[DE] Bill to Extend Media Employees' Right of Refusal to Give Evidence

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Karina Griese
Institute of European Media Law (EMR), Saarbrücken/Brussels

The Federal Government has presented a draft Bill to amend the Strafprozessordnung (German Code of Criminal Procedure - StPO). The Bill aims to address the problems of guaranteeing freedom of the press and broadcasting, as set out in the Basic Law, on the one hand, whilst providing a functional criminal justice system capable of establishing the truth on the other.

In the Government's opinion, it is unsatisfactory that the right of refusal to give evidence should apply only to periodicals, broadcasts and statements made by third parties. Currently, a journalist's right to refuse to disclose material he has prepared himself is only granted in isolated cases, not by the StPO but by Article 5.1.2 of the Grundgesetz (Basic Law - GG) (see also IRIS 1999-10: 7).

Under the new Bill, non-periodical publications, communications and information services designed to provide public information or promote the formation of opinions, together with television reports, are to be covered by the right of refusal to give evidence. Material prepared by journalists and, - for the first timeinformation gathered in connection with their employment, are also to be protected.

The Bill requires that, in a broad range of areas, freedom of the press, broadcasting and film should take precedence over the interests of criminal justice, unless the evidence concerned would help solve a serious crime. German law defines a "serious crime" as any offence for which a prison sentence of at least one year may be imposed. On the other hand, the interests of criminal justice are secondary if disclosures relating to prepared material or information would jeopardise the anonymity of informants and their evidence.

Against the wishes of the German Union of Journalists and the Federal Union of German Newspaper Publishers, the reasons given for the Bill state that loss of the right of refusal to give evidence will not be dependent on there being a strong suspicion that a particular person has committed a crime. Rather, any degree of suspicion will suffice. Current law, according to the Bill, does not state that the admissibility of bringing or using evidence in a main hearing should depend on the degree of suspicion. Otherwise the admissibility of evidence would have to be constantly assessed, for which there is no provision in the current Code of

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Criminal Procedure.

The provisions of the ban on search and seizure are also amended by the Bill. The precise meaning of the proportionality principle in the weighing up procedure is expressly mentioned in the Bill. Powers of seizure may only be used in exceptional circumstances, ie if the investigation would otherwise be pointless or significantly impeded.

Gesetzesentwurf der Bundesregierung zur Änderung der Strafprozessordnung.

Federal Government Draft Bill to amend the Code of Criminal Procedure.

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