[DE] Draft Law Strengthening Freedom of the Press

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On 4 April 2010, the Bundesministerium der Justiz (Federal Ministry of Justice - BMJ) presented a draft law strengthening the freedom of the press.

The bill aims to improve the protection of journalists and their sources in order to ensure that they can fulfil their oversight function vis-à-vis State activities.

This is to be achieved by amending Art. 353b of the Strafgesetzbuch (Criminal Code - StGB), which provides for imprisonment of up to five years for breaches of official secrecy and special obligations of secrecy by public officials. An additional paragraph will be added to the article, expressly excluding "aiding and abetting breaches of official secrecy". This will mean that journalists who merely publish material that has been leaked to them will not be punishable.

The need for regulation in this area arose following comments by the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) in its "Cicero ruling" of 27 February 2007 (see IRIS 2007-4:8). In this case, the magazine Cicero had cited confidential documents of the Bundeskriminalamt (Federal Criminal Police Office). The responsible public prosecutor's office subsequently launched an investigation into the aiding and abetting of a breach of official secrecy, during which the magazine's editorial offices were searched and documents confiscated. The magazine complained to the Constitutional Court about these measures.

The BVerfG ruled that "the mere publication of an official secret in the press by a journalist is not sufficient to justify the suspicion that the said journalist has aided and abetted a breach of official secrecy, together with the related search and confiscation of material." Specific factual evidence was required to show that the offence of aiding and abetting had been committed. Investigations into journalists' activities should not be carried out solely, or mainly, in order to discover the identity of a source.

Pressemitteilung des BMJ

http://www.bmj.bund.de/enid/Meldungen/Bundesjustizministerin_staerkt_Pressefreiheit_1oq.html

BMJ press release

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