

Press Freedom Index 2015

Press Freedom in Germany

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In a global comparison the top positions in the International Press Freedom Index are held by countries with democratic governments where the separation of powers is given. In these countries an independent judiciary ensures that the legislature and government generally observe minimum standards. Most of the top-ranking countries are EU member states and Anglo-Saxon democracies. Germany ranked 12th this year, maintaining its upper mid-range position among the EU member states.

For a "close-up" assessment of the situation in these countries, however, stricter standards for press freedom must be applied. Full press freedom requires the kind of press and media diversity that provides citizens with the controversial opinions and information necessary for them to make informed electoral decisions. Therefore, in its "close-up" assessment for Germany Reporters Without Borders documents in detail deficiencies and structural developments which, despite Germany's 12th position in the index, pose a threat or obstacle to the realization of press freedom and freedom of information.

This overview refers to the period from the beginning of January 2014 to the beginning of February 2015.

1. Summary

- In 2014 an indiscriminate animosity towards established news outlets that had been latent for some time in certain sections of society came to the surface above all at anti-Islam and right-wing

extremist demonstrations. Journalists were insulted, verbally accosted and in some cases physically attacked by small groups at demonstrations in various German cities. In Dresden, thousands of demonstrators participating in the Pegida movement rallies chanted slogans such as "Lying press" and "Traitors of the people" the likes of which had previously only been heard at far-right rallies.

- Above all journalists and newsrooms that covered the war in Ukraine or the Pegida rallies were frequently insulted and sometimes even threatened in Internet forums, social media or emails. There were several incidents of journalists or editorial offices being attacked, including targeted arson attacks.
- In 2014 new cases of journalists being secretly investigated by criminal prosecution authorities or intelligence services became known, either as specific targets or in the course of large-scale surveillance operations. A particularly serious case was uncovered in Hamburg, where an agent of the criminal investigation department who worked undercover in the left-wing scene also worked at a free radio station for several years.
- Further revelations by US-whistleblower Edward Snowden brought to light new details that undermine the protection of journalistic sources and research in Germany. The debate about data retention also flared up again recently.

Two higher administrative court rulings have confirmed concerns that a 2013 ruling by the Federal Administrative Court would be interpreted as curtailing journalists' right to access records held by federal authorities. The Freedom of Information Act remains insufficient on the federal level; several federal states do still not have any corresponding legislation.

- **Hostility with consequences: hostile behaviour towards journalists and attacks on editorial offices**

Several **arson attacks were carried out against journalists and editorial offices** last year. In Berlin the car of a photographer who regularly covers neo-Nazi demonstrations was set on fire twice within a few months. His name also figured on what appeared to be a "wanted poster" listing the names of 18 photojournalists which has been circulating on far-right websites since November. (<http://bit.ly/1JV5tw4>) In March, the car of a columnist for the Berliner tabloid BZ was set on fire. In a letter claiming responsibility for the act posted on a far-left website, unidentified persons announced they will "make life difficult" for the author because of the "filthy articles" he had written. (<http://bit.ly/1ghtGTJ>)

On the night of 10 January 2014, just a few days after the deadly attacks on the offices of Paris-based satirical magazine *Charlie Hebdo*, unidentified persons threw an incendiary device into the archive rooms of the *Hamburger Morgenpost*. The newspaper had reprinted several Muhammad cartoons from the satirical magazine in the aftermath of the Paris attacks.

Demonstrators repeatedly **threatened and harassed journalists** at far-right demonstrations like the "Hooligans against Salafists" march in Cologne at the end of October 2014 and in Hannover in mid-November. In Dortmund, supporters of the right-wing extremist party "Die Rechte" wanted to demonstrate outside the home of an editor for the *Ruhr-Nachrichten* newspaper in December to take a "stand for objective journalism". (<http://bit.ly/1tjVyhq>) After the police banned the demonstration, unidentified

persons threw a paint bomb against the editor's house. In early 2015 unidentified persons began circulating online fake "death announcements" for journalists who report on Dortmund's Nazi scene.

The *Lausitzer Rundschau*, which regularly publishes critical reports on neo-Nazi activities in the region, was once again targeted in 2014. Unidentified persons smeared the facades of several of its local newsrooms with inflammatory slogans like "We'll get you all" and "Jews, kill them". (<http://bit.ly/1CJGHZ0>) Far right and xenophobic slogans were also scrawled or stuck on the walls of two local editorial offices of the Brandenburg-based daily *Nordkurier*.

Although there have been occasional instances of journalists being harassed and attacked in the past, especially at neo-Nazi demonstrations, the perpetrators are now increasingly attempting to **come out of their isolation on the far right**. To this end they have tried to join up with local movements like the "Patriotic Europeans Against the Islamization of the West" (Pegida) movement in Dresden and its offshoots in other cities like Leipzig and Duisburg, where a long-simmering distrust of "the media" as part of a "system" that is perceived as alien is now being articulated.

At demonstrations of these movements too, slogans like "Lying press! Shut your mouth!" were chanted against journalists on a regular basis (and in Dresden repeated by several thousands of demonstrators), reporters were accosted or in some cases called by their names and accused of distorted reporting. And there were also cases of reporters being **physically attacked by small groups of demonstrators**. (<http://bit.ly/1CJqpUb>).

Those who were critical in their coverage of the Pegida demonstrations or of the political escalation in the conflict between Russia and Ukraine frequently received **hate mail, insults and threats** via social networks. (<http://bit.ly/1K6xnqW>) Participants in pro-Palestinian demonstrations against the Gaza war in 2014 repeatedly insulted photographers and called them "scavengers" on Facebook.

After writing a newspaper article that was critical of the new Russian state-funded broadcaster *RT Deutsch*, journalist Olaf Sundermeyer received hate mail. One such mail contained the message: "You really deserve to be shot for the rubbish you wrote about RT."

On several occasions photojournalists in particular complained that the **police did not offer them adequate protection from harassment and threats at demonstrations**. This was the case at a series of demonstrations against refugees in Berlin. At a neo-Nazi march in the town of Döbeln in Saxony, several photographers were thoroughly searched by the police after demonstrators claimed the reporters were taking portrait shots of them. Two photographers were approached by the police as potential incendiaries were given a verbal warning ("Gefährderansprache") by the police and felt compelled to leave the demonstration. (<http://bit.ly/1K76gvP>)

2. Under suspicion: journalists targeted by police and intelligence services

In 2014 further instances of journalists being spied on by law enforcement authorities or national and international intelligence services came to light.

In November, following research by a group linked to the alternative cultural centre Rote Flora, the Hamburg Senate confirmed that an agent of the criminal investigation department had **worked undercover**

in Hamburg's left-wing scene over a period of several years. The woman had infiltrated Rote Flora circles between 2000 and 2006 and also worked undercover at the free radio broadcaster *Freies Sender Kombinat* (FSK). She took part in editorial meetings and procured detailed information about the broadcaster's internal procedures and journalistic sources. It is likely that she passed on this information to the state office of criminal investigations, which constitutes a serious violation of editorial confidentiality and protection of sources. (<http://bit.ly/1yKPvCU>)

In Munich it emerged in 2014 that at least in the preceding years, suspicions of bribery had prompted the Federal Criminal Police Office (BKA) to intercept the phone connections of two employees at the Bavarian state office of criminal investigations (LKA) over several months and in doing so meticulously **documented their conversations with a police reporter with the regional broadcaster Bayerische Rundfunk**. The BKA had previously rejected plans to intercept the reporter's phone calls directly. The investigations against the reporter and the two Bavarian LKA employees were eventually dropped on the grounds of "proven innocence". (<http://bit.ly/16dhAHD>)

NSA whistleblower Edward Snowden's revelations about the activities of Western intelligence agencies exposed further cases of surveillance that among other things call into question the confidentiality of journalists' communications. A collaboration between the US's National Security Agency (NSA) and the German Federal Intelligence Service (BND) under the codename „**Eikon**al“ came to light in October 2014: according to the leaked information, between 2004 and 2008 the BND tapped into an Internet hub in Frankfurt and analyzed the data with the NSA without being able to ensure that the data of German citizens did not also end up illegally in the hands of its US colleagues.

It also emerged that the NSA specifically targets people who protect their online communication – as for instance investigative journalists working on particularly sensitive topics do. Among other things the NSA tapped into a hub server used by the **Tor anonymization network** in Erlangen – meaning that the intelligence agency almost certainly knows which IP addresses were used to gain access to the network over this hub. (<http://tinyurl.com/n7py5ub>)

By refusing to guarantee Snowden safe passage and therefore make it possible for him to testify before the **parliamentary committee investigating the NSA spying affair**, the German government has demonstrated that it continues to have little interest in a comprehensive investigation of such excesses in the surveillance activities of intelligence agencies.

In 2014 it became known that the BND had applied for funds for a **technical upgrade** that would enable it to monitor Internet traffic protected by SSL and HTTPS encryption technology. To do this, however, the intelligence service would have to exploit weak points in these programmes – and could exert pressure on software designers to integrate such vulnerability into the programmes. This would weaken the protection offered by such encryption technologies as a whole, and therefore poses a threat not least to journalistic sources and informants' protection. (<http://bit.ly/1DAiucs>)

Moreover in 2014 long-held suspicions that **dictatorships keep regime critics and critical journalists under digital surveillance even when they are abroad** and could believe themselves beyond the reach of such surveillance were substantiated. In early August 2014 a hacker published around 40 gigabytes of internal data from the Anglo-German producer of surveillance software, Finfisher that provide strong evidence of this. The data indicates that the Arab Gulf State Bahrain also used Finfisher technology to spy on 15 computers in Germany. (<http://bit.ly/1wc4rbj>)

Journalistic sources also continue to be under threat from the plans for **data retention**, the storage of telephone and Internet connections data for investigation purposes without specific grounds for suspicion. Following the attacks in Paris, politicians from the CDU and CSU called for the reintroduction of the data retention directive. On the grounds that in its proposed form the legislation violated basic rights, the Federal Constitutional Court of Germany ruled against data retention in 2010 and the European Court of Justice did the same in 2014. Reporters Without Borders calls for connection data to be stored only under the supervision of judges and in specific cases in which there are concrete grounds for suspicion.

A new telecommunications law has been in force in Germany since July 2013 that obliges telecommunications companies and Internet providers to pass on personal data such as the telephone numbers, names, addresses and also passwords, PINs and dynamic IP addresses of customers to the police, intelligence services and customs authorities under very broadly defined requirements. Such data can be used to trace the online activities of smartphone users for instance, which is why this reform is also likely to act as a deterrent to journalists' sources and whistleblowers.

Targeted online surveillance also continues to pose a threat to journalistic sources and informants' protection. The Federal Criminal Police Office (BKA) announced in the summer of 2014 that its "**Bundestrojaner**" spyware was ready to go into operation and complied with the stringent requirements of Germany's Federal Constitutional Court. (<http://bit.ly/1zxhtBn>) However, since a clear differentiation from online surveillance is virtually impossible even from a technical point of view, Reporters Without Borders remains sceptical that such surveillance technology can be used at all in conformity with the constitution. The Federal Constitutional Court had ruled in 2008 that only the interception of individual communication (procedures) (so-called "Quellen-TKÜ") was permissible, and that blanket surveillance had to be ruled out.

One success in the lobby work of Reporters Without Borders and other non-governmental organizations that joined forces in the *Coalition Against Unlawful Surveillance Exports (CAUSE)* is the new EU regulation on **export controls of dual-use items** which came into effect at the end of 2014. For the first time sales and exports of digital surveillance technology require official approval. It remains to be seen how effective these controls will be in practice. (<http://bit.ly/1BZ9aPJ>)

3. Media in crisis: journalistic diversity continues to deteriorate

The financing crisis in the media industry continued in 2014 – and along with it the **creeping erosion of media diversity**. The number of newspapers with their own full editorial staff dropped further. Especially in rural areas of Germany, in many places there is only a single regional newspaper left, which as a result plays a dominant role in shaping public opinion.

Since last year the *Kölnische Rundschau*, for example, takes its cover section from the Bonn-based *General-Anzeiger*, in which its former rival M. DuMont Schauberg has a minority stake. Four local newsrooms of the *Kölner Rundschau* were closed down and integrated into an editorial team run by the publishers Heinen-Gruppe and DuMont Schauberg. The *Münstersche Zeitung* is now published without having any editorial staff of its own. For some time now its cover section has been supplied by the *Ruhr Nachrichten*, and since November 2014 its local news also comes from the pool of reporters who work for the *Westfälische Nachrichten*, which was once its rival and of the opposite political orientation. (<http://bit.ly/15HKXBM>)

Since its takeover as a result of insolvency, the *Münchner Abendzeitung's* economy and politics sections have been supplied by a text pool run by media group *Straubinger Tagblatt/Landshuter Zeitung*. In January 2015 the publishing group Rhein/Main announced that it was buying the *Darmstädter Echo*, which had already reported drastic spending cuts. The *Osnabrücker Zeitung* took over the *Delmenhorster Kreisblatt* in 2015. (<http://bit.ly/1nWe2LU>)

The dwindling number of permanently employed editors contrasts starkly with the **growing number and size of press and public relations offices at companies, organisations and PR agencies**. With ready-to-print PR texts disguised as news articles, they try to fill in the gaps left by staff reductions and concentration of labour in editorial departments. For readers this advertising is often barely distinguishable from editorial content, and with online media in particular, the **growing use of "advertorials"** is in some cases openly blurring the lines between covert advertising and editorial content. Another problematic issue is companies using their clout as advertising customers to influence content or increase the number of times they are mentioned in individual media outlets.

In 2014 for instance, the German Insurance Association (GDV) increased the number of staff in its communications department to more than 20 employees, whose job is to supply editorial departments with texts. (<http://bit.ly/1qv0iMg>) Electronics retailer Saturn started financing the online technology portal *Turn On* in 2014. For readers using such websites the line between independently researched topics and clever product placement by the sponsor is also increasingly blurred. For several thousand euros an advertising representative for the German business daily *Handelsblatt* made an offer to customers to place advertising content in the newspaper in such a way that it would be indistinguishable from editorial content (<http://bit.ly/18oCcyj>)

4. Inadequate protection: the legal situation

In 2014 the **impact of a Federal Administrative Court ruling** that has caused unease among many journalists since February 2013 started to become apparent. In the ruling the judges revised the prevailing interpretation of the law according to which journalists could demand information held by federal authorities with reference to the press laws of the individual German states. Instead the judges pointed to a "minimal entitlement" to information derived directly from the press freedom enshrined in the constitution.

With reference to this ruling, two higher administrative courts rejected urgent appeals by journalists for information from federal authorities: in January 2014 the Berlin-Brandenburg Higher Administrative Court dismissed the complaint of an editor who had requested information about Edward Snowden's application for political asylum from the Federal Foreign Office. Then in September 2014 the Higher Administrative Court in Münster put a halt to a journalist's research after he requested information from Germany's domestic intelligence service, the Federal Office for the Protection of the Constitution, about the number of journalists it has on file. To close this legal loophole journalist associations among others are calling for a federal law on disclosure of information to the press (**Bundespresseauskunftsgesetz**).

The **press freedom law** which has been in force in Germany since 2012 is intended to protect editorial offices from police raids and confiscation of materials except when there is strong suspicion of involvement in a crime reason to suspect a crime has been committed. Nevertheless, in July 2014 agents sent by the Darmstadt public prosecutor's office and the police who were armed with a search warrant forced employees at the editorial offices of the *Darmstädter Echo* to reveal the name of an Internet user

who had allegedly insulted an administrative employee in a forum on the newspaper's website. The public prosecutors' office justified its conduct arguing that the press law didn't apply in this instance since the search was aimed at a reader's comment that had not been subject to editorial processing.

(<http://bit.ly/1moBSTK>) The Darmstadt regional court later ruled that the search warrant was illegal on the grounds of grave procedural errors.

Since 2006 citizens and journalists in Germany have had the **right to access records view documents** held by the federal authorities. However many authorities prevent people from exercising this right by citing various exceptions, being slow to process requests and demanding high fees. In July 2014, the Administrative Court in Berlin criticised in a ruling that in 2011 the Federal Ministry of the Interior had divided a request to view documents filed by two journalists into 66 individual requests and then charged fees totalling almost 15,000 euros. (<http://bit.ly/1yL9lxR>)

At the end of 2014 Baden-Württemberg's ruling coalition finally presented the key points of the state's own **freedom of information act (IFG)**, which had been announced back in spring 2011. However important elements such as a so-called "balancing clause" (Abwägungsklausel) that would apply in cases of conflict of interests between intellectual property or trade secrecy and public interests were not included. Meanwhile Hessen, Lower Saxony, Bavaria and Saxony have all yet to introduce their own freedom of information laws.

Another cause for concern is the debate about the planned **EU Data Protection Regulation** that will govern the processing of personal data by private companies and public authorities across the EU. Reporters Without Borders fears that the binding protection regulations that have applied in Germany up to now could be dropped or largely left to the discretion of the member states in the new regulation. This would affect the protection of journalistic data processing from the research phase right through to publication. Thus far the authorities have no right to access the computers of journalists in Germany.

(<http://bit.ly/1q2icUd>) Reporters Without Borders calls for editorial protection and informants' protection to be preserved in the new regulation.

Potential **whistleblowers** still lack adequate legal protection in Germany. Conflicting laws and rulings as well as loopholes in labour legislation make it difficult for them to gauge the potential legal consequences of their actions.

Germany has no specific whistleblower protection act on a federal level (<http://bit.ly/1tmJVDJ>), nor was such a law included in the government's coalition agreement. In their coalition talks the CDU-CSU and SPD simply agreed to examine whether the international regulations are being adequately implemented in the area of whistleblower protection. With this omission the German government has made it clear that it has no interest in supporting whistleblowers in Germany. Last autumn it even repeatedly threatened to have leaks of "confidential" information to journalists, and in particular information from the parliamentary committee investigating the NSA spying scandal, prosecuted under criminal law. (<http://bit.ly/1Ao9ole>) Such attempts at intimidation undermine the media's supervisory function vis-à-vis the political class. Journalists need whistleblowers to uncover injustices.

In its ruling on the interstate broadcasting agreement for public broadcaster ZDF in March 2014, the Federal Constitutional Court reduced the political parties' influence on the broadcaster's programming. It demanded that the number of politicians and "state-affiliated persons" on ZDF's supervisory board and television board be reduced from 44 percent at the time of the ruling to no more than a third of the boards' members, in order to limit state influence on the broadcaster.

In December 2014 the premiers of Germany's federal states resolved at a joint conference that the parties should take full advantage of the seats allocated to them on these bodies. Moreover the CDU-CSU and the SPD plan to continue dividing most of the seats reserved for politicians among themselves. This means the smaller parties and other social groups still have very limited influence in these bodies. They are calling for the one-third quota to be further reduced. The member institutions of the public broadcasting consortium ARD deemed there was no need for them to take action in this respect since no more than a third of the seats on their committees were held by politicians and "government-affiliated persons".

For more information see:

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