

Dear Mrs. Khan,

We would like to refer back to our conversation on February 1, 2026, in Cologne, for which we would like to thank you, as well as to your preliminary observations on freedom of opinion and expression in Germany, which you summarized in your [statement of February 6, 2026](#).

We very much welcome the fact that you have addressed some important points regarding the state of freedom of expression in Germany. Some of the points that we raised in our joint discussion with you and Mrs. Allison Thomas-McPhee were not included in your statement. We hope that you will give these points due consideration in your full report on your visit to Germany, which you have announced to submit in June 2026.

To ensure that these issues, which are extremely important for freedom of expression in Germany, receive the attention they deserve, we would like to address them once again—along with a few other points—in this open letter to you:

1. Critical voices are now subject to EU sanctions. These include German journalists such as Hüseyin Dođru. The accusation is "disinformation," without this term having been defined for the purposes of the sanctions. Some of the measures are drastic: entry bans, exit bans, freezing of bank accounts, freezing of assets, and a comprehensive ban on any financial support. You informed us that this would not be an issue during your visit to Germany, as you would be examining the state of freedom of expression in relation to Germany and not to the EU. However, it is German authorities that implement EU sanctions (just as the federal digital network agency – BNetzA) does in connection with the implementation of the Digital Services Act - as you also mentioned in your statement). Please also note that there is no law in Germany that prohibits "disinformation" per se. In addition, on January 15, 2026, the German parliament passed a law in this context that goes beyond EU requirements and creates criminal offenses for persons assisting persons sanctioned by the EU, that were not intended by the EU. In this respect, the EU sanctions are not only supported by the German government, but the German legislature is also intensifying them – at the expense of freedom of expression in Germany.
2. In your statement, you write that media freedom in Germany is generally robust. However, in the past, the German federal government has repeatedly taken action against journalism protected by freedom of expression and freedom of the press. The prohibition of the magazine Compact had to be revoked by the Federal Administrative Court¹. The Federal Constitutional Court had to overturn the German government's warning letter to a journalist critical of the government for expressing legal opinion². The federal government responded to this in a statement, explaining that it had come to a different conclusion than the Federal Constitutional Court with

¹ <https://www.tagesschau.de/inland/verbot-compact-aufgehoben-100.html>

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https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2024/04/rk20240411_1bvr229023.html

regard to the distinction between statements of fact and expressions of opinion³. Furthermore, the federal government uses millions in taxpayer money to fund the activities of organizations that have made it their mission to control and observe other (government-critical) opinions that are clearly covered by freedom of expression⁴.

3. In recent years, criticism of those in power has increasingly led to house searches or convictions – and not only in connection with activism related to Palestine. These cases often involved statements that are either not punishable in Germany or, at most, classified as minor offenses. In common criminal law practice, proceedings for insult against private individuals are usually discontinued or referred to private legal action. However, in cases of (possible) insult of politicians, even terms such as "knucklehead"⁵, "stupidest foreign minister in the world" or "warmonger" can lead to house searches and the confiscation of digital devices⁶. The trusted flaggers, that you also mentioned, also play a questionable role in this, as they apparently classify far too many statements as punishable. For example, in 2025 the Federal Criminal Police Office has classified over 65 percent of the cases reported to it as punishable by the trusted flaggers of the "Meldestelle REspect!" as not relevant under criminal law. The trusted flaggers therefore play a role that needs to be analyzed in the criminalization of speech that you criticize in your statement.
4. Another problem in this context is that criminal provisions that interfere with the open exchange of opinions have increased in recent years. Offenses or qualifying offenses under the Criminal Code have been newly created respectively expanded or supplemented: § 126 (Disturbing public peace by threatening to commit offences), § 126a (Dangerous dissemination of personal data), § 130 (Incitement of the masses), § 140 (Rewarding and approval of offences), § 185 (Insult), § 188 (Insult, malicious gossip and defamation directed at persons in political life), § 192a (Hate-mongering insult) or § 241 (Threatening commission of serious criminal offence). This raises the question of the politicization of criminal law. For example, Section 126a of the Criminal Code has been described by criminal law professors as a "gateway to political criminal law" and a "gateway for government evaluation and sanctioning of social debates".⁷ These criminal provisions are therefore strongly criticized by parts of legal science. In some cases, their constitutionality is even called into question⁸. The reason given for this is, for example, that preliminary activities would be recorded that are far too distant from a specific violation of legal rights or that these

³ <https://www.bmz.de/de/aktuelles/archiv-aktuelle-meldungen/bmz-stellungnahme-beschluss-bundesverfassungsgericht-207318>

⁴ <https://gegenmedien.info/monitoring/>

⁵ <https://www.nzz.ch/international/wegen-schwachkopf-beleidigung-habeck-loest-hausdurchsuchung-bei-rentner-aus-ld.1857625>

⁶ According to the law professors Josef Franz Lindner/Frauke Rostalski/Elisa Hoven, *Freiheitsgefährdungen*, JZ 25, 945, 948

⁷ Hoven/ Rostalski, *Diskursverbesserung durch Diskursverkürzung? Der Praxistext des § 126a StGB als Mahnung zu politischer Neutralität des Strafrechts*, KriPoZ 2024, 167, 170 (<https://kripoz.de/2024/05/31/diskursverbesserung-durch-diskursverkuerzung-der-praxistest-des-%c2%a7-126a-stgb-als-mahnung-zu-politischer-neutralitaet-des-strafrechts/>)

⁸ Hoven/ Rostalski, *Diskursverbesserung durch Diskursverkürzung? Der Praxistext des § 126a StGB als Mahnung zu politischer Neutralität des Strafrechts*, KriPoZ 2024, 167, 170 (<https://kripoz.de/2024/05/31/diskursverbesserung-durch-diskursverkuerzung-der-praxistest-des-%c2%a7-126a-stgb-als-mahnung-zu-politischer-neutralitaet-des-strafrechts/>)

activities do not reach the minimum level of criminality required⁹. In some cases the scope of proportionate punishment has been significantly exceeded¹⁰. Professors of Constitutional Law¹¹ criticize efforts to shift the boundaries of criminal liability at the expense of freedom of expression. In this respect, an inappropriate expansion of criminal law may violate the principle of ultima ratio and thus also be highly problematic in terms of freedom of expression.

5. In the whole discussion about the criminalization of political statements and criticism of those in power, you must bear in mind that in Germany the criminal justice authorities are not independent and that criminal prosecution is possible at the discretion of politics. Discussions about the independence of the public prosecutor's office in Germany have been going on for a long time. The debate was reignited a few years ago when the European Court of Justice stated on May 27, 2019, that German public prosecutors are at risk of being influenced by the executive branch and that the independence of their actions is not guaranteed. It should be obvious that only an independent public prosecutor's office can dispel accusations of political persecution of critical voices, as numerous individual cases suggest.
6. Anyone who expresses criticism of the state and government in Germany must also expect to be targeted by the German domestic intelligence service, the Federal Office for the Protection of the Constitution. Since a change of legislation in 2021, the Office for the Protection of the Constitution is allowed to monitor not only groups of people, but also individuals. Since then, the number of individuals listed in the German domestic intelligence agencies' information system has risen sharply. Between 2020 and 2025, 1,850,000 new individuals were added to the database (compared to only 420,000 between 2015 and 2020). The former president of the Office for the Protection of the Constitution, Thomas Haldenwang, even considered it as duty of the Office for the Protection of the Constitution to ensure that the state also took action "against verbal and mental boundary shifts", as these directly targeted the thoughts and speech of citizens. The partially unlawful activities of the Office for the Protection of the Constitution were confirmed by an employee of the Office who, as a whistleblower, reported¹² that anyone who "simply dislikes the Green Party and, according to the official interpretation, puts up a poster that delegitimizes the state, holds up a corresponding sign at a demonstration, or posts a corresponding message on social media can become a target of the Office. That alone is enough to cause it." He states that it is important to understand how an intelligence service works: "If you want to shed light on an organizational structure, for example, you naturally also look at who the target persons associate with. And then we check these people too. We examine the environment, the employer, the

⁹ Please see Mitsch, Der unmögliche Zustand des § 130 StGB, KriPoz 2018, 198; Hoven/Rostalski, Diskursverbesserung durch Diskursverkürzung? Der Praxistext des § 126a StGB als Mahnung zu politischer Neutralität des Strafrechts, KriPoZ 2024, 167, 170 (<https://kripoz.de/2024/05/31/diskursverbesserung-durch-diskursverkuerzung-der-praxistest-des-%c2%a7-126a-stgb-als-mahnung-zu-politischer-neutralitaet-des-strafrechts/>)

¹⁰ Schiemann, Änderungen im Strafgesetzbuch durch das Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität, KriPoz 2020, 269, 276 (<https://kripoz.de/2020/09/22/aenderungen-im-strafgesetzbuch-durch-das-gesetz-zur-bekaempfung-des-rechtsextremismus-und-der-hasskriminalitaet/>)

¹¹ <https://www.faz.net/aktuell/feuilleton/medien-und-film/christoph-degenhart-wie-der-staat-meinungsfreiheit-bedroht-19738785.html>

¹² <https://www.schwaebische.de/politik/verfassungsschuetzer-schlaegt-alarm-der-rechtsstaat-wird-ausgehoeht-2543613>

lover, the friends who come over for barbecues – basically everything we can find. We try to get an overall picture. We do this according to professional rules, and these rules are the same for everyone, whether they are left-wing extremists or people who delegitimize the state. We do everything the profession has to offer and bring up everything that we would bring up with real extremists."¹³

7. You cite a study according to which almost 85 percent of German academics have felt an increasing threat to academic freedom since October 2023. In this context, we would like to refer to a book by two academics¹⁴ that discusses how "troublesome" professors at German universities have been dismissed or demoted from high offices, and how there is increasing pressure to conduct research only in line with certain political ideologies. This also applies to cases prior to October 2023.
8. Furthermore, the perceived loss of freedom is not limited to academia in Germany, nor is it restricted to certain topics. In the latest Allensbach survey, only 46 percent of Germans responded that they felt they could freely express their political opinions¹⁵. According to an INSA survey, 84 percent of respondents believe that there are people who do not express their opinions because they are afraid of the consequences¹⁶. These are all disastrous figures for a democracy.
9. You seem to have a positive view of the Digital Services Act. At the same time, you state that in a democratic society, tolerance of different views and criticism must be respected, especially toward public figures, even toward statements that are "lawful but awful". However, the Digital Services Act is intended to combat precisely such lawful statements¹⁷. In this respect, it would be contradictory to describe lawful statements that are subjectively "awful" as tolerable in a democratic society, while at the same time praising the Digital Services Act. The fact that the Federal Network Agency is explicitly not only concerned with prosecuting illegal content is clear from the [BNetzA agency's guidelines on certification as a trusted flagger](#). According to this guideline, for example, "negative effects on civil discourse" should also constitute reportable content. If you praise the Digital Services Act, which goes far beyond the Network Enforcement Act (Netzwerkdurchsetzungsgesetz) previously in force in Germany, it would be interesting to hear your assessment of the concerns raised by your predecessor as Special Rapporteur on Freedom of Expression, David Kaye, regarding the Network Enforcement Act¹⁸ in light of the Digital Services Act.
10. During our conversation, you seemed to find the government funding of NGOs and other organizations unproblematic, even if this has a (sometimes considerable) influence on the formation of public opinion. However, the German Federal Constitutional Court states: "In a democratic state, the people's will must be formed freely, openly, and without regulation. (...) The formation of the people's will and the

¹³ <https://www.schwaebische.de/politik/verfassungsschuetzer-schlaegt-alarm-der-rechtsstaat-wird-ausgehoeht-2543613>, siehe auch <https://www.lvz.de/mitteldeutschland/sachsen-plaudernder-mitarbeiter-neue-krise-fuer-verfassungsschutz-H4NIYQYHGRFBBJZO37ZUBDERUQ.html>

¹⁴ Egner, Heike & Anke Uhlenwinkel (2024): *Disrupting the university. The creation of a culture of fear and the stifling of academic freedom in Germany, Austria and Switzerland*. Neu-Isenburg: Westend, 96 p. Translated by Zachary Gallant, published 03.03.2025

¹⁵ <https://www.welt.de/politik/deutschland/article68f11916cdf2d9fc0bea1883/umfrage-nur-46-prozent-der-deutschen-glauben-ihre-meinung-frei-aeussern-zu-koennen.html>

¹⁶ <https://insa.news/meinungsfreiheit-in-gefahr/>

¹⁷ please see Oster, *The Application of the Digital Services Act to the Fight against Disinformation*, JURA 2025, 129, 132

¹⁸ <http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-DEU-1-2017.pdf>

formation of the state's will are intertwined in many ways. In a democracy, however, this formation of will must proceed from the people to the state organs, not vice versa from the state organs to the people." Furthermore, the process of forming public opinion and will must remain "free of state influence" as a basic principle¹⁹. German constitutional law professors criticize that these conditions are not met in the EU and in Germany. They argue that the funding practices at both the EU and national levels are hardly consistent with applicable law²⁰. Australian researcher Andrew Lowenthal speaks of a large, well-organized, financially well-endowed and networked system that extends far beyond individual organizations. It were a project that influences how people perceive the world and act politically on an industrial scale²¹. One of Germany's most renowned constitutional law experts, Prof. Dr. Christoph Degenhart, professor emeritus of constitutional and administrative law as well as media law at the University of Leipzig and former judge at the Saxon Constitutional Court, puts it this way: "Civil society engagement projects are intended to be steadily supported, i.e. financed [by the federal government], including those combating racism, queerphobia, anti-feminism, and anti-Islamism. It is primarily NGOs that are intended to benefit from democracy promotion in the form of permanent funding. Who would be against democracy or diversity and their funding? As praiseworthy as this concern may seem, state-funded non-governmental organizations are not only a contradiction in terms. State funding means closeness to the state, creating dependencies and potential for state influence. (...). State funding can also jeopardize fundamental freedoms and contribute to the gradual erosion of freedom of expression."²²

When you say in your concluding remarks that the government must now address the current threats and challenges to freedom of expression in a way that gives priority to human rights and pluralistic, inclusive discourse, we believe you are underestimating the fact that the dangers to freedom of expression in Germany also emanate to a considerable extent from the executive branch. Unfortunately, this is given far too little attention in your statement and is narrowed down to specific topics. Voices critical of the government are not only opposed by the federal government when it comes to the issue of Israel and Palestine, but also on all other issues that are unpopular with the government. However, the fundamental right to freedom of expression arose precisely from the special need to protect criticism of those in power, and continues to derive its significance from this²³. We have attempted to illustrate how this need for protection is under threat using the examples mentioned above. In our opinion, these are all points that must be taken into account in your final report in order to paint a complete picture of the state of freedom of expression in Germany. If you would like further information on these matters, please do not hesitate to contact us.

¹⁹ See the ruling of the Federal Constitutional Court of July 19, 1966 - 2 BvE 1/65 -, BVerfGE 20, 119 - 134

²⁰ <https://rsw.beck.de/aktuell/daily/meldung/detail/foerderung-ngos-eu-kommission-demokratieprinzip>

²¹ <https://www.nzz.ch/international/deutschland-hatte-grosse-fortschritte-bei-demokratie-und-meinungsfreiheit-gemacht-nun-scheint-es-in-eine-andere-richtung-zu-gehen-ld.1919496>,

²² <https://www.faz.net/aktuell/feuilleton/medien-und-film/christoph-degenhart-wie-der-staat-meinungsfreiheit-bedroht-19738785.html>

²³ BVerfGE 93, 266 (293),

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1995/10/rs19951010_1bvr147691.html?nn=68020; BVerfG-K vom 6.6.2007, 1 BvR 1423/07 – Heiligendamm, Rn. 28

Yours sincerely

Andrej Hunko, former rapporteur for freedom of expression at the Council of Europe

Jan Ristau, lawyer and author of the book "Freedom of expression in danger! How the state is undermining democracy"