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Meinungsfreiheit / Freedom of Speech

How police and the judiciary restrict our fundamental right – and how we can defend it

Published on February 27th 2026 by Berlin Verlag

Translated from German into English. This AI translation is not intended for publication and is solely provided for the purpose of review and submission.

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Foreword

The central principle on which every democracy is built—freedom of expression—is currently driving a deep wedge between democracies. The United States on one side, Europe on the other.

In February 2025, at the Munich Security Conference, U.S. Vice President J. D. Vance walked onto the stage of a luxury hotel ballroom filled with European government officials – and immediately went on the attack. Europe was stifling freedom of expression, the American claimed, dressed in a dark suit, blue tie, speaking in a grave tone. The greatest threat to Europe today, he argued, no longer came from Russia or China, but “from within.” As Vance put it, this was the result of “the retreat of Europe from some of its most fundamental values.” He then lectured his audience – and especially his German hosts – that “Democracy rests on the sacred principle that the voice of the people matters.”

With regard to the many increasingly strict European laws against so-called hate speech – things like government “censorship requests” directed at social media platforms such as Facebook or X, as well as state-imposed online blockers and filters, which Germany in particular had aggressively expanded over the past ten years – the guest from the U.S. declared: “There is no room for firewalls.” The principle of free expression, he insisted, requires a special ability from those in power: the ability to endure criticism. “Either you uphold that principle or you don’t.”

Silence filled the room. European participants were momentarily speechless, and some later recounted how they had felt themselves oscillating between shock and amusement. Because, of course: People like J. D. Vance, who in their own country smear critical journalists, pressure universities, and bully late-night show hosts off the air, are not exactly those from whom Europeans enjoy receiving lectures on democratic virtues. It was easy for German politicians to point out that the American was not particularly well-positioned to sermonize about respect for dissenting opinions.

After all, the administration of U.S. President Donald Trump and his vice president Vance had just expelled the Associated Press from the White House because the journalists had taken the liberty of continuing to call the Gulf of Mexico the “Gulf of Mexico,” while the Trump administration childishly preferred to refer to it as the “Gulf of America.” At the same time, in the United States, the campaign against unwelcome voices – including drastic measures such as searching phones and social media for critical comments about America’s ally Israel – had only just begun.

But a troubling thought arises: What if the guest from America nevertheless had a point? The U.S. vice president is not the first to have noticed something about Europe, and even left-leaning liberals in the U.S. are increasingly uneasy about developments in Europe and especially in Germany. Sometimes things are clearer from the outside than from within: Germany has long been the Western country with the most language taboos and the strictest criminal provisions against mere words; freedom of speech has traditionally been written in smaller letters here than in the U.S. And during the decade between 2015 and 2025, in which democratic culture proved highly volatile on both sides of the Atlantic and democracy came under stress, Germany decided to try even more of the same.

That is, Germany chose to create additional laws, and to tighten existing ones, to regulate and restrict political expression more strongly. Parliament expanded and multiplied criminal statutes; the offense of incitement to hatred was broadened in several respects; and the offense of publicly approving criminal acts was extended to such a degree that one can now be punished for “endorsing” acts that exist solely in the imagination. Many public prosecutors made combatting hate speech a new priority, creating new, highly capable teams to investigate and push legal boundaries.

Never before have there been so many investigations in this country over mere words — over pure speech offenses, as legal scholars call them. The number of investigations has — depending on the specific offense — tripled, quadrupled, quintupled; for some once obscure offenses, such as the public endorsement of criminal acts, it has increased a hundredfold, from around 20 cases a year to 2,000. Even for the old offense of blasphemy, “insulting religious denominations,” there were suddenly 125 investigations in 2024 — a record. This is partly due to the fact that the internet never forgets and that statements made online can be documented technically more easily than in the analog world. But it is also due to the state’s willingness, greater than ever before, to respond to words with bans and punishment.

In the beginning, this undoubtedly stemmed from the best intentions. When these tougher measures began in 2015/16, the idea was primarily to protect vulnerable groups from being shouted down. That is valid — an important idea. When journalist Dunja Hayali commented in the summer of 2025 on a deadly attack in the United States — the assassination of far-right figure Charlie Kirk — a torrent of comments poured down on her on social media, enough to intimidate anyone into silence. Hayali had said, among other things, that it was unjustifiable for some groups to celebrate Kirk’s death — “not even in view of his often repulsive, racist, sexist, and anti-human statements.” That alone was enough to trigger some people.

“If you keep this up, you will soon pay dearly for your words,” wrote @gordons_katzenabenteuer on Instagram. “You deserve nothing but the very worst. You’d better start watching your back.” A user named @nocebo_the_mortem wrote, “I hope you get shot in front of your family too.” @jaroabroad chimed in: “You are an absolute piece of shit, and these threats are completely justified!” @juki030 wrote: “We’ll see you hanging yet!” @team.114hrc wrote: “Cry more, you pi... You’ll be next soon.” @volkersuthoff wrote: “I hope someone shoots you, you miserable dyke!”

If perpetrators were allowed to get away with such violent threats, little would remain of the victims’ freedom of expression. Such attacks are often strategic. A study by the British newspaper *The Guardian* found that among the ten most insulted authors in online comments, eight were women, four of them non-white. The remaining two were Black men. In Germany, people with a migration background are more than twice as likely to be targeted by online abuse. These are people who have not long had a voice in political discourse, and who — in the eyes of the abusers — are to be put “back in their place.” Behind this lies a desire to drive these groups out of the discourse.

This is reactionary, antidemocratic. A response is necessary. Also by the state. But the German criminal justice apparatus has now overshot that goal by far. Increasingly, interventions are not limited to threats but extend to much milder mockery. When someone in Germany is called “stupid” or a “moron,” it is usually obvious that no prosecutor will be set in motion. But when the target is a politician, new standards are emerging.

A citizen in Bavaria received a penalty order because he called Green politician Annalena Baerbock the “dumbest foreign minister in the world.” A case under the new statute of “insulting political officeholders.” Since 2021, insult, defamation, and slander against “persons of public political life” have been consolidated into a single paragraph. The number of investigations the state has launched on this basis has since doubled each year: 748 cases in 2021, then 1,404 the year after, then 2,598, and most recently 4,439. Notably: none of these cases concern threats or other forms of violence.

The new wind blows cold. Ten years ago, it was unthinkable that police would conduct dawn raids on private homes solely because someone committed the offense of insult — a crime that generally results in only minor penalties. Such a search was considered disproportionate. A search is a serious infringement of fundamental rights. Today, however, this happens regularly. On “action days,” dozens or even hundreds of suspects’ doors are knocked on in parallel. Reports about this now appear even in the *New York Times*, whose journalists express surprise at developments in free speech on the old continent. “How far can you go before it becomes too far?” two of the paper’s European correspondents wrote in a long 2022 report on Germany’s new strictness, which goes further than “any Western democracy.”

People expressing opinions online about international politics are increasingly experiencing home searches as well. This was visible during the heated debates surrounding the Middle East conflict. When a man in Munich wrote on Instagram that the massacre committed by the Palestinian terror organization Hamas against Israeli civilians on October 7, 2023 was, of course, horrific, but that a subjugated people had the “legitimate right to resistance by all necessary means,” a court approved the confiscation of his phone and other “internet-enabled devices.” This was unexpected. That people make such crude claims in discussions — claims that practically beg to be countered with context or nuance — is nothing new. That such statements now trigger criminal intervention is.

This pattern is evident in domestic political debate as well. A veteran Green Party local politician in Munich was prohibited from accusing Bavaria’s deputy premier Hubert Aiwanger of engaging in scapegoating rhetoric that resembled the antisemitic agitation of the Nazis. For this, the Green politician found himself facing charges of incitement to hatred, a development that astonished him, and in 2024 he was even convicted — in not just one, but two court instances; his political career is finished. A warning to others.

During the COVID-19 pandemic, when Hamburg’s interior senator issued a stern reprimand to citizens not to hold parties — and was then caught hosting an illegal party with dozens of guests — the owner of a punk bar in St. Pauli dryly commented on X, formerly Twitter: “Du bist so 1 Pimmel.” (“You’re such a dick.”) Shortly thereafter, four uniformed, armed officers appeared at his apartment door. They searched his home and seized devices. Another case of insulting political officeholders began.

The bar owner had not expected that. Nor would I have, and I am a trained lawyer who teaches at the law faculty of the University of Frankfurt. Even if you make a great effort to stay informed, keeping track of the increasingly broad interpretations of the criminal code and vague concepts like “insult” has become difficult. At this pace of change, surprise is ever more common. And this, I think, is a problem. Something has changed in this country. Not only the United States has a free speech problem; in our own way, so do we. That is what this book is about.

The German state today defines many statements as criminal that, just ten years ago, clearly fell under freedom of expression. The threshold at which police and prosecutors consider something punishable “incitement” has been drastically lowered in many areas, partly through statutory changes, partly through changes in legal interpretation. Allowed yesterday, forbidden today: this is a major legal trend that I aim to describe, analyze, and respond to critically.

In the spring of 2025, when J. D. Vance was in Munich, I was, conversely, in the United States. In California, I conducted research at universities that were struggling to defend themselves against the authoritarian overreach of the Trump administration. I met with legal scholars who were organizing protests against Trump’s policies. Among them was David Kaye, former UN Special Rapporteur on freedom of expression, who showed me his favorite café in Santa Monica — vegan, dog-friendly. But as great as their alarm over Trump’s plans was, it did not diminish their concern about what they were seeing from across the Atlantic. “These raids,” David Kaye said.

As summer began in California, CBS’s *60 Minutes* aired a story from — Lower Saxony. An American reporter interviewed two German prosecutors and one prosecutor specializing in the prosecution of hate speech. They spoke about the now-common home searches for online posts, and about the astonished reactions of those affected, who often said they had not known their statements were illegal. One prosecutor said as much — grinning.

In Santa Monica, David Kaye brought it up. He found it unsettling. Prosecutors who seemed unconcerned that they were surprising people with the news that something had recently become illegal? What kind of understanding of the rule of law was that? And he pointed out another aspect that worried him: “Pimmel” is about the mildest mockery directed at the president that one reads in the U.S. It happens practically every day that someone calls him a “moron,” or “the dumbest president of all time.” Under American law, that is not punishable — fortunately. One can hardly imagine what Donald Trump would do if the U.S. adopted Germany’s criminal law approach.

In democracies, freedom of expression has traditionally been understood as the most important of all political rights because it is the foundation that enables all other freedoms. It is the basis on which political conflict can even occur — where demands can be made and voices heard. In 1952, when the Federal Republic was still young, the judges of the Federal

Constitutional Court (in that case: seven men and one woman) wrote in one of their early rulings that freedom of expression was “absolutely constitutive” for democracy. More eloquently, and somewhat more poetically: “Freedom of speech is the necessary condition of nearly every other form of freedom,” wrote U.S. Supreme Court Justice Benjamin Cardozo. And yes: speech may be polemical. Exaggerated. Emotional. At least up to a point.

I now wonder whether we in Germany have become far too accustomed to the everyday normalcy of home searches over “insulting political officeholders,” to the creeping uncertainty about whether one is still allowed to call someone the “dumbest foreign minister in the world,” to the fact that difficult civil-society debates are being narrowed — and I also wonder whether an open society shouldn’t rein in its criminal justice system urgently in many areas. Especially in volatile times, we need more debate, not less. Meanwhile, in the American cartoon *South Park*, U.S. President Donald Trump appears as the devil’s sex partner, and jokes are made about the Commander in Chief’s small manhood.

If the U.S. under Trump had laws like Germany’s, J. D. Vance and others would have far greater opportunities to intimidate their critics. This scenario — in which a right-wing authoritarian leader with an ego as fragile as Trump’s or Vance’s could have critics prosecuted for criminal “insult” — is precisely what liberal Americans like David Kaye are profoundly relieved is *not* currently possible, and what the U.S. Supreme Court would likely prevent. In Germany, where prosecutors have been given ever more power and legal leeway in this area, that scenario may be just one state election away.