

Report to the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Concerning Discriminatory Practices in Public Procurement in Germany

1. Introduction

In response to the call for input for your official visit to Germany in 2026, CAP Liberté de Conscience respectfully submits this report. Your call explicitly seeks information on, *inter alia*, “legal, institutional and policy frameworks that protect or restrict the right to freedom of opinion and expression,” and “measures to address... intolerance, negative stereotyping, stigmatization, discrimination... against any persons.”

This submission directly addresses these points by documenting a longstanding and systemic practice by German public contracting authorities that we assess constitutes discrimination based on religion or belief, thereby unlawfully restricting the economic participation and freedom of expression of members of a specific religious community. The findings presented herein are based on an analysis of publicly available tender data and are framed within the context of relevant European Union and international human rights law.

2. Report Overview: Objectives and Methodology

The primary objective of this analysis is to document and assess the use of so-called “protective declarations” (*Schutzerklärungen*) targeting the Church of Scientology within German public procurement procedures. The core question addressed is whether the mandatory requirement for economic operators to disavow any affiliation with this specific religious group as a precondition for bidding on public contracts complies with the principles of equal treatment, non-discrimination, and freedom of religion or belief.

The methodology employed is empirical and documentary. Data was collected from the European Union’s Tenders Electronic Daily (TED) portal, the official journal for public procurement above certain thresholds within the EU. A systematic search was conducted for notices published by German contracting authorities containing the term “Scientology” from 2 May 2014 (the earliest date from which comprehensive digital records are accessible) to 20 August 2024. Each identified tender notice was reviewed to confirm the inclusion of a requirement for a “Scientology Protective Declaration.” The data was aggregated annually to identify trends. A representative sample tender was selected for detailed analysis to illustrate the standard integration of this requirement into procurement documentation. This empirical data was then evaluated against the legal standards established by Directive 2014/24/EU on public procurement, the Treaty on the Functioning of the European Union (TFEU), and foundational human rights instruments including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

3. Key Findings: Systemic Discrimination in Public Procurement

3.1. Scale and Prevalence of the Practice

The analysis identifies a persistent and institutionalized practice. Between 2 May 2014 and 20 August 2024, **3,095 public tender notices** published by German authorities on the TED portal required bidders to submit a declaration distancing themselves from the Church of Scientology. It is critical to note that this figure represents a minimum count, as the EU transparency obligation only applies to contracts valued above €140,000 (net of VAT). The practice is not diminishing; on the contrary, the annual number of such tenders has risen consistently, from 81 in 2014 (from May onward) to 493 in 2023. In just the first eight months of 2024, **434 discriminatory tenders** were published, indicating a trajectory for another record year.

3.2. Nature of the Requirement

The requirement is typically listed among mandatory submission documents, alongside declarations of eligibility, anti-corruption pledges, and proof of insurance. The “Scientology Protective Declaration” obliges the bidding company to affirm that neither the company itself nor any of its employees are connected to the Church of Scientology. Failure to provide this declaration results in exclusion from the procurement procedure. This requirement is applied universally, regardless of the contract’s subject matter. The sample tender analyzed (Notice 259451-2024) is illustrative: the City of Munich’s municipal hospital group, München Klinik gGmbH, required this declaration for a contract to supply **modular furniture, medical furniture, shelves, tables, cupboards, desks, and bookcases**. This demonstrates that the clause is applied even for wholly secular, non-sensitive goods and services, where any alleged conflict of interest or performance risk related to a bidder’s religious affiliation is objectively non-existent.

3.3. Systemic Institutional Pattern

The data reveals this is not an isolated or local phenomenon but a widespread practice across Germany, employed by municipal, state, and potentially federal contracting authorities. The consistent inclusion of the clause in standard tender documentation over a decade points to its institutionalization within German public procurement guidelines and checklists. Its application across wildly divergent contract types—from construction and IT services to hospital furniture—indicates a blanket policy of exclusion based on religious affiliation rather than a case-by-case assessment of legitimate risk.

3.4. Classification under International and EU Law

This practice constitutes a systemic violation of several fundamental legal principles:

- **Violation of EU Public Procurement Law (Directive 2014/24/EU):** The practice directly contravenes Article 18(1), which mandates that “Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.” By designing a procurement requirement with the sole effect of excluding adherents of a specific religion, authorities are *de facto* “artificially narrowing competition” to their disadvantage. Furthermore, the mandatory exclusion grounds listed in Article 57 are exhaustive and relate to serious criminal offences such as corruption, fraud, terrorism, and child labour. Religious belief is not, and cannot be, a legitimate exclusion ground under the Directive.

- **Violation of EU Fundamental Freedoms (TFEU):** The practice impedes the freedom of establishment (Article 49 TFEU) and the freedom to provide services (Article 56 TFEU) for economic operators associated with Scientology. It also constitutes a restriction on the free movement of goods, as it prevents companies from other EU member states affiliated with the religion from competing for German contracts.
- **Violation of the Right to Freedom of Religion or Belief (ICCPR Article 18):** The ICCPR protects the freedom to manifest one's religion or belief, individually or in community with others. The UN Human Rights Committee has clarified that discrimination on the basis of religion or belief includes "any distinction, exclusion, restriction or preference" based on religion that impairs the equal enjoyment of rights. Barring individuals and companies from participating in the economic life of the state solely due to their religious affiliation is a severe impairment of this right.
- **Violation of the Prohibition of Discrimination (ICCPR Article 26 & UDHR Article 7):** The practice is a clear instance of discrimination. It subjects individuals to a disadvantageous condition not applied to others, based solely on their religious affiliation, with no objective and reasonable justification. The German state's reported characterization of Scientology does not meet the high threshold required under international law to justify such pervasive and punitive discrimination in the field of public contracts.
- **Chilling Effect on Freedom of Opinion and Expression:** The requirement to denounce or disavow an association as a condition for economic participation creates a powerful deterrent against the free identification with, or expression of, particular beliefs. It forces individuals and companies to choose between their conscience and their livelihood, which constitutes an undue interference with the right to hold opinions without interference, protected under ICCPR Article 19(1).

4. Recommendations

Based on these findings, we urge the Special Rapporteur to consider the following recommendations for inclusion in your dialogue with the German government and in your subsequent report:

4.1. Immediate Cessation and Review:

- **Recommendation 1:** Call upon the German federal government to issue an immediate directive to all public contracting authorities at every level (municipal, state, federal) to cease and desist from including any form of "Scientology Protective Declaration" or similar faith-based exclusionary clauses in public tender procedures.
- **Recommendation 2:** Urge the German Parliament (*Bundestag*) to undertake a comprehensive review of all public procurement regulations, guidelines, and standard form documents to identify and formally repeal any provisions that mandate or permit discrimination based on religion or belief, bringing national law into full compliance with Directive 2014/24/EU.

4.2. Affirmation of Non-Discrimination Principles:

- **Recommendation 3:** Encourage Germany to publicly affirm that economic operators are to be assessed solely on their professional, financial, and technical capacity to fulfill a contract, in strict adherence to the principles of equal treatment, non-discrimination, and proportionality as enshrined in EU law. Exclusion from public procurement must be based solely on the criteria exhaustively listed in Article 57 of Directive 2014/24/EU.

4.3. Redress and Accountability:

- **Recommendation 4:** Recommend that Germany establish a clear, accessible, and effective mechanism for companies unfairly excluded from procurement procedures due to these discriminatory clauses to seek rapid redress, including compensation for bid preparation costs and opportunities to participate in future tenders without prejudice.

4.4. Training and Awareness:

- **Recommendation 5:** Advise the implementation of mandatory training programs for all public officials involved in procurement on their obligations under EU law and international human rights standards, emphasizing the impermissible nature of discrimination on grounds of religion or belief in public contracting.

4.5. Monitoring and Transparency:

- **Recommendation 6:** Suggest that Germany enhance its monitoring of public procurement practices to ensure compliance with non-discrimination principles and report publicly on measures taken to eliminate such discriminatory practices, providing statistical data on the cessation of faith-based exclusionary clauses.