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**Contribution by Reporters Without Borders (RSF)
an NGO with special consultative status,
on press freedom and the freedom of information in Germany**

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Submission Acronym: RSF Germany

Reporters Without Borders (RSF) is an international NGO defending media freedom since 1985. RSF has 14 offices worldwide, a network of correspondents in 130 countries and consultative status with the United Nations. In 1994, RSF Germany was founded as the German section of the organization, based in Berlin.

Germany ranks 16th out of 180 countries in RSF's 2022 World Press Freedom Index.

Prepared for the fourth cycle of Germany's Universal Periodic Review (UPR), this contribution offers an account of developments since the last circle and recommendations on press freedom.

1. Working Conditions for Journalists

1.1 Attacks against Journalists

Press Freedom and related basic rights are generally well protected in Germany. However, since the last UPR on Germany in 2018, the figures for physical assaults against journalists have risen sharply. Violence occurred in particular on the fringes of protests against Corona measures, right-wing populist events and rallies. Even though the broader public's trust in the media slightly rose¹, a climate of hostility toward the media has clearly intensified. The resulting physical insecurity of journalist's working conditions deserves political attention. While in 2019 RSF recorded 13 attacks², in 2020 the number rose to 65³ and in 2021 to 80⁴, the RSF report on 2022 will show a record high of 103 verified attacks⁵. There were further 16 attempted attacks last year that were thwarted - in most cases by security escorts, whose standard presence is a more recent phenomenon. These numbers include physical attacks as well as attacks on equipment, editorial buildings, and on IT infrastructure, such as hacking. They do not include obstructions, arrests, insults or digital violence. While taking into account that an increased awareness of the risk situation for journalists may have led to more reports, the rise in assaults on journalists is alarming - especially with regard to the fact that in 2022 fewer demonstrations against Corona measures took place than in the years before.

In dealing with these assaults, journalists again often felt that they did not receive adequate support from the police. RSF already highlighted this issue in its stakeholders' submission to the thirtieth session of the Working Group on Germany in 2018⁶ but no visible improvements could be noted since.

1.2 Obstructions by the Police

There have continued to be numerous obstructions to media work by the police, in several cases even violent or verbal attacks by police officers on journalists, especially in the vicinity of demonstrations and events by right-wing groups and parties or the corresponding counter-demonstrations⁷. In its national UPR report in 2018, the German Government highlighted its efforts to provide human rights education on racism and discrimination in police training⁸. While RSF welcomes these efforts, it still regrets a lack of training with regard to dealing with media representatives and issues of press freedom.

The German Press Council has launched an initiative to revise and update the "Principles of Conduct for Press/Broadcasting and Police to Avoid Obstructions in the Performance of Police Duties and the Free Exercise of Reporting", which have been in effect since 1993, in cooperation with the relevant authorities in Bund and Länder. The revision is ongoing, RSF would welcome a timely agreement and implementation.

1.3 Virtual Threats

Increasingly concerning are defamatory and hate campaigns on the internet against journalists. A particularly harmful practice are so-called "enemies lists" of right-wing circles, on which the plain names and addresses of numerous journalists can be found. As soon as they appear on such a list, the journalists in question are targeted with regular acts of hostility mostly

¹ <https://medienvertrauen.uni-mainz.de/forschungsergebnisse-der-welle-2020-3/>, last access February 4, 2023.

² https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste_2020/Nahaufnahme_Deutschland_2020_neu.pdf

³ https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste_2021/FINAL_Nahaufnahme_Deutschland_-_RSF.pdf

⁴ <https://www.reporter-ohne-grenzen.de/nahaufnahme/2022>, last access March 30, 2023.

⁵ to be published in May 2023.

⁶ see A/HRC/WG.6/30/DEU/3, p.7.

⁷ <https://www.reporter-ohne-grenzen.de/nahaufnahme/2022>, last access February 3, 2023.

⁸ A/HRC/WG.6/30/DEU/1, p.5-6

online, up to and including death threats, which are difficult to trace and almost impossible to combat legally⁹. Existing laws applied in such cases are designed to address analog violence, law enforcement agencies lack clear legal grounds and resources to identify and appropriately prosecute digital violence. RSF therefore calls for the implementation of an effective digital violence protection law.

RSF already criticized that the German Network Enforcement Act (NetzDG), meant to combat hate speech, can be misused as a blueprint for censorship in less democratic countries¹⁰. RSF welcomes that NetzDG is under revision and will soon be superseded by the implementation of the European Digital Services Act (DSA) into German law and calls to adopt the DSA's rights based approach, which is much better suited to address digital violence as a systemic problem than the case-based NetzDG. The implementation of the DSA should abandon the narrow definition of "hate speech" and apply the broader concept of digital violence. One aspect of the NetzDG should be adopted that is not currently reflected in the DSA and is an important means of effectively combating digital violence: The role of a "service agent" (Zustellungsbevollmächtigter) at the national level, appointed by the platform to handle complaints. Dealing with complaints at the European level would not adequately address digital violence.

2. Legal Framework and Mechanisms to Protect Journalists and Press Freedom

2.1 Application of the Principle of Universal Jurisdiction

The principle of universal jurisdiction for core crimes against international law is firmly anchored in German law (section 1 of the German Code of Crimes against International Law) and has been applied in recent cases. This is an important development in the fight against impunity for crimes against journalists, that are oftentimes not adequately prosecuted in the countries where they take place. RSF strongly welcomes that cases, such as the murder of journalist and RSF correspondent in Gambia, Deyda Hydara¹¹, have been brought to court in Germany in accordance with the principle of universal jurisdiction.

The Federal Ministry of Justice has presented a key issues paper in February 2023 on the further development of international criminal law. RSF welcomes that the ministry envisages to explicitly include the possibility for victims of crimes under the section 7 and 8 of the German Code of Crimes against International Law to participate in criminal proceedings before German courts as joint plaintiffs - including the benefits of the assignment of a lawyer and psychosocial support. The paper further aims at facilitating the coverage of such cases for foreign media by giving non-German speaking journalists access to courtroom translation (which is so far limited to those participating in the trial) and to translated verdicts. The implementation of these proposals into German legislation would strengthen Germany's international perception as a leader in applying the principle of universal jurisdiction and significantly raise the costs of impunity for crimes against journalists.

⁹ https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste_2020/Nahaufnahme_Deutschland_2020_neu.pdf, last access February 3, 2023.

¹⁰ <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/un-anhoerung-kritik-aufgreifen>, last access February 3, 2023.

¹¹ <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/prozess-nach-mord-an-rsf-korrespondent-1>, last access April 3, 2023.

2.2 Protection of Cooperation Between Whistleblowers and Media Houses

The cooperation of whistleblowers with editorial offices of media houses in Germany comes along with high personal risks for the whistleblowers. The German Whistleblower Protection Act, the draft of which is currently being negotiated, is meant to increase the level of security for whistleblowing in Germany in line with the European Whistleblowing Directive. However, the draft effectively raises the hurdles to passing on information to the media by introducing high requirements as to when whistleblowers may approach the media and making it more difficult to disclose classified information even in justified cases. The law thus does not take into account the justified public interest in clarifying systematic misconduct.

2.3 Strategic Lawsuits against Public Participation (SLAPPs)

Strategic Lawsuits Against Public Participation (SLAPPs) are designed to drain the financial and time resources of persons engaging in public participation, such as critical journalists, to wear them down psychologically and lead to self-censorship. In Germany, such cases are still only reported anecdotally. The concept of SLAPPs is not recognized as a structural phenomenon. Germany lacks a solid legal framework that would allow SLAPPs to be identified and countered in a timely manner, to sanction instigators of SLAPP proceedings and to protect and financially compensate victims.

In its coalition treaty, the German Government has announced that it would support EU measures against SLAPPs. RSF therefore calls on the Government to support efforts on the EU level to draft efficient anti-SLAPP legislation and prepare a comprehensive transposition into German law including protective measures with regard to fields of law that are not being addressed by the EU regulation.

3. Humanitarian Assistance and Journalism in Exile

3.1 Visa Policy

RSF observes that long processing times and suspension of procedures in the granting of residence permits to threatened journalists from abroad restrict the exercise of the right to protection and asylum.

Many journalists at risk from Afghanistan have not been granted residence permits to date, despite legitimate claims and respective political promises. The Federal admission programme for Afghanistan, which aimed at providing the most vulnerable persons with an uncomplicated opportunity to obtain a visa for Germany, has in practice led to inefficiency in processing applications and an unclear situation with regard to eligibility for and access to entry permits. Because the program is limited to 1,000 admission cases per month, the possibility for humanitarian admission of the persons concerned is restricted. Numerous endangered persons are excluded from the program because they fled to a third country. Since the start of the program, applications for humanitarian visas (Section 22 of the German Residence Act) are no longer being processed, or are being processed only very slowly. End of March 2023, application for visa through the program was suspended until further notice¹². It should be resumed as soon as possible.

While RSF positively highlights the granting of residence permits to endangered journalists from Russia, it is difficult to understand why journalists from Belarus, who persevere in a

¹² <https://www.reporter-ohne-grenzen.de/afghanistan/alle-meldungen/meldung/aufnahmeverfahren-wieder-aufnehmen>, last access April 4, 2023.

comparably endangered situation, are not granted comparable opportunities for visa. This poses a problem to independent journalism in Belarus, but also for a small group of Belarusian journalists who are already in Germany. While it is currently possible for Russians to obtain a residence permit as professionals under the Federal Residence Act, there is no such provision for Belarusian journalists.

3.2 Transnational Repression

Increasing authoritarianism worldwide has led to Germany becoming the most important destination point for independent media professionals. In this context, several initiatives were created to support projects by exiled media professionals, such as the JX Fund. RSF welcomes the fact that Germany offers good conditions for exile journalism and thus supports independent civil society abroad. But foreign journalists are often threatened by surveillance and repression from their home countries. Secret services and unofficial diaspora police organizations are involved, both in virtual and analog space, in monitoring and intimidating critical journalists. This takes the form of digital violence, direct persecution in everyday life, threats to family members and confrontations on the fringes of demonstrations. RSF is in contact with journalists who are victims of transnational repression for example from Vietnam¹³, China, Egypt¹⁴ and Turkey. It is urgently necessary to recognize and address the activities of semi-official diaspora organizations whose purpose is to control critical voices in exile and make sure that journalists, who are particularly affected by transnational repression, receive appropriate protection.

4. Press Freedom in the Digital Sphere

4.1 Legal basis for Surveillance

Journalists are continuously exposed to the threat of digital surveillance by German authorities - since 2018 increasingly as a result of amendments to the legal framework. Source telecommunication surveillance is allowed by the Federal Police Act from December 2020. It is used to monitor encrypted communications by using Trojan software to tap data directly at the source even before encryption. This makes it possible to read encrypted communications under certain conditions in order to combat human trafficking and smuggling of migrants. It is particularly controversial that preventive source tapping is allowed - before there is even a concrete suspicion¹⁵. It became known in 2021 that, contrary to initial claims, German security authorities were using a version of the Pegasus spyware. A reform of the law for the protection of the constitution was passed in the same year, which allows intelligence services to use so-called state Trojans. RSF and other NGOs filed emergency petitions against this in several administrative courts¹⁶ with the goal to ban the use of relevant state Trojans by the Federal Intelligence Service (BND), the Federal Office as well as the State Offices for the Protection of the Constitution and the Military Counterintelligence Service against unsuspected secondary parties.

Because the BND was able to search digital communications data according to escalating search criteria and with almost unlimited access, RSF filed a constitutional complaint against the BND Act in 2017. After the German Constitutional Court declared this mass surveillance of global internet traffic unconstitutional, the law was reformed. But the amended BND Act continues to violate fundamental rights, as foreign media professionals and their sources are

¹³ <https://www.reporter-ohne-grenzen.de/podcast/folge-12-vietnam>, last access March 30, 2023.

¹⁴ <https://www.reporter-ohne-grenzen.de/podcast/folge-10-aegypten>, last access March 30, 2023.

¹⁵ <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/fragen-und-antworten-zur-staatstrojaner-klage>, last access February 3, 2023.

¹⁶ <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/bverwg-verhandelt-staatstrojaner-klage-von-rsf-1>, last access February 3, 2023.

still not adequately protected from digital surveillance through intelligence services and misuse of the information collected in this way. RSF therefore filed another constitutional complaint in December 2022, calling for a renewed revision of the law¹⁷ with regard to an appropriate protection of foreign journalists.

4.2 Legal defense against surveillance

It is almost impossible to show that one is affected by digital surveillance, as it usually takes place in secret and the BND does not inform those affected afterwards. But because showing proof that one has been surveilled remains a prerequisite for the acceptance of a complaint against digital surveillance before German courts, the right to effective remedy is damaged¹⁸. After the Federal Administrative Court and the Federal Constitutional Court rejected complaints by RSF against BND mass surveillance on the grounds that RSF had not made a sufficiently credible case that the organization itself was affected by surveillance, RSF filed a complaint with the European Court of Human Rights. The complaint was accepted in January 2021 and remains pending.

This level of surveillance and the hurdles to taking legal action against it are a threat to press freedom and the protection of journalists' sensitive sources. RSF hopes that the surveillance bill (Überwachungsgesamtrechnung) announced in the coalition agreement of the German Government will provide the much-needed impetus to revise the legal framework regarding surveillance.

4.3 Surveillance made in Germany threatening human rights abroad

Current versions of the FinSpy Trojan by the German company FinFisher, which has ceased operations due to a lawsuit filed by RSF and other civil society organizations, keep turning up in countries with repressive regimes, such as Turkey, Egypt, and Myanmar¹⁹. Regulation of the export of dual-use goods that can be used for surveillance purposes is inadequate at both the national and European level. There is still no neutral and legally anchored definition of surveillance technology, allowing to identify dual-use goods that can be used for digital surveillance, no binding control list is maintained, and companies have few due diligence obligations to verify dual use goods. Germany must work to reform the existing European regulation on the export of dual-use goods on these points. In addition, it should focus its attention on deeply considering the risks of human rights violations through German surveillance software in the Arms Export Control Act, which is currently available as a key issues paper and will soon be elaborated by the Federal Ministry of Economics and Climate Protection.

Recommendations

- Implement regulations and practices to combat violence against journalists online and offline and ensure the practical application of existing regulations on the street, within companies, organizations and public authorities and in the courtroom.
- Complete and implement the "Principles of Conduct for Press/Broadcasting and Police" as soon as possible and invest in police training and monitoring with regard to press freedom and dealing with media workers.

¹⁷ <https://www.reporter-ohne-grenzen.de/themen/internetfreiheit/kritik-am-bnd-gesetz>, last access February 3, 2023.

¹⁸ <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/neue-verfassungsbeschwerde-gegen-bnd-gesetz>, last access February 3, 2023.

¹⁹ <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/finfisher-stellt-nach-klage-geschaefsbetrieb-ein>, last access March 29, 2023.

- Advance and implement an effective digital violence protection law that builds on a broad concept of digital violence.
- Ensure that the implementation of the European DSA into national law will adopt its rights based and systemic approach and provide an effective mechanism for handling complaints, especially about digital violence, at the national level.
- Make sure that a German whistleblower protection law considers the relevance of public whistleblowing, protecting the cooperation between whistleblowers and media houses.
- Advance plans for the further development of international criminal law in German law.
- Support efforts on the EU level to draft efficient anti-SLAPP legislation and to complement its transposition into German law with further protective measures in those fields of law that are not being addressed by the EU regulation, including criminal law and purely domestic cases.
- Resume the admission procedure for the federal admission program in Afghanistan as soon as possible.
- Ensure equal access to Visa for threatened journalists from abroad, when there is equal entitlement.
- Simplify the Workers Immigration Act in such a way that journalists, as particularly qualified professionals, could more easily obtain visa and work permits.
- Amend laws allowing for surveillance by German security authorities in such a way that the legal framework rules out disproportionate surveillance threatening sensitive journalistic work and sources.
- Work towards a binding common control list, more corporate due diligence and a neutral definition of digital surveillance technology in dual-use goods exports regulation both at the national and European level.
- Halt all exports of Category 5 dual-use goods (telecommunications and information security) and suspend all current contracts in this area.

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