

## Journalistic successes and failures: the German treason affair

Wolfgang Kaleck, 3 August 2015

The significance of the [netzpolitik.org case](#) goes beyond the serious issue of criminal proceedings against two journalists. It has also put a spotlight on the relationship between the press and repressive state elements. Over the past few days there have been many explicit messages of solidarity from within the established media. This is particularly welcome given that *netzpolitik.org* represents a new kind of journalism which by no means enjoys universal recognition, especially on the question of whether such groups should benefit from press freedom protections.

Those most acutely affected by this are WikiLeaks, Julian Assange and others who don't fit under the rubric of traditional media and who are denied constitutional protection, even for the elements of their work that have a strong journalistic element.

Opponents of this new form of public intervention argue that these writers, tweeters, speakers and bloggers are not professional, independent journalists but are essentially activists. But activists can take on various roles at different times. There could be a very different legal assessment of their (non-)journalistic activities when for instance they are engaged in organizing a demonstration. There will also be cases in which it is difficult to separate journalistic from the non-journalistic work.

The efforts of many professional journalists to maintain quality and ethical standards are wholly justified. Yet sometimes these arguments are made out of arrogance or fear of a loss of their status. Professionalism – in the sense of being employed at a traditional media group – is no guarantee of high-quality reporting, and press independence is far from assured in many parts of the media landscape. Advertorials fill the travel and car supplements of the newspapers while many business, politics and science journalists report from positions embedded within political and economic structures. This argument also finds expression in the polemic of Glenn Greenwald, who argues that all journalism is a form of activism. While some might not see it that way, I have to agree when he warns that the purported objectivity of so many journalists can obscure their intentions and make it difficult for readers to critically assess the reporting.

The new, more “activist” forms of reporting represent an important corrective measure that can help to maintain an independent media. For now it's up to the authorities and courts in Germany to recognize this and acknowledge that the new media and other forms of communication also enjoy constitutional protection.

And the *netzpolitik* investigation? A scapegoat has been found in the form of Federal Prosecutor Harald Range – and not entirely without reason. It was reported that the proceedings were initiated back in May, at which point an opinion should have been sought as quickly as possible to determine whether the incriminating documents actually were state secrets. There was also no indication that the bloggers intended to prejudice the Federal Republic of Germany, as would be required for a finding of treason. In any case the

proceedings should have been halted at an early stage in order to protect the freedom of the press.

But why didn't this call come from the Justice Minister? And should we entrust the task of protection of the constitution to a domestic intelligence chief who has no qualms about using the criminal law to attack small media outlets in order to deal with government leaks? Last but not least: shouldn't the German Parliament have long ago purged the crime of treason, a historical hangover from an authoritarian tradition, from our statute books?

*Postscript, 5 August 2015*

On Tuesday Federal Prosecutor Harald Range was dismissed from his post by Justice Minister Heiko Maas after he publicly accused the Justice Ministry of interfering with the independence of the legal system. Maas had previously instructed the prosecutor to immediately halt work on an opinion arguing that the documents published by *netzpolitik.org* amounted to state secrets.