
New law replaces problematic NetzDG to tackle online hate speech.....	5
Climate group faces harassment due to protests.....	6
Safe Space.....	7
Anti- Gender rights protests	7
Targeting of BDS activism.....	7
Protests deemed “anti-semitic” by authorities	8
Attacks on journalists remain a concern	8
The framework for civic organisations' financial viability and sustainability	9
CSOs challenged by refugee crisis	9
Positive moves for funding	10
The right to participation and dialogue between the sector and governing bodies	10
Dialogue between government and CSO: room for improvement	10
Recommendations	11

Summary

Key developments

- 🌀 Reforms on tax status regime for civil society insufficient
- 🌀 Palestinian activists and youth climate group faces harassment
- 🌀 New coalitions makes several commitments to civil society

While civic space is regarded as “open” in Germany¹, over the last few years, it has experienced some challenges. Despite concerns about the compatibility of tax-exempt status and political activity and the European Commission’s recommendation that this should be addressed with reforms, civil society states that reforms initiated have not been sufficient enough and leave too much room for legal uncertainty. Concerningly, Palestinian activists and BDS activism has been repeatedly targeted, with at least 13 anti-BDS resolutions passed since 2018. The right to peaceful assembly has also faced repressions. For instance, police issued a ban against several pro-Palestine marches deeming it “anti-semitic”, while climate youth group ‘Rise of the Last Generation’ is facing harassment due to staging acts of civil disobedience. Additionally, the ongoing attacks on journalists, especially during protests, remain a concern. However, there have also been some positive moves to create a more enabling environment for civil society, with the government making several commitments, including a plan, currently under discussion, to provide a funding programme for CSOs working on democracy, human rights and the rule of law.

Institutional landscape, political and socio-economic

After 16 years of a conservative and conservative-social democratic coalition government at federal level, 2022 politics was coined by the start of a new coalition of liberal, green and social democratic parties. In a positive development, the coalition agreement mentioned civil society approx. 20 times, a major difference to previous agreements. Furthermore, as a result of the Russian invasion of Ukraine, not only did the new chancellor Olaf Scholz proclaim a shift of times in security and foreign policy, but a severe energy crisis hit Germany, which is causing continuing socio-economic challenges for many.

Overall, the system of rule of law is in place in Germany and people may exercise their rights and freedoms in the public sphere. Democracy indices like Polity5 and the Economist Democracy Index rank Germany as a functioning and consolidated democracy. However, studies such as the

¹ CIVICUS Monitor, Germany rating, CIVICUS, 2022. <https://monitor.civicus.org/country/germany/>

Edelmann Trust Barometer (2022)² and Decker et al (2020)³ indicate an ongoing decline in social and political trust, which could endanger the stability of German democracy in future.

The regulatory environment for and implementation of civic freedoms

Talking politics, still a concern for tax-exempt CSOs

Freedom of association is well established, although there are some conflicts regarding the compatibility of tax-exempt status and political activity.⁴ There are over 600,000 registered associations (plus an unknown number of unregistered associations) in Germany. Shut-downs nearly equal new association registrations.

The debate on political activity of tax-exempt CSOs accelerated after 2014 when the tax authority withdrew the globalisation-critical network ATTAC's status on grounds of pursuing too many general policy objectives. The case has gone through all levels of the financial courts; ATTAC has now lodged a complaint with the Constitutional court.⁵ Other associations are affected too; e.g., Innn.it-Verein (formerly Change.org) filed a lawsuit for non-profit status after the Berlin tax office rejected the association's objections after 20 months. According to the platform 'Nachdenkseiten', their association will lose its charitable status on 1 January 2023⁶. Many associations and foundations do not have the means to get involved in lawsuits over their charitable status. Some lawyers and tax consultants, therefore, recommend refraining from involvement in political activity.

In response to these concerns, there was a change to the application decree of the Tax Code in 2022, i.e. the guidelines for the financial authorities, which clarifies that tax-exempt CSOs may be politically active beyond their purpose "occasionally", and that it is "... not objectionable if a tax-exempt organisation occasionally comments on day-to-day political issues outside its statutory purposes". The CSO 'Allianz Rechtssicherheit für politische Willensbildung' claims this amendment, while an improvement, is not sufficient, because it does not clearly comprise the scope of the term "policy means", and also introduces new imprecise terms such as "politically neutral", which causes further legal uncertainty⁷.

² Edelman Trust Barometer Global Report 2022, Edelman Barometer, 29 December 2022. <https://www.edelman.de/research/edelman-trust-barometer-2022>.

³ Decker, F., Best, V., Fischer, S., Küppers, A. Vertrauen in Demokratie: Wie zufrieden sind die Menschen in Deutschland mit Regierung, Staat und Politik? 2020. <https://www.fes.de/studie-vertrauen-in-demokratie>.

⁴ According to Anwendungserlass AO 2014 (AEAO) v. 31. 1. 2014 (BStBl I S. 290), changed 18. 5. 2022 by (BStBl I S. 665)

⁵ <https://www.attac.de/kampagnen/gemeinnuetzigkeit/gemeinnuetzigkeit>

⁶ <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/innnit-klagt-auf-gemeinnuetzigkeit/>

⁷ Die Allianz Rechtssicherheit für politische Willensbildung, Allianz, 2022. <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/die-allianz/>

Registrations and suspensions of CSOs

As for registration requirements, since January 2022, CSOs, (and anybody else) wishing to lobby in the German federal parliament and government, need to register for representation of interests with the federal parliament. More than 5,500 natural or legal persons, partnerships, networks, and other forms of collective activity have registered. But not all requirements, e.g. in terms of transparency, have been established yet. Organisations that register must declare donations of more than 20,000 €; the name and address of the donor must be disclosed. This rule has been suspended for the current year so that the data of private donors may be anonymised. This transitional provision will now be extended. In the coalition agreement, the government parties had agreed on a revision of the lobby register law and also wished to introduce an executive and legislative footprint, but changes in the law will not take place until 2023.

Some suspensions of associations on grounds of antiterror and security policies have occurred. E.g., the Shiite Al-Mustafa association remains banned. The Bremen authorities had imposed the ban on the mosque association in March 2022 as they found that the Al-Mustafa community supports the terrorist organisation Hezbollah, which is banned in Germany. The Al-Mustafa community was the largest Shiite mosque community in northwestern Germany until it was banned. The Bremen Higher Administrative Court rejected a corresponding complaint against the ban made by the association. Additionally a ban was imposed by the Federal Ministry of the Interior on the association 'Deutsch-Libanesische Familie e.V.' as a substitute organisation for the association 'Waisenkindprojekt Libanon e.V.', which was banned in 2014 and declared lawful, by the Federal Administrative Court in 2022.⁸

With the onset of the COVID-19 crisis, rules were adapted, allowing associations to hold general meetings online, even if this is not laid down in the articles of association. This exemption expired on 31st August, 2022. If the statutes of the association do not provide for online meetings and resolutions, these are now no longer legal. Towards the end of the year, a draft law was presented to permanently enable members to participate online in a face-to-face AGM by board resolution. However, the change is still pending. (N.B.: For the private sector, permanent regulations to this effect were introduced in time to follow the provisional ones without any delay.) Another exemption to the non-profit law due to the COVID-19 crisis and the war in Ukraine, concerning more flexibility in the use of funds, has been extended by the Federal Ministry of Finance to the end of 2023.

New law replaces problematic NetzDG to tackle online hate speech

The debate about freedom of expression in Germany has been marked by the amendments to the **Network Enforcement Act (NetzDG)**, data protection, and hate speech. The Network Enforcement Act (NetzDG), which was passed by parliament in June 2017 and took full effect in January 2018, aims to combat fake news, hate speech and misinformation online. It introduces compliance rules for providers of social networks with fines regarding the handling of user complaints about hate crimes and other criminal content on the Internet. The deleted content must be stored for at least 10 weeks afterwards, and platforms must submit transparency reports on dealing with illegal

⁸ Rechtslupe 2022: Online at <https://www.rechtslupe.de/zivilrecht/vereinsrecht/vereinsverbot-fuer-den-deutsche-libanesische-familie-e-v-3238135>

content every six months. The law has been criticised for incentivising social media platforms to pre-emptively censor valid and lawful expression, and making them the arbiter of what constitutes free expression and curtailing freedom of speech in Germany. The law was amended by the Act to Combat Right-wing Extremism and Hate Crime, which from 1 February 2022 obliges providers of social networks to notify the Federal Criminal Police Office (BKA) of content with concrete indications that it endangers the democratic rule of law, violates public order, disseminates child pornography or poses a threat to life, sexual self-determination, physical integrity and personal freedom (§ 3a NetzDG). The Administrative Court of Cologne has provisionally upheld the appeals of Facebook and Google against the new regulations of the amended Network Enforcement Act (NetzDG) in summary proceedings, ruling that the reporting obligation under § 3a NetzDG is incompatible with the country of origin principle of the European directive on electronic commerce (ECR) and therefore inapplicable.⁹ A far right-wing protest movement (Querdenker) is campaigning against an infringement of freedom of expression in this context.

Climate group faces harassment due to protests

A heated public debate is currently in progress about means of protest for climate protection, especially the '**Rise of the Last Generation**', which started campaigning by giving away containerized food in various cities, but soon focused on public action in museums and road blockades. Some politicians and media, mostly conservative, criticise their activities, proclaiming the movement to be a new 'Red Army Fraction' (terrorist group), which should be observed by the relevant constitutional authorities. In early December 2022 the police searched the homes of eleven members of the group, affirming an initial suspicion of formation of a criminal organisation. The search appears to be related to actions by which oil pipelines were disrupted in the spring of 2022. There have been several arrests of climate activists during these actions¹⁰. There is widespread media coverage of this topic, and public debate is controversial between supporters, which defend this kind of protest in a democracy, and increasingly hostile opponents. Surveys show that climate and environment protection organisations are face continuous and increasing harassment and legal attacks.

Spill-over effects for other CSOs are to be feared. In the context of these protests, restrictive legislation has also been put on the table in some parts of Germany. In Bavaria, the amended **Police Task Act** grants the police far-reaching rights of intervention even in the event of "imminent danger" (the law previously stated "concrete danger" until it was amended in 2018.). With this formula, the state government significantly lowered the benchmark for preventive custody. A new law of assembly in Nordrhein-Westfalen (NRW) is also controversially debated. In recent months, thousands of people from trade unions, parties and political groups have repeatedly protested against the planned law. They fear excessively far-reaching restrictions on the right to protest. Supporters say it should help prevent right-wing extremist propaganda and marches at symbolic locations and memorial days in NRW in the future.

⁹ www.lto.de/recht/hintergruende/h/vg-koeln-stoppt-netzdg-loeschpflichten-hate-speech-regulierung-medien-facebook-google/

¹⁰ Climate activists glueing themselves to Berlins roads say they want to cause „peaceful frictions, Euronews, 15 July 2022. <https://www.euronews.com/green/2022/07/15/climate-activists-sticking-themselves-to-berlins-roads-say-they-want-to-cause-peaceful-fri>

Safe Space

Anti- Gender rights protests

The deadly attack on a 25-year-old during Christopher Street Day in Münster has sparked a nationwide debate on hate crime against LGBTQI+ and promoted some solidarity demonstrations. According to the Lesbian and Gay Association (LSVD), anti-queer attitudes are becoming a growing danger in Germany. At Christopher Street Day events in Berlin, Jena and Bielefeld, hostility was also reported: people were attacked, rainbow flags were torn. With the exception of the right-wing political party AfD, these incidents were unanimously condemned by politicians of all parties. In October 2022, several hundred people from the Young Alternative, the youth organisation of the AfD, demonstrated against a planned housing project with homosexual counselling in Berlin; a counter-demonstration with over 300 participants faced the members of the protest.

In relation to sexual and reproductive health and rights, parliament has lifted the ban on advertising for abortions. In the future, doctors will be able to publicly inform about abortion, and with what method they perform abortions. Pregnant women should be able to find a suitable doctor more easily. In this context, some protests from misogynistic and anti-abortion organisations could be observed in several cities, but mainly online.

Targeting of BDS activism

Over the past few years¹¹, there have been several cases where Palestinian activists and Boycott Divestment and Sanctions (BDS) campaigns¹² have been subjected to repressions. Several local and regional Parliaments, including the German Bundestag, have adopted at least 13 anti-BDS resolutions¹³, which several courts have deemed unconstitutional and in violation of the right to peaceful assembly and expression. In a recent, January 2022 court ruling, Germany's Federal Administrative Court in Leipzig confirmed that the City of Munich had violated the right to freedom of expression, after it denied the use of its conference hall for a planned public debate set to discuss Munich's anti-BDS resolution¹⁴.

There have also been several cases of Palestinians activists being targeted. According to the European Legal Support Centre, activists of the initiative 'Bundestag 3 for Palestine'¹⁵, who are suing the Bundestag for its 2019 anti-BDS resolution have been "insulted as antisemitic and unlawfully excluded from many public spaces in German cities". Additionally, Dr Anna Younes, a German Palestinian academic has been subject to a smear campaign, and surveillance¹⁶. In 2019, Younes was invited to an event to speak about strategies against right-wing extremism in Germany, but

¹¹ https://res.cloudinary.com/elsc/images/v1644411154/German-precedents-anti-BDS-motions/German-precedents-anti-BDS-motions.pdf?_i=AA

¹² A Palestinian movement for freedom, justice and equality for all: <https://bdsmovement.net/what-is-bds>

¹³ Since 2017, at least 13 anti-BDS resolutions have been adopted by the parliaments of Frankfurt, Munich, Berlin, Cologne, Dortmund, Bochum, Bonn, Leipzig and Bielefeld, the countries of Baden-Württemberg, Thuringia and North Rhine-Westphalia, and the federal Bundestag.

¹⁴ <https://elsc.support/news/more-and-more-german-courts-confirm-the-right-to-bds>

¹⁵ <https://www.bt3p.org/>

¹⁶ <https://elsc.support/news/letter-in-support-of-dr-anna-younes>

was uninvited shortly before the event. Later it emerged that the academic was surveilled and her data was privately processed by two organisations: RIAS Berlin and MBR (organisations which monitor antisemitic incidents) to “frame her as anti-Jewish racist, sexist and as a terrorist sympathiser”. The organisation created a secret dossier which was shared with the event organisers, resulting in the invite being retracted. In March 2020, Younes requested access to her data from RIAS on the basis of European Data Protection Regulation (GDPR), which the organisation refused.¹⁷ She subsequently launched a complaint with the Berlin Data Protection Authority.

In a positive development, on 16th May 2022 the Berlin Data Protection Authority decided in favour of Dr Younes and issued a warning against VDK, the German state-funded organisation legally representing RIAS Berlin and MBR for violating Dr Younes' data rights protected by the GDPR. This outcome followed a first decision in favour of Dr Younes, issued by a district court earlier in May 2022. While in its recent ruling, the Berlin Data Protection Authority recognised the violation of the academic's digital rights, it evaluated that the creation of the secret dossier and its sharing with the event organisers was lawful.

Protests deemed “anti-semitic” by authorities

In May 2022, a demonstration by Palestinian activists and supporters to mark Nakba day, which commemorates the displacement of Palestinians caused by the creation of the state of Israel in 1948, was denied permission by Berlin police. According to the police assessment¹⁸, the protest was deemed “an immediate risk” of “inflammatory, anti-Semitic exclamations” and violent behaviours, based on previous incidents. Among these, police mentioned pro-Palestinian gatherings that took place at the end of April, during which, according to police, violence, anti-Semitic exclamations and hatred were reported. Due to the “emotion” attached to Nakba Day, the police considered that it was too dangerous to allow any related demonstration. This decision was upheld by a court in Berlin and by the German appellate court, which rejected the demonstrators' challenge of the ban. Human rights organisations condemned the ban, highlighting that any restrictions on protest should be “necessary and proportionate”¹⁹. Despite the ban, between 13th and 15th May 2022, several demonstrators who took part in the Nakba Day protests in Berlin faced excessive force, with some of them detained for up to two hours by the police. Around 20 people were arrested during protests. This isn't the first case of a Palestinian solidarity protest being restricted by police, a similar approach was used for other gatherings organised from 29th April to 1st May 2022.

Attacks on journalists remain a concern

Worryingly, attacks on journalists, especially during protests, have continued. These attacks prompted Reporters Without Border to downgrade Germany's rating from 13th to 16th in its World

¹⁷ <https://elsc.support/news/berlin-data-protection-authority-holds-rias-mbr-accountable-for-violating-dr-younes-data-rights>

¹⁸ <https://www.berlin.de/polizei/polizeimeldungen/2022/pressemitteilung.1205876.php>

¹⁹ <https://www.hrw.org/news/2022/05/20/berlin-bans-nakba-day-demonstrations>

Press Freedom Index²⁰. Journalists have faced verbal and physical attacks as well as obstructions preventing them from reporting. In particular, verbal and physical attacks have frequently taken place during Querdenker (Covid-19 denialists protest movement). demonstrations.

The framework for civic organisations' financial viability and sustainability

CSOs challenged by refugee crisis

The main resources for CSOs, beside payment for services and grants, donations and volunteering, tend to be fairly stable in Germany. However, available data are not conclusive. While the Deutscher Spendenrat reports total donations of 5.8 bn € in 2021, an increase of 7% over 2020 and the highest number since the beginning of the survey (2005)²¹, Deutsches Zentralinstitut für soziale Fragen (DZI) reports 12.9 bn € for 2021. (The figures differ as they are based on different methods).²² Donating to causes connected to Ukraine were most prominently represented.

According to the 5th German Volunteer Survey, 39.7 per cent of people aged 14 and over volunteered.²³ Volunteers were mainly involved in sports clubs, religious communities, and development and humanitarian aid organisations. However, there are concerns about the recruitment of young people.

The volunteer fire brigades launched nation-wide media calls for awareness this year, as they have difficulties in attracting new members. Volunteers make up 95 percent of all firefighters. There are still 22,000 fire fighters in Germany, but the German Fire Brigade Association (DFV) has for years observed that the numbers are falling. In 2000, almost 1.1 million people volunteered for the fire service, 16 years later that number was only 995,000.²⁴

The energy crisis triggered by Russia's war against Ukraine affects many small CSOs, endangering the existence of many also due to the fact that organisations with tax exempt status are not legally allowed to accumulate substantial reserve funds. E.g., the German Sports Umbrella Organisation Deutscher Olympischer Sportbund calls on its members to save at least 20 percent on energy in the coming months in order to avoid blanket closures of swimming pools and sports facilities.

²⁰ <https://monitor.civicus.org/updates/2022/04/25/rsf-index-signals-decline-press-freedom-journalists-continue-come-under-attack/>

²¹ Deutscher Spendenrat. Online at: <https://www.spendenrat.de/spendenjahr-2022/>

²² Deutsche Zentralinstitut für soziale Fragen. Online at: <https://www.dzi.de/pressemitteilungen/aermere-haushalte-spenden-mehr-als-reiche-haushalte/>

²³ Freiwilligensurvey 2021. Online at: <https://www.bmfsfj.de/bmfsfj/service/publikationen/freiwilliges-engagement-in-deutschland-176834>

²⁴ Dw 2022: Online at: <https://www.dw.com/de/die-nachwuchssorgen-der-freiwilligen-feuerwehr/a-50226766>

One of the main challenges for CSOs in 2022, which also showcases the important role of civil society actors, was the reception of and **care for many refugees** from conflict regions, mainly from Ukraine, but also from Syria, Afghanistan and other war zones. There exists a 'trade-of problems' that accumulated in the Ukraine crisis for many CSOs. It can be shown in the area of charity food banks: While the number of Ukrainian refugees applying for food has grown, food donations have declined as major food sponsors have donated to Ukraine, thus creating a shortage of goods and volunteers at local level.

Positive moves for funding

In early December, the federal government adopted the draft of the Democracy Promotion Act. It primarily provides a funding programme for CSOs working for democracy, human rights and the rule of law. If passed by parliament, it would fulfill one of the promises relevant to civil society made in the coalition agreement. The ministers responsible for this law have also promised to lobby for the legal framework of CSOs to be fundamentally modernised next year. However, there is considerable dissent within the coalition over this, with the liberal party being averse to any changes.

While most German CSOs strongly support the Lagodinsky Initiative for a statute for European associations and a Commission Directive regarding mutual recognition and minimum standards, the German government has not so far made its position public.

The right to participation and dialogue between the sector and governing bodies

Dialogue between government and CSO: room for improvement

There are no explicit fora for dialogue between the state and civil society at federal or state level in Germany, while they do occasionally exist at local level. Dialogue with governments is traditionally maintained by umbrella organisations, which represent different areas of civil society, e.g. for sport or humanitarian organisations. These organisations see themselves primarily as lobbyists and much less as partners in dialogue. CSOs not aligned with such umbrella organisations usually have very limited access to decision-makers. While some overarching structures like the Bundesnetzwerk Bürgerschaftliches Engagement (the federal civic engagement network) exist, there is no network or organisational frame that encompasses all areas of civil society activity. A public body, the Deutsche Stiftung für Engagement und Ehrenamt, established by an Act of the federal parliament in 2020, strives to be an interface between CSOs and local, state, and federal governments and has established some forms of dialogue, but remains heavily government-controlled. An institutionalised and comprehensive strategy for the integration of the civic space into the public sphere beyond the very traditional mechanisms of hearings is lacking.

The dialogue between government and civil society, as announced in the coalition agreement, has not yet materialised. This is underpinned by the fact that the political parties, possibly with the exception of the Green Party – and the traditional media for that matter – have as yet failed to adopt a modern state-of-the-art concept of civil society and the civic space. E.g., while politicians

on official visits abroad now regularly hold meetings with “civil society”, they neither disclose whom they are actually talking to nor involve German CSOs or civil society experts in these talks. Furthermore, with few exceptions, they show little interest in such meetings at home. On the other hand, there is an increasing interest with politicians in organising citizens' councils, town hall meetings, and assemblies as meaningful extensions of representative democracy. But little attention is paid to choosing the right format. Habitually, they include a randomly composed group of citizens who discuss major political issues, and propose (non-binding) policy recommendations. No effort is put into integrating such one-off projects into a comprehensive strategy of rendering democracy more resilient. Also, there is a tendency to crowd out organised civil society by such activities.

Recommendations

- ✎ Urgently consult with civil society on reforms to adapt the tax-exempt status for non-profit organisations and provide timely follow-up and feedback during the consultation process, and ensure that reforms are in line with European and international standards on funding for civil society
- ✎ Refrain from detaining and harassing climate youth group ‘Rise of the Last Generation’ and respect the right to freedom of peaceful assembly
- ✎ Co-create participatory platforms such as councils, town hall and assemblies with civil society, through an open, transparent and inclusive process to promote participation