

Leipzig court suspends ban on right-wing extremist *Compact* magazine

Justus Leicht
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The Federal Administrative Court in Leipzig has provisionally lifted the ban on the right-wing extremist magazine *Compact* and its affiliated media, which the Interior Ministry (BMI) under Nancy Faeser (Social Democrat, SPD) imposed in mid-July. The court's decision is aimed less at preserving press freedom than at legitimising racist agitation.

With the *Compact* ban, Faeser had created a precedent for the removal of fundamental democratic rights that can also be used against left-wing organisations. She used the law on voluntary associations to suspend the constitutionally protected freedom of the press. The Federal Administrative Court did not object to this but expressly confirmed it. Instead, it lifted the ban because it doubted whether right-wing extremist agitation was actually “characteristic” of the fascist magazine.

COMPACT-Magazin GmbH, the publisher of the magazine, against which the ban was formally directed, had filed a lawsuit against and applied for a temporary injunction to restore the suspensory effect of its lawsuit against the BMI's ban order.

The BMI had justified its ban by stating that the “association” [the publishing company] rejected the constitutional order and had an anti-constitutional attitude. This was expressed, among other things, it said, in numerous articles in the monthly *COMPACT—magazine for sovereignty*.

Freedom of opinion and of the press and protection from censorship are guaranteed in Germany by Article 5 of the constitution. According to the same article, this right is only restricted by “general laws.”

According to Supreme Court case law, the word “general” is usually understood to mean that certain opinions may not be sanctioned on the grounds of their undesirable content but only on the grounds of a violation of laws that apply equally to opinions of any content—for example, violations of personal rights, incitement of the

people, calls for or approval of serious crimes, etc.

There is no legal provision for banning media products. The various press laws of the federal states, for example, regulate the right of reply. In most cases, they state that “the responsibility for criminal acts committed by means of a printed work is determined by the general criminal laws.” In addition, there may be criminal sanctions against responsible editors or publishers.

Otherwise, the most severe measures available are regulations for the confiscation of certain individual media products. There is no legal basis for a total ban on media outlets, especially because of their political orientation, either in the media state treaty of the federal states, which regulates the accessibility of broadcasting and telemedia, or in the Telemedia Act (TMG).

The only time a legal basis was created to ban “anti-constitutional newspapers” was at the beginning of the 1950s, during the height of the Cold War. However, this draft law was never realised. A ban on the basis of political orientation would probably have little chance of being upheld, at the latest before the European Court of Human Rights, which rejected Turkey's ban on pro-Kurdish newspapers on the grounds of PKK propaganda years ago.

Since the main purpose of Compact GmbH was to publish *Compact* magazine, many lawyers had argued that its ban by the BMI on the basis of the law on associations was not tenable, since it was not the law on associations that applied here, but the law on the press.

The Federal Administrative Court was, however, unequivocal on this point: “There are no concerns regarding the applicability of the law on associations to the applicant, which is organised in the legal form of a limited liability company and operates as a press and media company,” the court stated in its press release.

It is not really surprising that the Federal Administrative Court is helping to use the law on associations to

undermine freedom of expression and the press. This had already been hinted at when it approved the ban on the linksunten.indymedia website without even examining the merits of the case against it.

The significance of this is extremely far-reaching: not only does the law on associations—which is practically its most important regulation—explicitly provide for the prohibition of all possible associations. Prohibitions can simply be decreed by the government and can only be challenged by those affected in court afterwards. The reasons for a ban do not even have to be criminal offences; purely political reasons, such as “acting against” the “constitutional order” or the “idea of international understanding” are sufficient.

It is also noteworthy that, according to the press release of the Federal Administrative Court, the BMI did not accuse *Compact* of violating the “idea of international understanding” despite its notorious racist agitation. Shortly before, “Palestine Solidarity Duisburg” had been banned on this ground because it opposed the illegal occupation of Palestine by Israel. The fight against racist oppression is banned in Germany but not the fight for it.

The Federal Administrative Court explicitly saw in *Compact* “a violation of human dignity” and “in many contributions a militant and aggressive attitude towards fundamental constitutional principles”—a polite way of describing its unbridled agitation against refugees, Jews, Muslims, people of colour and LGBT people. Nevertheless, it was doubtful whether a ban was proportionate, “given the largely unobjectionable contributions with regard to freedom of opinion and freedom of the press,” despite the magazine’s violation of human dignity.

In addition, the violation of human dignity was possibly not—according to the Federal Administrative Court press release—“characterising” enough for the orientation of the “association.” This was the case with a leading medium of the ultra-right scene, which “in many articles takes a combative and aggressive stance towards fundamental constitutional principles”!

This gobbledegook means nothing other than that racism, racist and anti-Semitic agitation may be anti-democratic and violate the human dignity of those affected, but the court still considers it a legitimate contribution to the debate that is protected by fundamental rights.

In view of the state’s actions against refugees, its support for the genocide in Gaza, the rearmament of the Bundeswehr (Armed Forces) and the escalation of the

NATO war against Russia, this fits the picture.

Contrary to what journalists who consider themselves liberal might think, the Federal Administrative Court’s rapid decision has little to do with defending democratic rights. If that were the case, the court would have had to reject the BMI’s construct of circumventing the fundamental right to freedom of the press by means of the law on associations—but rather with defending right-wing extremist propaganda.

The way in which German courts deal with those who fight against racism rather than for it is demonstrated by the constitutional complaint filed by the Sozialistische Gleichheitspartei (Socialist Equality Party) with the Supreme Court against its surveillance and defamation by the Office for the Protection of the Constitution, as Germany’s domestic secret service is called. Although the complaint was filed over two years ago, the highest German court has still not responded to it.

The contrast is even more obvious in the case of Palestine Solidarity Duisburg (PSDU), which was banned by the state Interior Minister of North Rhine-Westphalia, Herbert Reul (Christian Democrat, CDU) in May of this year. Although the ban was issued on the basis of the German Law on Associations in both cases, legal action was taken against it and an application for interim relief was filed, the “summary proceedings” in the case of PSDU were dragged out for several months with the active assistance of the Higher Administrative Court of North Rhine-Westphalia.

The “Committee for the Defence of Palestine Solidarity Duisburg” draws a bitter conclusion. “A right-wing extremist magazine that has been spreading racism against Muslims and refugees for at least ten years, openly campaigning for the AfD [Alternative for Germany] and having links to neo-Nazis” was getting “a quick trial in its own interest.”

For the PSDU, which has “always opposed antisemitism and Nazi fascism and has always stood up against occupation and genocide, against German complicity in war crimes, against racism and fascism in Palestine and in Germany,” there was “obviously no place in Germany at the moment.”



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