



DEMOCRACY AND HUMAN RIGHTS ASSISTANCE

Legislation Review Fund (1300537)

**FUNDED THROUGH
EXTRABUDGETARY CONTRIBUTIONS**

Warsaw, September 2012

Legislation Review Fund (1300537)

Current budget: EUR 715,000¹

1. Background

This fund collates and builds upon the various legislative reform assistance programmes that have been conducted by ODIHR since 1999. As the number of requests for legislative assistance has steadily increased over time, so has the complexity of the task. ODIHR has responded by upgrading its capacity to act on such requests. The creation of a Legislative Support Unit in 2004 was part of this process. Since 2004, more than 200 legal opinions have been drafted on all issues falling within ODIHR's Human Dimension mandate.²

2. Objective

To assist OSCE participating States to reflect commitments they have undertaken in the human dimension in their national legislation.

3. Eligibility

The areas of law covered are the following:

- Election legislation;
- Constitutional law (with a focus on human rights and fundamental freedoms);
- Trafficking in human beings (including more specific issues such as victim/witness protection, compensation schemes for victims);
- Gender issues/equal opportunity legislation;
- Prevention of domestic violence;
- Legislation relating to migration, freedom of movement and civil registration;
- Legislation on political parties and non-governmental organizations;
- Freedom of assembly;
- Freedom of information, data protection (in co-ordination with the OSCE Representative on Freedom of the Media);
- Legislation combating "extremism" and other laws relating to incitement to violence;
- Hate crime legislation;
- Anti-discrimination legislation;
- Legislation on freedom of religion or belief or on religious education;
- Legislation on issues relating to the criminal justice system;
- Legislation defining the powers of the police to stop and search, to enter premises, to intrude into the privacy of individuals;
- Legislation relating to the legal profession and more specifically, the representation of parties in criminal proceedings;
- Legislation pertaining to the independence of the judiciary;
- Legislation pertaining to ombudspersons and their staff.

ODIHR does not accept requests on issues covered by other OSCE institutions, but co-ordinates requests which may overlap thematically. This includes legislation pertaining to national

¹ For the period 20 November 2009 to 31 December 2014.

² This figure does not include opinions on election legislation.

minorities and freedom of the media. Requests for legislative assistance come either through OSCE field operations or directly from state authorities and official entitie(s) representing the OSCE participating State. ODIHR also considers requests coming from other OSCE institutions and bodies, as well as from other international organizations. ODIHR does not consider requests from individuals or non-governmental organizations.

4. Selection criteria

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.

5. ODIHR's role and methodology

ODIHR assists OSCE participating States upon request by reviewing draft legislation to ensure compliance with OSCE commitments and other international standards, particularly those related to human rights, democracy and the rule of law. ODIHR has a unique vantage point with its comparative knowledge of legislation across the OSCE region, as reflected in its legislative database through which legislators can obtain examples and options from other countries' legislation that can help them to choose their own options. ODIHR produces two types of standardized reviews: an opinion based on an official request from governments, legislatures, official entitie(s) representing the OSCE participating State, other OSCE institutions and bodies, as well as from other international organizations; and comments based on the request of an OSCE field operation. Legal reviews are drafted by legislative analysts located at ODIHR,³ often in close co-operation with OSCE field operations and Expert Panels which ensures that ODIHR's recommendations are informed by local policy discussions and are context specific. All reviews are posted on ODIHR's legislative database (www.legislationline.org).⁴ All are prepared in English and some are also made available in the language of the participating State whose legislation is being reviewed.

Reviews of legislation pertaining to subject matters covered by the mandates of both ODIHR and the Venice Commission of the Council of Europe (elections, freedom of assembly, legislation on political parties) are closely co-ordinated with the latter and joint opinions are frequently issued. ODIHR has observer status at the Venice Commission's plenary sessions where all opinions, including joint ODIHR/Venice Commission opinions, are discussed in view of their adoption. ODIHR also co-operates with the Council of Europe's Directorate General on Legal Affairs and issues joint opinions with it.

With regard to election legislation, ODIHR's reviews contain concrete recommendations on how to bring it closer in line with OSCE commitments, in particular the Copenhagen Document of 1990. Its recommendations for changes to electoral legislation build upon years of comprehensive and effective election observation and legal analysis and use the *Guidelines on Reviewing a Legal Framework for Elections* described below. Election legislation is reviewed first by an external expert, then by the relevant Desk Officer at ODIHR and the Head of ODIHR's Elections Department, and finally approved by ODIHR's Director. Reviews of electoral legislation are

³ Based in the Legislative Support Unit within the Democratization Department. Election legislation is reviewed first by an external expert, then by ODIHR staff based in the Elections Department.

⁴ Including also most reviews of electoral legislation.

conducted in co-operation with the Venice Commission (see above). ODIHR may also prepare legal comments on electoral legislation if it proves necessary as part of its preparations to observe an election.

ODIHR's expert opinions on legislation on freedom of religion or belief or other related legislation are prepared based on *in situ* visits and consultations with the main stakeholders.

Expert Panels/Groups and Legislative Guidelines

Over the years, ODIHR has established three expert bodies, namely the Advisory Panel on Freedom of Religion and Belief (established in 1997), the Expert Panel on Freedom of Peaceful Assembly (established in 2006), and the Group of Experts on Political Parties (established in 2011). These Panels/Groups are composed of eminent and independent experts in their respective fields, selected on the basis of their expertise, experience, integrity and objectivity. Through this Fund ODIHR maintains these advisory structures, using their collective expertise in its legal review activities and benefitting from their advice on all matters pertaining to their respective subjects of law.

ODIHR has also drafted several legislative guidelines offering advice and expertise on the regulation of specific subjects based on international human rights standards and commitments, as well as evolving state practice. The first example of such guidelines was the *Guidelines on Reviewing a Legal Framework for Elections*, published in 2001.⁵ The above-mentioned Panels/Groups of Experts have assisted in the drafting process of many ensuing ODIHR legislative guidelines, namely the *Guidelines for Review of Legislation Pertaining to Religion or Belief* (published in 2004 in cooperation with the Council of Europe's European Commission for Democracy through Law (Venice Commission), the *Joint ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly* (most recently revised in 2010), and the *Joint ODIHR-Venice Commission Guidelines on Political Party Regulation* (published in 2010). The guidelines are useful tools to assist OSCE participating States in their efforts to draft legislation in line with human dimension commitments, and are widely referred to in law reviews and internationally recognized.

6. Follow up

Due attention is given to following up on recommendations contained in the law reviews both to clarify them for legislators and other relevant parties and, when requested, to help incorporate them into the draft legislation under consideration. Such follow-up may take the form of consultations with authorities or other interested domestic and international partners, roundtable discussions on the draft legislation, developing guidelines for the proper implementation of the legislation or facilitating training for interested stakeholders.

With regard to election legislation, ODIHR conducts its assistance in close co-operation with national authorities, the election administration, political parties and civil society, focusing on issues identified in final reports of ODIHR Election Observation Missions (EOMs) and during follow-up visits. Where applicable, it co-operates with OSCE field operations and other national and international organizations in developing focused election-related activities and in implementation of them. Using roundtables, seminars and workshops, ODIHR encourages

⁵ These Guidelines, currently being updated, identify minimum legal standards for election legal frameworks and ensure uniformity, consistency and accuracy in the review of election laws.

ownership of electoral reform processes and their results by the authorities, political parties and civil society. It uses more inclusive forums to foster broader acceptance and public confidence in the adoption of legislation for democratic elections.

7. Reporting

ODIHR reports annually to donors in the context of its regular extra-budgetary reporting.