

## Press Freedom Index 2014 Press Freedom in Germany

*Status as of 11 February 2014*

Germany ranks 14th among 180 countries on the Reporters Without Borders Press Freedom Index, putting it in the upper middle of the field within the EU.

The extent to which journalists are being targeted for surveillance by German and foreign intelligence agencies became increasingly clear in 2013. The Lower Saxony Intelligence Agency admitted to having spied for years on journalists involved in researching extremist milieus, and it also emerged that the US intelligence agency the CIA had tried to obtain information about a German reporter from the Federal Office for the Protection of the Constitution, Germany's domestic intelligence service. Moreover, the mass Internet surveillance programmes of intelligence agencies like the NSA and GCHQ pose a fundamental threat to the protection of sources.

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Another salient trend is the diminishing diversity of the press. The number of newspapers with their own complete editorial staff continues to drop. Further newsrooms closed down in 2013, either because their publications were taken over by competitors or they were merged with other newsrooms. Many regions no longer have competing local daily newspapers.

Public prosecutors repeatedly confiscated journalists' research material or tried to uncover media contacts in the course of their investigations. In July a new telecommunications regulation, the "Bestandsdatengesetz", came into force that gives police authorities and intelligence services easier access to static communications data such as mobile phone PINs, email account and cloud service passwords and dynamic IP addresses. The data retention debate also flared up again. Both measures pose a threat to journalistic sources and serve to deter potential informants.

Some authorities continue to react slowly to requests for information arising from the freedom of information regulations of the individual states and the federal government, in some cases also charging high fees for handing out such information. Journalists have been unsettled by a ruling by the Federal Administrative Court that calls into question the right of the press to obtain information from federal authorities.

Reporters Without Borders is also concerned by the fact that journalists have repeatedly received threats from neo-Nazis, Salafists or from criminal circles. There were also several instances of police preventing reporters from covering demonstrations.

- 1) Surveillance by intelligence agencies
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- 4) The laborious path to transparency: access to information held by authorities
- 5) Neo-Nazis, Islamists and criminals threaten reporters.

## 1) Surveillance by intelligence agencies

In Germany too, the activities of both domestic and foreign intelligence agencies have proven in 2013 to pose a growing threat to the confidentiality of journalistic research. The mass Internet surveillance by US intelligence services and their closest allies that was exposed by NSA whistleblower Edward Snowden in June 2013 also poses a fundamental threat to the protection of sources for journalists here in Germany. A specific example of this was the US agencies' surveillance of free-lance journalist Stefan Buchen (*NDR, Süddeutsche Zeitung*). In September 2013 the German news magazine *Der Spiegel* revealed that the CIA had twice requested information about the reporter from Germany's domestic security agency, the Federal Office for the Protection of the Constitution, in the context of a collaboration which ended in 2010. Buchen often travels to Arab countries for research purposes and conducts research on Islamists. He has also visited Afghanistan on several occasions. The Federal Office for the Protection of the Constitution said it refused both requests for information.

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In September the Lower Saxony Intelligence Agency admitted that it had illegally stored data on seven journalists and editors without having any evidence of "a connection to extremism" or concrete grounds for suspicion. Apparently the persons in question were mainly journalists who research the neo-Nazi or left-wing extremist scenes. One case turned out later to be a case of mistaken identity. A *Spiegel* report according to which the agency had seven other journalists suspected of being affiliated with the autonomous scene under observation remains unconfirmed.

A particularly high-profile case was that of Andrea Röpke, a journalist widely regarded as one of the top experts on the right-wing extremist scene who was under surveillance from 2006 to 2012. She submitted a request to the Lower Saxony Intelligence Agency in 2012 asking whether it had information about her on file. It replied that it did not have any information about her still on file. As it turned out, however, the data was only erased after she submitted her request.

The extent and duration of this surveillance operation, as well as the reasons why it was carried out in the first place, remain unclear. Andrea Röpke has therefore brought charges of suppression of documents against the authority. She is now also demanding full access to her reconstructed files.

According to reports in the press, Germany's Federal Criminal Police Office (BKA) has acquired licenses for the spyware of the German-British company Gamma (<http://bit.ly/1aPPUrW>). The software is to be used for a transitional period as a so-called government "Trojan" which enables investigators to subject individual computers to total surveillance (using "Quellen-TKU" software). However from a technical standpoint it is difficult to draw the line between this tool's applications and online searches of personal computers, which have been subject to heavy restrictions since a 2008 ruling by Germany's Federal Constitutional Court. Reporters Without Borders therefore has serious doubts about whether such surveillance technology can be used at

all in conformity with the constitution. And the fact that it can be exported to authoritarian regimes without being subjected to any kind of effective controls makes its use all the more questionable (<http://bit.ly/1aNHGTg>).

## 2) Media in crisis: less diversity, more disguised advertising

The trend started years ago: the number of newspapers with a complete editorial staff is dwindling, with local newsrooms being replaced by reporter pools and central news desks that supply the same content to different newspapers. In most regions, competing print media have become a rarity. Increasingly editorial collaborations between different media companies are formed, which in some cases even extend to the front sections of newspapers from different media groups.

A particularly drastic example is the *Westfälische Rundschau (WR)*, which since February 2013 has been published without having any editorial staff of its own – a novelty in Germany. In January the WAZ Media Group (now the Funke Media Group) gave up the newspaper's central news desk in Dortmund, as well as its local news desks. Since then the production of the main section of the newspaper has been almost entirely taken over by the *Westdeutsche Allgemeine Zeitung (WAZ)*, while the sister newspaper the *Westfalenpost* or local competitors supply the local news section. In October the Funke Media Group announced further cuts: in Castrop-Rauxel the *Westdeutsche Allgemeine Zeitung* and the *Westfälische Rundschau* would in future take their local news content from the *Ruhr Nachrichten*, a daily which belongs to the Lensing media group.

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At the end of February 2013, after struggling to survive for years, the insolvent *Frankfurter Rundschau* was taken over by the Frankfurter Societät (*Frankfurter Neue Presse*) and the *Frankfurter Allgemeine Zeitung*. Only 28 of its 450 staff were kept on after the takeover; the *Rundschau* continues to take its coverage from Berlin from its former sister newspaper the *Berliner Zeitung* and the *DuMont Redaktionsgemeinschaft*, which was already supplying both papers with content before the takeover.

After filing for bankruptcy twice within six months, undergoing a restructuring programme and being taken over for a short time by an investor, the news agency *dapd* finally shut down its operations on 11 April 2013. The Bremen-based *Weser-Kurier* outsourced two further local newsrooms to an external contractor on April 30. At the *Berliner Zeitung* over 30 editors lost their jobs. The Hamburg regional newspaper *Harburger Anzeigen und Nachrichten*, a paper with a long tradition, closed down completely. Since the end of May the Mainz-based publishing group Rhein-Main has been jointly producing the *Allgemeine Zeitung (Mainz)*, the *Wiesbadener Kurier* and the *Wiesbadener Tagblatt* – with a news desk for the front sections as well as several combined local editions.

In Franconia the five newspapers of the Oberfranken media group recently started working together with the papers of the Main-Post media group on the editorial production of the front sections – as several local newsrooms had already been doing since the previous summer. The *Augsburger Allgemeine* is also part of the team on the production side. On 1 January 2014, the Funke Media Group took over two local papers belonging to the Axel Springer AG, the *Hamburger Abendblatt* and the *Berliner Morgenpost*.

The cutbacks in many newsrooms are taking place in a context in which companies and PR agencies are trying to place their commercial content among media content. In regional papers, for instance, the proportion of ready-to-print texts that are supplied by agencies or public relations departments is steadily growing. Frequently, commercial content is deliberately not identified as advertising but disguised as journalistic content or mixed up with it in order to boost its credibility. For example the *rtv* TV guide, which many dailies carry as a supplement, repeatedly reported on health issues and in each case referenced a specific brand product that promised to bring relief. The business trip magazine *Business Traveller* carried articles on tourist concepts which were also the subject of advertisements in the very same issue – in one case the model in the advertisement was also quoted and pictured in the article.

The news portal *Focus Online* came under attack in June 2013 because it allowed the owner of a PR agency to comment as a columnist. The PR professional used this as a platform to make positive comments about his clients. In an interview with football manager Jürgen Klopp, the women's magazine *Grazia* allowed him to extol the virtues of a car from a company that has him under contract as a brand ambassador.

Given the situation outlined above, such PR strategies have high chances of success because editors have less and less time to carry out research and check information. They are forced to rely on pre-produced content that costs as little as possible. PR materials and disguised advertising are presented to the reader as tests or favourite products of the editorial staff, or in the form of paid articles and even entire magazines published by the company. The reader, however, takes them to be journalistic products.

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### 3) Protection of sources and informants

A press freedom law which offers journalists greater protection from state interference when conducting investigative research has been in effect since August 2012. They can now no longer be prosecuted for acting as accessories to the betrayal of state secrets if they accept, assess or publish documents from informants at government authorities. Moreover, under the new law editorial offices can only be searched and materials confiscated if there is strong reason to suspect that a crime has been committed.

In the past year, however, the limitations of this protection have become clear. On February 6 police investigators searched the homes of eight freelance photographers in five German states and confiscated a large number of photographs. The goal of the operation was to secure pictures of an attack on a police officer who was injured during a demonstration in March 2012. This confirms the criticism voiced by Reporters Without Borders and others that the new law only protects editorial offices against searches, not however the offices of freelance journalists.

In September 2013 Huber Denk, a journalist based in Passau, found out that he had been under investigation by the public prosecutor's office of Munich since 2010. Denk had reported on a conspicuous party donation of 20,000 euros made by an Augsburg entrepreneur who was being investigated on charges of fraud. Denk was put under investigation on suspicion of "incitement to betray official secrets" – an offence that is still punishable under the new press freedom law. Reporters Without Borders and other critics have made the point for some time now that this regulation can pose problems for journalists who actively seek confidential documents.

Similarly there is a lack of legal protection for whistleblowers who leak information to expose problems and abuses to the public and media. In their coalition agreement the CDU and the SPD have announced their intention to examine whether the international labour law regulations intended to protect such sources are being adequately implemented in Germany.

In other cases too, public prosecutors have tried to confiscate research materials for their investigations or to investigate journalists in the course of investigations against other individuals. The Frankfurt public prosecutor's office tried to use a court order to force the *Deutsche Presse-Agentur dpa* to hand over photographs of a demonstration held in June in Frankfurt during which a police officer allegedly beat up a demonstrator. After the *dpa* filed a complaint, however, Frankfurt's regional court revoked the court order in January 2014.

In January the Augsburg county court ordered a search of the *Augsburger Allgemeine's* offices to confiscate data on an internet forum user who was under investigation for slandering a local politician. To avoid the search, the newspaper handed over the data. The regional court however later ruled that the county court's order was inadmissible.

In August 2013 the Stuttgart county court ruled that the public prosecutor's office was to immediately erase all the emails of an editor for the Berliner *tageszeitung*, which it had stored and examined without obtaining a court order to do so. The background here was that in June 2012 investigators confiscated the computer of a former judge who had publicly quoted from a document from the Interior ministry that was intended "for official use only". In their quest to find out how the document was leaked, the investigators launched an investigation into the betrayal of official secrets, sought out the name of the journalist and filed his partially encoded correspondence with the ex-judge.

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Also in the case of a 23-year-old woman who was beaten and injured in a prison cell in Munich, the police deliberately tracked down her media contacts. According to a report in the *Süddeutsche Zeitung*, the public prosecutor's office tasked police with checking the woman's mobile phone for evidence of drug-related offences. But the police also targeted her text messages and email correspondence with a journalist, and added them to the investigation files.

So-called data retention, which requires telecommunications companies to retain data relating to their customers' internet access, email and telephony for the purpose of investigating crimes, continues to pose a threat for journalists' sources. In the past it has led to informants breaking off contact with journalists out of fear of being exposed. The Federal Constitutional Court declared a data retention law null and void in 2010. In its coalition agreement Germany's grand coalition government agreed in autumn 2013 to the implementation of the EU directive on data retention, however grave doubts exist about the permissibility of the law in its present form. In December, the advocate general of the European Court of Justice (ECJ) recommended a fundamental revision of the directive. The ECJ has yet to rule on the issue.

In the debate over a new law, Reporters without Borders calls for telephone and internet data to be retained, if at all, then only in special cases in which there are concrete reasons to suspect a crime, and subject to judicial supervision. This position also forms part of the international tenets for the application of human rights in communications surveillance (<http://bit.ly/IR3Ma4>), which Reporters Without Borders presented together with more than 260 organisations from all over the world to the UN Human Rights Council in Geneva last July.

A new telecommunications regulation ("Bestandsdatenauskunft") has been in force since 1 July 2013. It obliges telephone companies and internet service providers to pass on data such as phone numbers, names and addresses of customers and also passwords, PINs and dynamic IP addresses to the police, intelligence services and customs authorities under circumstances that in some cases are very broadly defined. Such data can be used to track the internet activities of smart phone users for example, which is why this reform is also likely to act as a deterrent for press sources and whistleblowers.

#### 4) The laborious path to transparency: access to information held by authorities

While the Freedom of Information Act (Informationsfreiheitsgesetz, IFG) which has been in force since 2006 recognises the citizens' right to access information held by public authorities, five German states have yet to pass their own freedom of information (FOI) laws (Hessen, Lower Saxony, Saxony, Baden-Württemberg and Bavaria, where however just under 60 communities have their own FOI laws). In early February 2014, Baden-Württemberg's interior minister laid the cornerstones for the FOI law already announced for his state in the coalition agreement of April 2011, and said he would present a draft law by the summer holidays.

In practice, however, the individual authorities take very different approaches to applying the FOI laws (<http://bit.ly/1eDeM9k>). Many journalists complain that authorities are slow to respond to their requests or simply turn them down. There are also cases of authorities charging excessive fees for information. Under the auspices of the *Freedom of Information Advocates Network* (<http://www.foiadvocates.net>) and together with civil rights groups from all over the world, Reporters Without Borders is campaigning for easier access to information held by public authorities and also supports the FOI portal "Frag Den Staat", or "Ask the State" (<https://fragdenstaat.de>).

In the case of the "Afghanistan papers", the German Defence Ministry acted on the basis of legislation that runs counter to the Freedom of Information Act to conceal information from the public. In July 2013, with reference to copyright laws, it brought a legal action against the publication of documents informing the German parliament about how the war in Afghanistan was proceeding (<http://bit.ly/1dy6Lwc>). A research team of the WAZ Media Group had published the documents in their entirety on the internet in November 2012 (<http://bit.ly/1gfuNzn>) in order to prove that the German armed forces and the German government had glossed over the situation in Afghanistan. The verdict has not yet been pronounced. However should this attempt by the Defence Ministry to use copyright against the general public's right to information be successful in court, it would set a worrying precedent.

A ruling by the Federal Administrative Court in February 2013 has caused concern among journalists. In the ruling the judges revised the generally held legal opinion that journalists can also demand information from federal authorities on the basis of the press laws of the individual German states. At the same time the judges acknowledged for the first time that even without explicit legal provisions a right to information derives directly from the freedom of the press enshrined in the German constitution. Since then it has been unclear whether this ruling restricts the right to information from public authorities.

## 5) Neo-Nazis, Islamists and criminals threaten reporters

Journalists have repeatedly been the target of attacks by extremists or received threats after reporting on criminals. Journalists were threatened and attacked during a neo-Nazi march in Magdeburg in January 2013. At a march organised by the far-right National Democratic Party (NPD) in the eastern German village of Schneeberg in November, demonstrators shouted slogans like "Hit the press in the face", and a journalist was actually hit in the face. In June a group of alleged Islamists attacked an SWR camera team that was filming in front of a mosque in Offenbach while it waited for the local imam to turn up for an interview. A reporter, a cameraman and a camera assistant were injured, and a camera severely damaged.

The police aren't always a help when journalists are trying to cover protests and rallies. On June 1 police officers hindered reporters in their work at a demonstration in Frankfurt and prevented some of them from gaining access to a group of demonstrators who were being held in a "kettle" by police. Several reporters suffered injuries that had to be treated in hospital, and microphones and cameras were also damaged. After a neo-Nazi march in the southern German town of Göppingen in October, journalist associations complained that reporters were only given access if accompanied by police officers, and had been prevented from exiting a police kettle, in some cases for extended periods.

7 In February a Bielefeld-based reporter for the *Westfalen-Blatt* received murder threats via YouTube and in an internet forum after he covered the trial and commented on the verdict of a Yazidi head of family charged with complicity in murder.

Frankfurt reporter for the *Wirtschaftswoche* was stalked for weeks by unidentified persons after she published a cover story about the dubious business activities of a real estate group. After unknown persons started trailing her right to the door of her home, her editorial department was compelled to hire bodyguards to protect her for several weeks. The journalist's car was deliberately scratched on two separate occasions.

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### Press Contact:

Silke Ballweg / Christoph Dreyer  
Tel.: 030 60 98 95 33 55  
Email: [presse@reporter-ohne-grenzen.de](mailto:presse@reporter-ohne-grenzen.de)