

[DE] Government Adopts Bill Strengthening Press Freedom

IRIS 2010-9:1/22

*Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/Brussels*

On 25 August 2010, the Federal Government adopted the bill strengthening the freedom of the press in criminal law and criminal procedure law (PrStG). The bill is based on a draft tabled by the Bundesministerium der Justiz (Federal Ministry of Justice - BMJ) on 4 April 2010 (see IRIS 2010-6: 1/20).

The bill will strengthen the freedom of the press by offering better protection to journalists and their sources, in order to ensure that the media can fulfil their oversight function vis-à-vis State activities. In the sense of the provisions, journalists are "people who, in a professional capacity, participate or have participated in the preparation, production or distribution of printed publications, radio programmes, film reports or information and communication services used for educational or opinion-forming purposes" (Art. 53(1)(5) of the Strafprozessordnung - Code of Criminal Procedure - StPO).

In accordance with the BMJ's proposal, a new paragraph has been added to Article 353b of the Strafgesetzbuch (Criminal Code - StGB; breaches of official secrecy and special obligations of secrecy), under which journalists cannot be punished for aiding and abetting breaches of official secrecy if they merely receive, analyse or publish the secret or the information that is supposed to be kept secret.

In addition, an amendment to Article 97(5)(2) StPO (concerning items that cannot be confiscated) stipulates that journalists in the sense of Article 53(1)(1)(5) StPO may only have their property confiscated if they are seriously suspected of involvement in the offence. Previously, any degree of suspicion was sufficient.

The need for reform in this area arose following the so-called "Cicero ruling" of the Bundesverfassungsgericht (Federal Constitutional Court) of 27 February 2007 (see IRIS 2007-4: 8/11). In that case, the magazine "Cicero" had cited confidential documents of the Bundeskriminalamt (Federal Criminal Police Office), following which the responsible public prosecutor's office had launched an investigation, searched the magazine's editorial offices and confiscated documents.

Gesetzentwurf der Bundesregierung - Gesetz zur Stärkung der Pressefreiheit im Straf- und Strafprozessrecht (PrStG)

http://www.bmj.bund.de/files/-/4673/RegE_Pressefreiheit.pdf

Federal Government Bill - Act strengthening the freedom of the press in criminal law and criminal procedure law (PrStG).

