

Legal environment and space of civil society organisations in supporting fundamental rights

Germany

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1 Five most significant civic space developments in 2020

1.1 Reform of German charity law

Civil society organisations active in advocacy and political campaigning face uncertainty of their charitable status and restrictions in their options for political actions. This development was caused by a decision of the German Federal Fiscal Court (*Bundesfinanzhof, BFH*) published in early 2019.¹ In this concrete case, the court ruled that the organisation Attac was no longer eligible for charitable status due to its general political activity. The BFH stated that influencing political decision-making and shaping public opinion would not fulfil a charitable purpose. The ruling gave local financial authorities in Germany a new precedent for the annual revision of charities in 2020. Several organisations were denied their charitable status in these processes. The cases of Attac, Campact and VVN raised a broader media and political attention.²

The restrictive interpretation of the charitable nature of political activism by the BFH opened a vivid debate about reforms and adaptations of the German Fiscal Code (*Abgabenordnung*) to the requirements and the role of civil society within a modern democracy.³ The responsible German Federal Ministry for Finance (*Bundesministerium der Finanzen BMF*) had already announced a draft proposal for such a reform in the end of 2019 including a new tax category for mainly politically active charitable organisations.⁴

The reform entered into force as part of the annual review of tax regulations (*Jahressteuergesetz 2020*) on 29 December 2020.⁵ While the law included several amendments and improvements to the financial framework for civil society such as an increase of the tax exemption limit for volunteers receiving financial compensation, it did not respond to the issue of political activism and its impact on the charitable status of an association. The law merely extended the list of public-benefit purposes which now additionally include climate protection and the protection of vulnerable groups among others.⁶

¹ Bundesfinanzhof (2019), [Urteil vom 10. Januar 2019](#), VR 60/17.

² For a deeper analysis of these cases: Fisahn, A., Vereinigung Demokratischer Juristinnen und Juristen e.V. (2020), [Mitteilung „Gemeinnützigkeit – kein Gnadenerlass des Finanzamts“](#). All hyperlinks were accessed on 26 January 2021.

³ The National Network for Civil Society (Bundesnetzwerk Bürgerschaftliches Engagement BBE) has compiled positions and recommendations of this debate: [Schwerpunkt Gemeinnützigkeitsrecht](#), BBE-Newsletter 12/2020

⁴ Deutscher Bundestag (2020), [Kurzprotokoll](#) der Sitzung des Unterausschusses Bürgerschaftliches Engagement vom 29. Januar 2020

⁵ Bundesministerium der Finanzen (2020), [Jahressteuergesetz 2020, 21 December 2021](#).

⁶ Deutsches Stiftungszentrum (2021), [Factsheet 'Reform des Gemeinnützigkeitsrechts'](#).

1.2 Reform of German foundation law

A coherent, uniform federal law on foundations does not exist in Germany. Foundation law is split up into federal regulations in the German Civil Code (*Bürgerliches Gesetzbuch* BGB) and 16 federal state laws. In the view of practitioners and legal experts, this situation does not sufficiently cover many situations of practical relevance and constitutes a burden to the daily work of foundations. The implementation of foundation projects is always dependent on the legal opinion and goodwill of the respective local foundation authority. Furthermore, the current framework conditions, such as growing bureaucracy, legal uncertainty and low interest rates, make it difficult to achieve the foundation's objectives. A reform seems overdue.

On 28 September 2020, the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz* BMJV) published a first ministerial draft bill on the reform and standardisation of the law governing foundations.⁷ The meaning and purpose of the reform is to provide legal certainty. It is intended to overcome the juxtaposition of federal and state law repeatedly leading to disputes and legal uncertainty among founders and foundations. In addition, the ministry intends to create a public register of foundations for better transparency in the foundation landscape.

The reception of the ministerial draft bill by practitioners and foundations has been widely negative, and the parliamentary process has recently been put on hold. While the German Association of Foundations (*Bundesverband Deutscher Stiftungen*) principally welcomes the legal initiative and its intentions, it strongly opposes new restrictions in the design of the statutes and possible re-interpretations of the will of the founder.⁸ Overall, the association identifies a step back for foundations to freely operate. Others criticize harshly the missing consultation with civil society organisations and renounce an expert commission with the inclusion of external knowledge.⁹

⁷ Bundesministerium der Justiz (2020), [Draft Law on the harmonisation of foundation law \(Entwurf eines Gesetzes zur Vereinheitlichung des Stiftungsrechtes\)](#), 28 September 2020.

⁸ Bundesverband Deutscher Stiftungen (2020): [Stellungnahme zum Referentenentwurf eines Gesetzes zur Vereinheitlichung des Stiftungsrechts](#) (Stand: 16.09.2020).

⁹ see Open Letter of legal experts to the Federal Minister of Justice of 06. December 2020: Arnold, A., Weitemeyer, B., Roth, G., Strachwitz, R.: : [Offener Brief zur Reform des Stiftungsrechts](#)

1.3 Emergency measures during the Covid-19 pandemic and their effects on civil society activities

Governmental measures in response to the Covid-19 pandemic included several public lockdowns during 2020 that affected the space and range of activities of civil society organisations. Problems civil society organisations face include challenges in recruiting volunteers, new forms of communications mostly in digital ways, decline of donations and income, and new forms of project management. The pandemic therefore constitutes an existential threat to some non-profit organisations.¹⁰ In 2020 however, on its federal level, Germany has not adopted specific support instruments or programmes tailored for civil society organisations affected by the pandemic.¹¹

On the other hand, civil society organisations are indispensable in overcoming the current crisis: They complement state structures in social services, and they form the necessary basis for social cohesion. On December 15, 2020, the Subcommittee on Civic Engagement of the German Parliament (*Unterausschuss Bürgerschaftliches Engagement des Deutschen Bundestages*) held a public hearing on the subject of "Voluntary and civic engagement in times of the corona pandemic".¹² The experts agreed: in order to be able to fulfil their role, civil society organisations need more attention and recognition from society and politicians, tailored financial aid, improved legal framework conditions, better support for their digital upgrading, as well as perspectives for overcoming the crisis and the time after the pandemic. Politicians should recognise and involve civil society more strongly as a partner in overcoming the crisis, for example through a civil society summit at the Federal Chancellery.

¹⁰ Zivilgesellschaft in Zahlen (2020), [Die Lage des freiwilligen Engagements in der ersten Phase der Corona-Krise.](#)

¹¹ Hummel, S., Strachwitz, R. (2020), 'Conditions for civil society are good. But civic actors were neglected during the emergency' in: European Civic Forum, [Acitivizenship Civic Space Watch Report 2020](#)

¹² Deutscher Bundestag (2020), [Bericht der öffentlichen Anhörung vom 15. Dezember 2020.](#)

1.4 Combatting illiberal, anti-democratic and misanthropic attitudes in society threatening civic space

Illiberal, anti-democratic and misanthropic attitudes in society challenge the values of democracy, freedom and the rule of law and constitute a threat to civic space. In many regions in Germany, civil society organisations active in the field of human rights and humanitarian aid face severe restrictions due to a social climate of resentment and hate speech.¹³ The pandemic aggravated this development. Protests against Covid19-protective measures, stirred up mainly by right-wing conspiracy ideologies, show the influence of disinformation on opinion trends and the ability to mobilisation.¹⁴

The Cabinet Committee of the Federal Government to combat right-wing extremism and racism presented a comprehensive catalogue of counter measures in November 2020.¹⁵ Those include a better protection from discrimination and a stronger involvement and support for civil society organisations. Existing national programmes to prevent the emergence of anti-democratic and misanthropic attitudes and to interrupt radicalisation processes at an early stage receive a substantial additional amount of about €200 million, such as the programme "Living Democracy!" (*Demokratie leben!*) as a central pillar of the federal government's strategy for preventing extremism and promoting democracy (*Strategie der Bundesregierung zur Extremismusprävention und Demokratieförderung*).¹⁶

Sustainable and long-term funding for civil society structures to promote democracy however remains an unsolved issue. While many national programmes such as "Living Democracy!" intend to set up coordinative and horizontal cooperative networks, funding by the federal level is limited to the maximum of a three-year project cycle. The Federal Ministry for Family, Senior Citizens, Women and Youth elaborated a Draft Law to promote Democracy (*Demokratieförderungsgesetz*) that would enable permanent support for established civil society structures. So far however, no internal coalition agreement could be reached.

¹³ Otto-Brenner-Stiftung (2020), [Bedrängte Zivilgesellschaft von rechts, May 2020.](#)

¹⁴ Mulhall, J., Khan-Ruf, S. (2021), [State of Hate. Far Right Extremism Report in Europe 2021](#), HOPE Charitable Trust

¹⁵ Bundesministerium der Justiz und für Verbraucherschutz (2020), [Pressemitteilung zu den Ergebnissen des Kabinettsausschusses zur Bekämpfung von Rechtsextremismus und Rassismus.](#)

¹⁶ Bundesministerium für Familie, Senioren, Frauen und Jugend (2016), [Strategie der Bundesregierung zur Extremismusprävention und Demokratieförderung, 13 July 2020.](#)

1.5 German Foundation for Civic Engagement and Volunteering

In July 2020 the newly established German Foundation for Civic Engagement and Volunteering (*Deutsche Stiftung für Engagement und Ehrenamt* DSEE) started its operations from its location in Neustrelitz. The foundation aims at improving and supporting civil society organisations and volunteering especially in laggard and underdeveloped regions in Germany. A focus of the programmes of the foundation will be set on the improvement of digital means for civil society activities and the development of a volunteering infrastructure in response to the Covid-19 pandemic. The foundation shall also act as a central hub for civil society organisations and individual volunteers, providing information and consulting services as well as bridging existing governmental support programmes.¹⁷

The DSEE was set up as public foundation on the initiative of three Federal Ministries. The federal law on its formation (*Gesetz zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt*) of 23 June 2020¹⁸ serves as its legal basis. In addition, the statutes regulate the structure of the foundation, its tasks in the individual functional areas, the governance and asset management. As a rule, the DSEE should work outside the scope of other governmental funding programmes, but may complement them. The foundation is chaired by a Board of Trustees whose members are appointed by the Federal Government. Trustees represent federal and state government as well as civil society organisations and networks.

With its annual budget of around €30 Mio, the DSEE is expected to have a significant impact on the landscape of civil society once it has fully established and developed its annual strategic and operative plan 2021. Its focus will be set on three areas: Funding Centre, Service Centre and Competence Centre. In the opinion of civil society networks in Germany such as the National Network for Civil Society (*Bundesnetzwerk Bürgerschaftliches Engagement* BBE)¹⁹ or the Alliance for Public Benefit (*Bündnis für Gemeinnützigkeit*)²⁰, the foundation's contribution to civic space will depend largely on its success in establishing cooperation mechanisms with the existing civil society infrastructure and not to create duplicating structures.

¹⁷ Deutscher Bundestag (2020), [Gesetz zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt, 01 April 2020.](#)

¹⁸ Deutscher Bundestag (2020), [Gesetz zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt, 01 April 2020.](#)

¹⁹ Bundesnetzwerk Bürgerschaftliches Engagement (2019), [Stellungnahme des BBE](#) zum Entwurf eines Gesetzes zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt, BT-Drucksache 19/14336 i.R. der Anhörung des Ausschuss für Familie, Senioren, Frauen und Jugend des Deutschen Bundestages am 9. Dezember 2019

²⁰ Bündnis für Gemeinnützigkeit (2019), [Position Paper of the Alliance for Public Benefit](#) on the formation of the DSEE, 27 September 2019.

2 Examples of promising practice

The German Foundation for Civic Engagement and Volunteering has set up an ad-hoc micro-funding "[Joint Impact Support Programme in times of Corona](#)"²¹ in order to support non-profit organisations in these difficult times. With a budget of €20 million, the foundation could support more than 8.000 organisations in Germany between October and December 2020. A focus of funding was put on digital communication, hard- and software equipment as well as competence- and knowledge sharing.

After a year of intensive work and discussions, the Berlin Senate passed a [Civic Engagement Strategy](#) 2020-2025 on 22 December 2020.²² In a participatory process, numerous actors from civil society as well as from science, business, administration and politics have worked on the draft for the strategy. The Civic Engagement Strategy sets standards for the relationship between civil society and public authorities in the Land Berlin, funding and cooperation principles and priorities of policies strengthening civic engagement until 2025.

²¹ The funding programme "[Joint Impact Support Programme in times of Corona](#)" is documented on the website of the German Foundation for Civic Engagement und Volunteering and is based on the [Programme Guideline](#)

²² The Governing Mayor of Berlin (2020), [Berliner Engagementstrategie 2020-2025 im Senat: 100 Handlungsempfehlungen stärken freiwilliges Engagement](#), Press Release, 22. December 2020.