

# **Internal Regulation of Press and Communication Activities of the Judicial Organisations**

Lisa Jani, October 16th 2014, Budapest  
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# Introduction

**Me:**

Journalist,

State Prosecutor,

Spokesperson for the Judiciary,

Judge



# The Case of Jonny K.



# Freedom of the Media – a Fundamental Right

## An example: The German Grundgesetz

### Article 5

Freedom of expression, arts and sciences

(1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.

(2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.

(3) Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution.

# Freedom of the Media – a Fundamental Right

**In Comparison:**

**The Universal Declaration of Human Rights**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers.

# Freedom of the Media – a Fundamental Right

## Protected by the Freedom of the Media:

- procurement of the information
- production of the release
- its distribution
- the media product itself

# Freedom of the Media – a Fundamental Right

## The Freedom of the Media includes:

- the right to define the direction, the content and the form of the press product
- informants are protected

## Main Goal:

- absence of interference from an overreaching state (no censorship)



# The Rights to Information: The Press Act and the Freedom of Information Act

## Press Act of Berlin:

- The authorities are obliged to give any representative of the press the information he/she needs in order to fulfil his/her public task
- No information if:
  - special secrecy laws exist
  - ongoing legal proceedings are endangered
  - private interests worthy of protection are hurt
- Internal instructions/regulations that forbid a government agency to give information to the press are illegal

## § 4 Informationsrecht der Presse

(1) Die Behörden sind verpflichtet, den Vertretern der Presse, die sich als solche ausweisen, zur Erfüllung ihrer öffentlichen Aufgabe Auskünfte zu erteilen.

(2) Auskünfte können nur verweigert werden, soweit

1. Vorschriften über die Geheimhaltung entgegenstehen oder

2. Maßnahmen ihrem Wesen nach dauernd oder zeitweise geheimgehalten werden müssen, weil ihre Bekanntgabe oder ihre vorzeitige Bekanntgabe die öffentlichen Interessen schädigen oder gefährden würde oder

3. hierdurch die sachgerechte Durchführung eines schwebenden Verfahrens vereitelt, erschwert, verzögert oder gefährdet werden könnte oder

4. ein schutzwürdiges privates Interesse verletzt würde.

(3) Allgemeine Anordnungen, die einer Behörde Auskünfte an die Presse verbieten, sind unzulässig.

(4) (...)

# The Rights to Information: The Press Act and the Freedom of Information Act

## Freedom of Information Act:

- enables the citizens to look into government materials
  - against a fee
  - all documents have to be published if asked for
  - the ways to make the information confidential are restricted
- Purpose of the law: to make government knowledge and action public. The citizens shall be enabled to form their own opinion and to control the officials.

### § 1 Zweck des Gesetzes

Zweck dieses Gesetzes ist es, durch ein umfassendes Informationsrecht das in Akten festgehaltene Wissen und Handeln öffentlicher Stellen unter Wahrung des Schutzes personenbezogener Daten unmittelbar der Allgemeinheit zugänglich zu machen, um über die bestehenden Informationsmöglichkeiten hinaus die demokratische Meinungs- und Willensbildung zu fördern und eine Kontrolle des staatlichen Handelns zu ermöglichen.

### § 2 Anwendungsbereich

- (1) Dieses Gesetz regelt die Informationsrechte gegenüber den Behörden und sonstigen öffentlichen Stellen (insbesondere nicht rechtsfähige Anstalten, Krankenhausbetriebe, Eigenbetriebe und Gerichte) des Landes Berlin, den landesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts (§ 28 des Allgemeinen Zuständigkeitsgesetzes) und gegenüber Privaten, die mit der Ausübung hoheitlicher Befugnisse betraut sind (öffentliche Stellen). Für die Gerichte und die Behörden der Staatsanwaltschaft gilt dieses Gesetz nur, soweit sie Verwaltungsaufgaben erledigen.

(2) (...)

### § 3 Informationsrecht

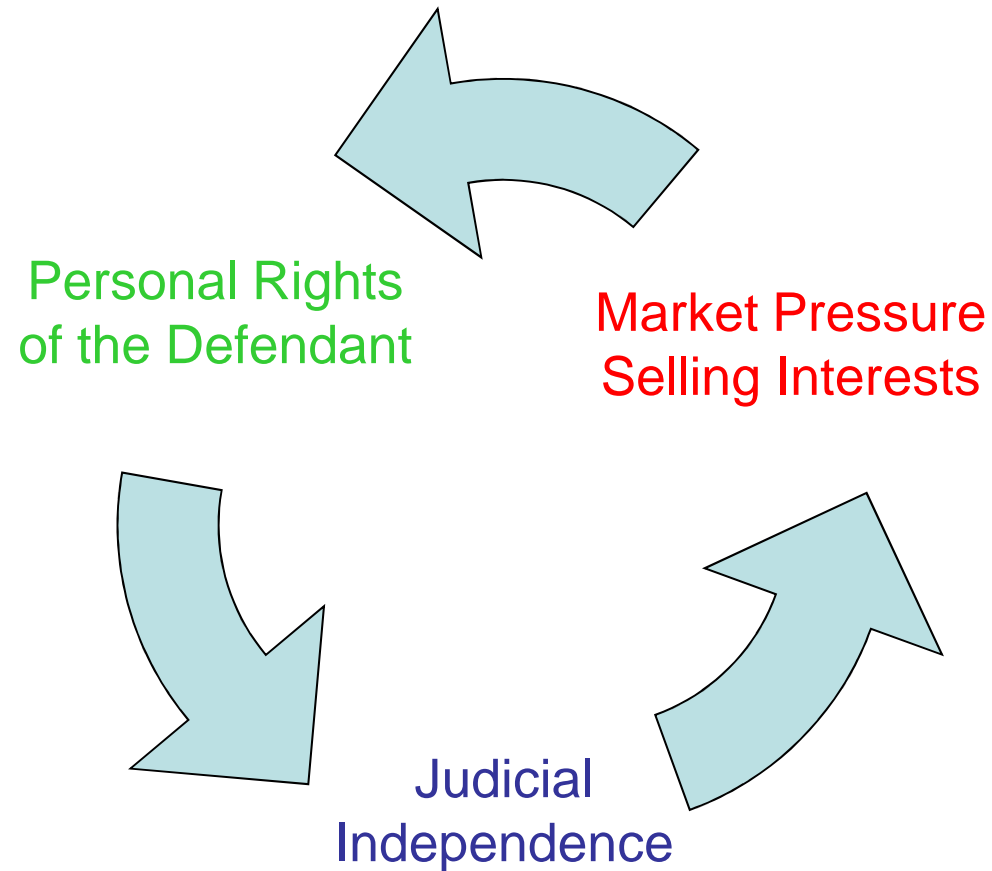
- (1) Jeder Mensch hat nach Maßgabe dieses Gesetzes gegenüber den in § 2 genannten öffentlichen Stellen nach seiner Wahl ein Recht auf Einsicht in oder Auskunft über den Inhalt der von der öffentlichen Stelle geführten Akten. Die Rechte nach Satz 1 können auch von juristischen Personen geltend gemacht werden.

(...)

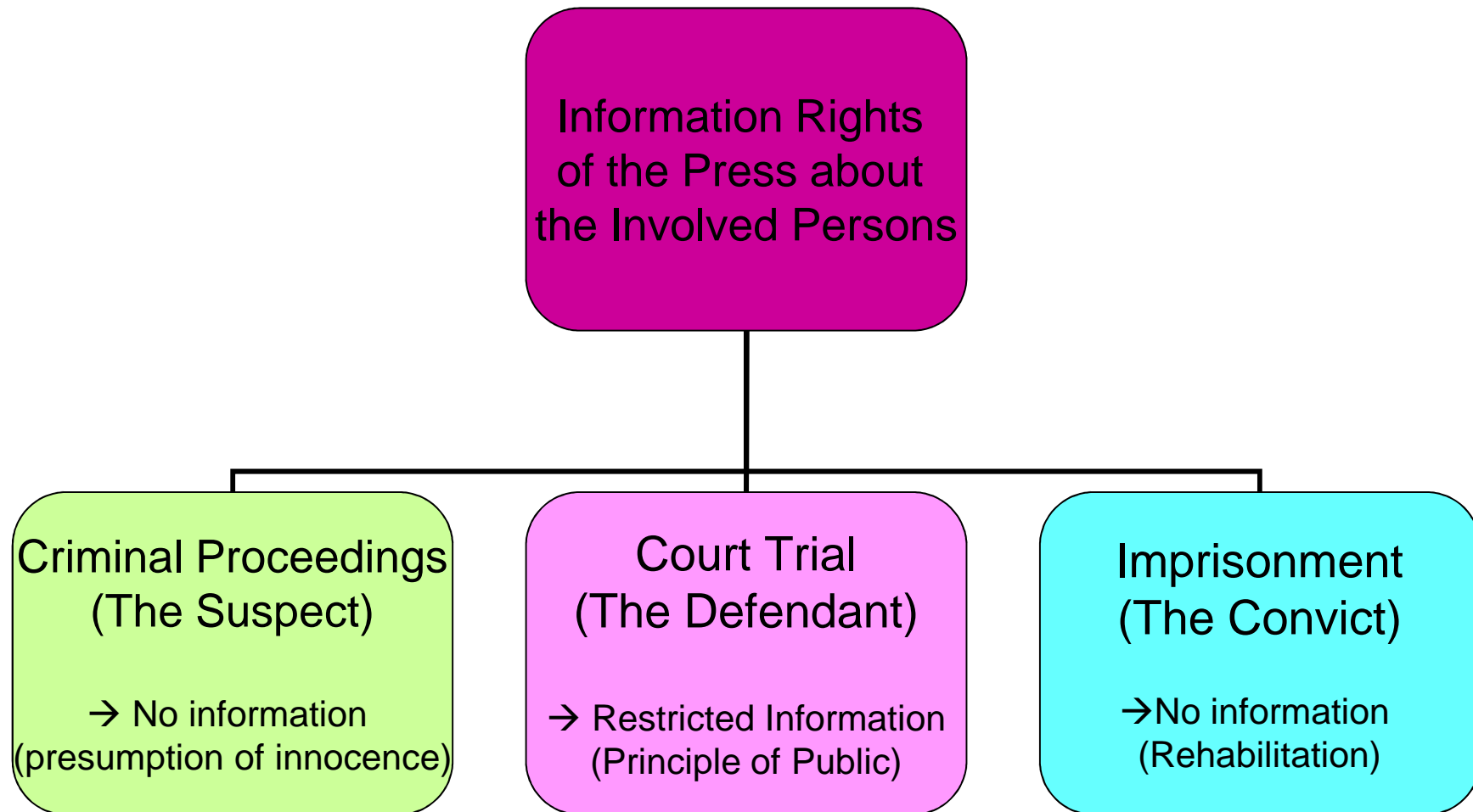
### § 4 Umfang der Informationsfreiheit

- (1) Akteneinsicht oder Aktenauskunft ist in dem beantragten Umfang zu gewähren, es sei denn, eine der in Abschnitt 2 geregelten Ausnahmen findet Anwendung.
- (2) (...)

# Colliding Interests: Market Pressure, Personal Rights and Judicial Independence



# Colliding Interests: Press Code, Personal Rights and the Privacy Policy



# Colliding Interests: Press Code, Personal Rights and the Privacy Policy

## The „Press Pack“



# Colliding Interests: Press Code, Personal Rights and the Privacy Policy

## The Role of the Spokesperson



# Political Interests versus Judicial Independence (and the Role of the Public Opinion)



# The Trial Against Onur U. et al





# The Verdicts: The Offenders May Now Be Called Offenders





**Thank you for your attention!**



# The German Press Code

Guidelines for journalistic work as recommended by the German Press Council

*Drawn up by the Deutscher Presserat (German Press Council) in collaboration with the Press associations and presented to Federal President Gustav W. Heinemann on 12 December 1973 in Bonn.*

## **Section 1** **TRUTHFULNESS** **AND PRESERVING HUMAN DIGNITY**

**Respect for the truth, preservation of human dignity and accurate informing of the public are the overriding principles of the Press.**

**In this way, every person active in the Press preserves the standing and credibility of the media.**

## **Section 2** **CARE**

Research is an indispensable instrument of journalistic due diligence. The publication of specific information in word, picture and graphics must be carefully checked in respect of accuracy in the light of existing circumstances. Its sense must not be distorted or falsified by editing, title or picture captions. Unconfirmed reports, rumours or assumptions must be quoted as such. Symbolic photos must be clearly marked as such.

## **Section 3**

### **CORRECTIONS**

Published news or assertions, in particular those of a personal nature, which subsequently turn out to be incorrect must be promptly rectified in an appropriate manner by the publication concerned.

## **Section 4**

### **LIMITS OF RESEARCH**

Dishonest methods must not be used to acquire person-related news, information or photographs.

## **Section 5**

### **PROFESSIONAL SECRECY**

**The Press shall respect professional secrecy, make use of the right to refuse to bear witness and shall not reveal informants' identities without their explicit permission.**

**Confidentiality is to be adhered to in principle.**

## **Section 6**

### **SEPARATION OF ACTIVITIES**

Journalists and publishers shall not perform any activities that could throw doubt over the credibility of the Press.

# The German Press Code

Guidelines for journalistic work as recommended by the German Press Council

## Section 7

### SEPARATION OF ADVERTISING AND EDITORIAL CONTENT

The responsibility of the Press towards the general public requires that editorial publications are not influenced by the private or business interests of third parties or the personal economic interests of the journalists. Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial and commercial content. If a publication concerns the publisher's own interests, this must be clearly identifiable.

## Section 8

### PROTECTION OF THE PERSONALITY

**The Press shall respect the private life of a person and his/her right to self-determination about personal information. However, if a person's behaviour is of public interest, it may be discussed by the Press. In the case of identifying reporting, the public interest in information must outweigh the interests worthy of protection of the persons involved; sensational interests alone do not justify identifying reporting. As far as an anonymization is required, it must be effective. The Press guarantees editorial data protection.**

## Section 9

### PROTECTION OF DIGNITY

Violating people's dignity with inappropriate representations in word and image contradicts journalistic ethics.

## Section 10

### RELIGION, PHILOSOPHY, CUSTOM

The Press will refrain from vituperating against religious, philosophical or moral convictions.

## Section 11

### SENSATIONAL REPORTING, THE PROTECTION OF YOUNG PEOPLE

The Press will refrain from inappropriately sensational portrayal of violence, brutality and suffering. The Press shall respect the protection of young people.

## Section 12

### DISCRIMINATION

There must be no discrimination against a person because of his/her sex, a disability or his membership of an ethnic, religious, social or national group.

## Section 13

### PRESUMPTION OF INNOCENCE

**Reports on investigations, criminal court proceedings and other formal procedures must be free from prejudice.**

**The principle of the presumption of innocence also applies to the Press.**

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Guidelines for journalistic work as recommended by the German Press Council

## **Section 14**

### MEDICAL REPORTING

Reports on medical matters should not be of an unnecessarily sensationalist nature since they might lead to unfounded hopes or fears on the part of some readers. Research findings that are still at an early stage should not be portrayed as if they were conclusive or almost conclusive.

## **Section 15**

### PREFERENTIAL TREATMENT

The acceptance of privileges of any kind that could possibly influence the freedom of decision on the part of publishers and editors are irreconcilable with the prestige, independence and responsibilities of the Press. Anyone accepting bribes for the dissemination of news acts in a dishonourably and unprofessional manner.

## **Section 16**

### PUBLICATION OF REPRIMANDS

It is considered fair reporting when a public reprimand issued by the German Press Council is published, especially by the publication or telecommunications media concerned.

## COMPLAINTS PROCEDURE OF THE GERMAN PRESS COUNCIL