

**German answers  
to the draft list of questions for CDMSI members on the  
implementation of Council of Europe standards related to  
safety of journalists and other media actors,  
as agreed by the CDMSI Bureau in their 31 March/1 April meeting,  
CDMSI(2015)Misc1rev2.**

1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?

Bodily injury (Section 223 Criminal Code) as well as threat (Section 241 Criminal Code) constitutes a criminal offence. Bodily injury is investigated and prosecuted upon the victim's request or - ex officio - if the prosecution authorities find a particular public interest warranting prosecution. Criminal threats have to be investigated and prosecuted ex officio.

2. Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?

No.

3. Is the confidentiality of journalists' sources of information protected in both law and practice?

Yes. The protection of a journalist's sources is safeguarded by numerous laws. These laws ensure that, in principle, a source remains anonymous.

In order to protect a journalist's source, German laws grant several rights to refuse to furnish information or to refuse testimony, e.g., in the German Code of Civil Procedure, in the German Code of Criminal Procedure and in the German Tax Code. E.g., pursuant to Section 53 subsection 1 no. 5 of the German Code of Criminal Procedure "individuals who are or have been professionally involved in the preparation, production or dissemination of periodically printed matter, radio broadcasts, film documentaries or in the information and communication services involved in instruction or in the formation of opinion" have a right to refuse testimony.

Likewise, pursuant to Section 102 subsection 1 no. 4 of the German Tax Code, "persons who are or were professionally involved in the preparation, production or dissemination of periodically printed matter or radio broadcasts with regard to the author, contributor or source of contributions and documentation and with regard to information received by them in their professional capacity insofar as this concerns contributions, documentation and information for the editorial element of their activity" may refuse to furnish information. An identical regulation provides Section 383 subsection 1 no. 5 of the Code of Civil Procedure for witnesses in civil court proceedings.

Insofar as a journalist might be affected by an investigation measure and it is to be expected that information would thereby be obtained in respect of which the person would have the right to refuse to testify, this shall be given particular consideration in the context of examining proportionality; if the proceedings do not concern a criminal offence of substantial importance, then, in principle, no overriding interest in prosecuting the criminal offence should be presumed. Insofar as is expedient, the measure should be dispensed with or, to the extent possible for this type of measure, restricted. The first sentence shall apply *mutatis mutandis* to the use of information for evidential purposes (§ 160a para 2 Code of Criminal Procedure).

#### 4. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?

There are several provisions in the German Criminal Code regarding defamation / libel:

Section 185 Criminal Code (“Beleidigung”) covers several situations depending on the nature of the utterance (opinion or allegation of fact). It covers the utterance of a negative opinion regarding the victim. The crime is punishable with imprisonment not exceeding one year or a fine and, if the insult is committed by means of an assault, with imprisonment not exceeding two years or a fine. An insult may only be prosecuted upon request (section 194 para 1 Criminal Code).

Section 186 Criminal Code (“Üble Nachrede”) is committed by asserting or disseminating a fact related to another person which may defame him or her or negatively affect public opinion about him or her, unless this fact can be proven to be true. It is punishable with imprisonment not exceeding one year or a fine. This offence carries a higher punishment if the offence was committed publicly or through the dissemination of written materials (imprisonment not exceeding two years or a fine).

Section 187 Criminal Code (“Verleumdung”) is committed by anybody who intentionally and knowingly asserts or disseminates an untrue fact related to another person, which may defame that other person or negatively affect public opinion about that person or endanger his creditworthiness. It is punishable with imprisonment not exceeding two years or a fine. This offence carries a higher punishment if the act was committed publicly, in an assembly or through dissemination of written materials (imprisonment not exceeding five years or a fine).

Section 189 Criminal Code (“Verunglimpfung des Andenkens Toter”) is committed by defaming the memory of a deceased person. It is punishable with imprisonment not exceeding two years or a fine.

#### 5. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, exceptio veritatis (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

### Civil law:

As for the civil tort based on infringement of the general personality right, the plaintiff has the burden of proof. The period of limitation lasts three years (Section 195 German Civil Code). The limitation period commences at the end of the year in which the claim arose and the obligee obtains knowledge of the circumstances giving rise to the claim and of the identity of the obligor, or would have obtained such knowledge if he had not shown gross negligence. Claims for damages become time-barred notwithstanding knowledge or a grossly negligent lack of knowledge, ten years after they arise and, regardless of how they arose and of knowledge or a grossly negligent lack of knowledge, thirty years from the date on which the act, breach of duty or other event that caused the damage occurred, the shorter period being determinative.

### Criminal law:

In case of Section 186 Criminal Code ("Üble Nachrede") the offender will not be punished if the assertion has been proven to be true. If the asserted or disseminated fact is a criminal offence, proof of the truth thereof shall be provided if a final conviction for the act has been entered against the person insulted. Proof of truth is excluded if the insulted person had been acquitted by final judgment before the assertion or dissemination (Section 190 Criminal Code). Proof of truth of the asserted or disseminated fact shall not exclude punishment under section 185 if the insult results from the form of the assertion or dissemination or the circumstances under which it was made (Section 192 Criminal Code).

Section 187 Criminal Code ("Verleumdung") requires positive knowledge, which means that the prosecution has to prove that the offender had positive knowledge that the accusation was false.

Critical opinions about scientific, artistic or commercial achievements, utterances made in order to exercise or protect rights or to safeguard legitimate interests, as well as remonstrations and reprimands by superiors to their subordinates, official reports or judgments by a civil servant, and similar cases shall only entail liability to the extent that the existence of an insult results from the form of the utterance of the circumstances under which it was made (Section 193 Criminal Code).

The period of limitation depends on the maximum punishment carried by the various offenses (Section 78 Criminal Code). For the above mentioned offenses, the period of limitation is five years, which may be extended up to ten years by acts leading to an interruption (like the first interrogation of the accused; Section 78c Criminal Code).

6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?

Yes. Pursuant to Section 188 Criminal Code, if an offence of defamation (Section 186 Criminal Code) is committed publicly, in an assembly or through dissemination of written materials against a person involved in the popular political life based on the position of that person in public life, and if the offence may make his public activities

substantially more difficult the penalty shall be imprisonment from three months to five years. The same applies to an intentional defamation (Section 187 Criminal Code) under the same conditions and entails imprisonment from six months to five years.

7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?

The application of the general state police laws may be preempted by the state press laws by setting forth the prerequisites under which press activities constitute a disturbance of public order. In addition, the state press laws provide journalists with claims for information against state authorities if such information is necessary for the performance of the journalists' public duty. A similar claim for information against federal authorities has been derived directly from the constitution. In addition, since the freedom of the press is a constitutional right, all simple laws need to be interpreted in its light.

8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?

There is no concrete information on a translation of the mentioned instruments other than those translations available at the Council of Europe website.