



## **European network of legal experts in gender equality and non-discrimination**

### **NEWS REPORT**

<b>Country:</b>	Germany
<b>Title:</b>	Amendments to the Penal Code regarding the prosecution of stalking
<b>Date:</b>	07 August 2017
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	The federal parliament passed a law amending the Penal Code to improve the prosecution of stalking and the protection of victims.
<b>Ground of discrimination:</b>	Sex/gender
<b>Source:</b>	Legislation
<b>Field:</b>	Other
<b>Applicable law:</b>	Penal Code

### **Content**

**Legislative development:** On 10 March 2017, the statute on the improvement of the protection against stalking entered into force, amending the Penal Code and the Criminal Procedure Code.

Until then, the relevant Section 238 of the Penal Code required, among others, that the personal life of the victim of stalking was seriously impaired, e.g. that the victim felt compelled to move house or change jobs and acted accordingly. This requirement severely hampered the prosecution of stalking, especially to the disadvantage of victims who resisted the pressure to change their lives fundamentally. Moreover, the prosecution of stalking lay in the discretion of the state attorney under the Criminal Procedure Code because stalking was qualified as a subject of private prosecution.

Under the amended Section 238 of the Penal Code, the general suitability of the stalking actions to impair a victim's life is sufficient without the requirement for the victim to actually perform detrimental lifestyle changes. And by amending the Criminal Procedure Code, state attorneys are generally obliged to prosecute stalking when reported.

**Key points of analysis:** Freedom from violence is the basis for the enjoyment and exercise of all fundamental and human rights. It is suggested that 12% of the population in Germany become victims of stalking at least once in their life, and the vast majority (80%) of these victims are female. The former requirements of the Penal Code punished victims who resisted to give up their jobs or leave their homes and made it nearly impossible to prosecute even very persistent stalkers. And the qualification of stalking as subject of private prosecution gave the harmful impression that stalking was a private problem although regarded as gender-based violence, even and especially when

committed by (ex-)partners, husbands or relatives, is a legal problem to be solved primarily by the state. The improvement of the protection against stalking is one more step in the direction of the implementation of the Istanbul Convention.

**Internet link source:**

Statute on the improvement of the protection against stalking of 1 March 2017, [http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/BGBl/BGBl\\_Anti\\_Stalking.html](http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/BGBl/BGBl_Anti_Stalking.html).