

# Legislative Assistance



**The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) assists OSCE participating States by reviewing draft legislation to ensure compliance with international standards, particularly those related to human rights, democracy and the rule of law.**

Requests for legislative assistance come either through OSCE field operations or directly from state authorities. The ODIHR does not consider requests from individuals or non-governmental organizations. There are three main criteria for selecting legislation to be reviewed: the likely impact of the review on domestic lawmakers; the timeframe for consideration and adoption of the legislation; and the status and nature of the request.

The ODIHR produces two types of standardized reviews:

- Opinions based on an official request from governments or legislatures; and
- Comments based on the request of an OSCE field operation.



The areas of law covered by the ODIHR include:

- legal framework for democratic elections;
- legislation pertaining to freedom of religion or belief;
- hate crime legislation;
- trafficking in human beings (including more specific issues such as victim/witness protection, compensation schemes for victims);
- gender issues/equal opportunity legislation;
- legislation relating to migration, freedom of movement and civil registration;
- freedom of association/status and registration of NGOs; lobby laws/regulations;
- freedom of assembly;
- freedom of information, data protection;
- legislation combating “extremism” and other legislation relating to incitement to violence;
- legislation on bar associations, defence lawyers, legal aid, status of judges, judicial councils or any issues relating to the criminal justice system, prosecution or legal profession;
- legislation pertaining to Ombudspersons and their staff;
- (to a lesser extent) constitutional law; police-related legislation; detention issues; terrorism related legislation (including legislation relating to victims of terrorism), legislation on the financing of terrorism;
- legislation on normative acts and other legislation regulating the law-making process.

In most instances, the ODIHR provides direct assistance to lawmakers while the legislative process is underway. Close co-operation with the OSCE field operations throughout the process is central to the OSCE’s added value in this field. ODIHR experts work closely with local actors and make constructive recommendations that take into consideration the specifics of the domestic legal system.

The ODIHR does not accept requests on issues covered by other OSCE institutions. This includes legislation pertaining to national minorities and freedom of the media. Legislation on constitutional courts or other courts as well as civil, criminal or administrative codes in their entirety are also not dealt with by the ODIHR. The ODIHR has developed co-operation links with the OSCE’s Strategic Police Matters Unit to provide legal advice on police-related legislation.

The ODIHR has a dedicated legislative support unit within its democratization department. Created in 2004, this unit has the primary responsibility for preparing ODIHR legal opinions. However, some areas, such as legislation relating to elections, freedom of religion or belief and hate crime, are dealt with through the ODIHR’s thematic programmes on these issues.

## **Freedom of Assembly**

ODIHR legal opinions on legislation pertaining to the freedom of assembly are drafted by the ODIHR Panel of Experts on Freedom of Assembly. The Panel of Experts was established in 2006 to draft the *ODIHR Guidelines on Freedom of Peaceful Assembly*, which was released in March 2007 following an extensive consultation process with experts from participating States. Since 2004, the ODIHR has provided comments on the legislation pertaining to or affecting the freedom of assembly in Armenia, Azerbaijan, Kazakhstan, Moldova and Ukraine.

## **Elections**

A legal framework that does not sufficiently reflect OSCE commitments for democratic elections is not conducive to genuine and meaningful democratic elections. The provision of expertise on the legal framework governing the conduct of elections is one of the main ways in which the ODIHR assists participating States.

The ODIHR's legal assistance work complements its election observation activities, providing follow up to recommendations for improving the electoral framework noted in election observation mission reports. In almost all instances, ODIHR legal opinions are issued jointly with the Council of Europe's Venice Commission.

The ODIHR has reviewed entire laws or specific provisions governing the conduct of elections in 18 OSCE participating States. In 2001, the ODIHR published *Guidelines for Reviewing a Legal Framework for Elections*, which provides an instrument for review aimed at ensuring uniformity, reliability, consistency and accuracy. These guidelines also provide guidance to national parliaments in the drafting or amending of election-related laws.

## **Freedom of Religion or Belief**

The ODIHR offers technical assistance and advice on the drafting of legislation pertaining to freedom of religion or belief upon the written request of OSCE participating States. The assistance is provided through the Advisory Panel of Experts on Freedom of Religion or Belief, a sixty-member consultative body to the ODIHR.

In 2004, the ODIHR published *Guidelines for Review of Legislation Pertaining to Religion or Belief*, which was drafted by members of the Advisory Panel of Experts in association with the Council of Europe's Venice Commission. This document forms the basis of the Panel's methodology for legal reviews.

## **Trafficking in Human Beings**

The ODIHR provides legal assistance and support in ensuring that legislation criminalizing trafficking in human beings, as well as legislation and regulations aimed at providing assistance to the victims of human trafficking, complies with the relevant international standards.

The ODIHR has long-standing and well-developed expertise in this area. Legislation in many OSCE participating States, including Azerbaijan, Armenia, Georgia, Moldova and Ukraine, has been amended with the assistance of the ODIHR.

The ODIHR's assistance does not end with the issuance of legal opinions, and is usually supported by the provision of in-country expertise and consultations.

To the extent possible, ODIHR opinions on legislation pertaining to combating trafficking in human beings is co-ordinated with other international actors working in this field, and joint opinions are also issued (for instance, with the Council of Europe).

## **Hate Crime**

The ODIHR has recently been tasked to assist participating States in improving the effectiveness of their response to hate crimes. The ODIHR is currently developing guidelines on hate crime legislation with the assistance of an international group of legal experts. The guidelines will be published after a consultation process, which will include OSCE field operations. They will then be used to support legislative reviews by providing clear and accessible benchmarks.

## **Freedom of Association**

The ODIHR has reviewed draft legislation on the regulation of non-governmental organizations or that otherwise affects the freedom of association in Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine, and Uzbekistan.

Currently the ODIHR is in the process of preparing a guidebook on the legislative regulation of civil society organizations. It will provide legislators in the OSCE participating States with information on how legitimate goals can be successfully achieved without encroaching upon the freedom of association and other rights and freedoms. The guidebook will draw heavily on legislative good practice from across the OSCE region.

The ODIHR co-operates closely with the Council of Europe's Venice Commission, and has permanent observer status at the Commission's plenary sessions. It often co-ordinates its reviews or issues reviews jointly with the Venice Commission. The ODIHR also issues joint opinions with other branches of the Council of Europe, as well as other relevant international organizations.

## Legislationline.org

The ODIHR maintains Legislationline ([www.legislationline.org](http://www.legislationline.org)), a free-of-charge online legislative database created in 2002 to assist OSCE participating States in bringing their legislation into line with relevant international human rights standards, by providing examples of legislation from other participating States.

The database is designed as a drafting tool for lawmakers, not simply as an archive of domestic or international legislation. Its purpose is to provide assistance to those who prepare and draft laws at the working level, and statistics show that it is being consulted by users from the whole OSCE region. A Russian interface of the database can be accessed from the homepage.

All ODIHR legislative reviews are available on [www.legislationline.org](http://www.legislationline.org).



## Transparency in legislative processes

The legal assistance provided by the ODIHR goes beyond the mere scrutiny of individual laws and extends into an examination of a country's law-making system. If laws are not made in an inclusive and transparent way, in consultation with relevant stakeholders, they risk losing the public confidence necessary for effective legislation. Therefore, in addition to the issuance of legal opinions and reviews described above, the ODIHR also conducts comprehensive assessments of the procedures and mechanisms in place in a given country for preparing, drafting, adopting and monitoring the implementation of legislation in order to facilitate the development of a more efficient and transparent legislative process.

Such assessments are only undertaken upon request of participating States. They are only a first step and are primarily intended as a catalyst for possible reform of the legislative system.

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