

Access to information is part of freedom of expression, together with an active citizenry, and thus one of the preconditions for ensuring a vibrant and well-informed democracy. NGOs demand of the governments to respect and comply with their obligations following national and international standards.

[First Baltic Sea NGO Forum 2001](#)

Baltic Sea NGO Forum

Submission for the Sixteenth Session of the Working Group on the Universal Periodic Review: Germany

[in German on same subject: http://home.broadpark.no/~wkeim/files/if-dimr-pbt.htm](http://home.broadpark.no/~wkeim/files/if-dimr-pbt.htm)

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[UPR Submission Session 16](#): Five states in Germany violate the human right of access to public documents (Article 19 CCPR)

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4. Recommendations:

1. **Germany has to adopt access to informations (ATI) laws in all 16 federal states and improve federal ATI law to meet international standards**
2. Withdraw reservation on Article 19 of CCPR
3. The rank of CCPR in German law must be respected and should be improved.
4. The recommendations of the Human Rights Commissioner of the Council of Europe, e. g. educate administration and judges in international law i. e. CCPR should be done.
5. Judges should not be hired, promoted and supervised by the executive power i. e. [Resolution 1685 \(2009\)](#) and [Recommendation No.R \(94\)12](#) of the Council of Europe should be followed.
6. CCPR, International Covenant on Economic, Social and Cultural Rights and the European Convention of Human Rights should be included in the Internet collection of the "laws of Germany" (www.Gesetze-im-Internet.de and <http://bundesrecht.juris.de>).
7. The German Institute of Human Rights should monitor human rights in Germany according to Paris principals.
8. Defamation should be decriminalized.

X. Baltic Sea NGO Forum 2012, in WS III Human Rights: Freedom of information recommended in the [Final Statement](#) (15, 16) that the Baltic Sea NGO Network oversee the implementation of the Universal Periodic Review (UPR) process in each country of all the Council of Baltic Sea States (CBSS) member states. The [UPR](#) process oversees all human right conventions. The deadline for other stakeholders is [2. October 2012](#) for the 16th UPR Working Group session (May/June, 2013).

I refer to the 6. state report of Germany according to Article 40 of the International Covenant on Civil and Political Rights (CCPR), reporting to the Human Rights Committee dated 18 April 2010 (1). The Human Rights Committee will consider the CCPR report of Germany and country situation during the session the [106th session](#) (15 October - 2 November 2012) in Geneva. The EU [Fundamental Rights Agency](#) suggested to contact the Council of Europe and the German Human Rights Institute (2), answering a complaint on lack of Freedom of information in Germany (3). The GRECO (Group of States against corruption) did not observe that [access to informations laws are missing in 5 states in Germany](#) (N). The German Human Rights Institute did not answer the [suggestion](#) to complain about the lack of access to information in 5 German lander.

The X. Baltic Sea NGO Forum 2012 asked me to investigate "[The role of international lawmakers and their respective influence on national legislation on access to information.](#)" The result was that all states of the Council of Baltic Sea States followed the advice of the first Baltic Sea NGO Forum with respect to international standards for access to information with the exception of Germany.

1. Access to public documents is a human right according to Article 19 CCPR

Freedom of [Information \(including access to public documents\)](#) is part of Article 19 the International Covenant on Civil and Political Rights (ICCPR), which Germany has signed.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reported e. g. in [E/CN.4/1998/40](#), 28 January 1998 and [E/CN.4/2000/63](#), 18 January 2000 that access to public documents is a human right.

UN, OSCE and AOS confirmed in a common statement of 6. December 2004, that access to [information is a human right](#): (4):

"The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the [principle of maximum disclosure](#), establishing a presumption that all information is accessible subject only to a narrow system of exceptions."

The "General Comment No. 34 on Article 19 of the ICCPR" confirms this (5):

"18. Article 19, paragraph 2 embraces a general right of access to information held by public bodies. Such information includes all records held by a public body, regardless of the form in which the information is stored, its source and the date of production."

"19.(...) States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation."

Germany tried to remove the human right of access to public documents and other human rights (13) from the [Draft General Comment No. 34 on Article 19 ICCPR](#) (see page 17 [reference 14](#)). Decriminalization of defamation and abolition of prison sentences (Article 49) is objected. Access to public documents is not considered a fundamental right according to the German Basic Law. The ICCPR has only the rank of a law. Therefore it is suggested to remove access to public documents from the ICCPR.

2. Five states (Länder) violate the human right of access to public documents

I have informed the states [Hesse](#), [Lower Saxony](#), [Saxony](#), [Bavaria](#) and [Baden-Württemberg](#) several times about the human right access to public documents. However these 5 states with halve of the German population continue to violate this human right and general access laws are not given (6). Access to public documents is only possible for environmental and consumer information.

The NGO "Bündnis für Informationsfreiheit in Bayern" has collected many examples of denial of access (10). [Reference 7](#) gives additional examples of denial of access to public documents.

The UN Convention against Corruption of 14. December 2005 has been ratified by more than 159 states with 6.5 billion inhabitants. However [Germany could not ratify because bribery of members of parliament is not a criminal](#) act. This law would have to be given by parliamentarians itself.

The [Group of States against Corruption](#) (GRECO) of the Council of Europe [saw deficiencies combating corruption in Germany](#) and made 2009 suggestions on transparency of financing of parties (K). The federal parliament Bundestag refused 2011 (see "Ausschussdrucksache 17(4)283 des Innenausschusses") to comment these suggestions with the majority of the

governing coalition parties of CDU/CSU and FDP ([M](#)). Germany's answer 29. June 2012 shows that no progress has been made ([N](#)).

More than [115 states](#) with [5.9 billion](#) i. e. 84 % of the world population adopted either FOI laws or constitutional provisions ([I](#)). Citizens in 5 states in Germany with more than half of the population lack this human right.

84 states with [5.5 billion](#) i. e. 78 % of the world population give better access to information than the federal Freedom of Information Law in Germany (<http://rti-rating.org/results.html>). International standards e. g. principle of maximum disclosure, reasonable costs are the basis of this investigation.

3. The rank of the ICCPR is not respected in praxis

Paragraph 118 of the State report reads: "CCPR is part of German justice system as federal law. Therefore it is binding for federal states." But this is not respected by German administration and courts.

Therefore German courts may decide against human rights if there is a conflict, e. g. the highest Court in the German land [Rhineland-Palatinate LG Mainz \(1 QS 25/98\)](#) stated that the court can not give access to documents (as the European Convention of Human Rights would demand), because it is the parliament, which would have to give this right. This court expresses here that they are not allowed to do what human rights would say.

Internet pages "laws in Internet" (www.Gesetze-im-Internet.de and <http://bundesrecht.juris.de>) do not contain the CCPR. Therefore I have [28. April 2007 suggested](#) to add it together with other human rights covenants. The answer 14. July 2007 [says that the capacity was not big enough](#). It is difficult to believe that this a valid reason.

Court cases [Walter Keim ./ Germany VG 2 A 85.04](#) and [VG 2 A 55.07](#) show that the Administrative Court of Berlin (Verwaltungsgericht Berlin), and the Higher Administrative Court (Oberwaltungsgericht) and later the Constitutional Court ([Verfassungsgericht](#)) in cases [1 BvR 1981/05](#), [1 BvR 2565/05](#) and [1 BvR 238/09](#) that the human rights character of access to public documents of the CCPR is ignored ([7](#)). Many applications referring to the CCPR are denied without even discussion. This proves that the rank of CCPR being a law is ignored ([7](#)).

The ICCPR human right access to public documents is rejected by the German government, because it is considered no fundamental right of the German Basic law (constitution) ([13](#)).

The reservation on Article 19 CCPR restricts foreigners rights in Germany.

The federal law of Freedom of Information has too many exceptions and violates international principle of maximum disclosure. Comparison with laws from 90 other countries places [Germany on 85th rank](#), 5.5 billion people i. e. 78 % of the worlds population have better access laws ([J](#)).

4. Recommendations

The [Report of the Human Rights Commissioner of the Council of Europe 2006](#) suggests to educate administration and judges in human rights e. g. CCPR (8). Unfortunately both the federal and local parliaments refused to consider this proposition (9).

In federal states judges at administrative courts are hired, promoted and supervised by the executive power and are not independent according to Article 14 CCPR. In the federation the influence of the executive power is somehow less, but still too much (11).

In approx. 50 States access to public documents is found in the constitution. Approx. [90 states have adopted access to information laws](#). In Europe basically Belarus and 5 German states are missing. After India in 2005, China in 2008, Russia in 2010 and Brazil in 2011 (BRIC countries) adopt laws on access to information only some countries in Africa and the Middle East are missing.

Germany's report should have been given [1. April.2009](#). The report was registered 18. April 2011 at [UN](#).

In many states – e. g. for the European Convention of Human Rights - international conventions have a higher rank compared to laws e. g. Austria, Switzerland and Norway (12).

The Human Rights Commissioner of the Council of Europe suggested to give the German Human Rights Institute the task to monitor human rights in Germany (E). The independence of the Institute should be strengthened according to Paris principals.

General comment No. 34 Article 19: Freedoms of opinion and expression § 47 states: "States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty." Imprisonment according to [Chapter 14](#), Section 185 Insult, Section 186, 187, 188 Defamation of the [German Criminal Code](#) should be removed.

Recommendations summarized:

1. **Germany has to adopt access to informations (ATI) laws in all 16 federal states and improve federal ATI law to meet international standards**
2. Withdraw reservation on Article 19 of CCPR
3. The rank of CCPR in German law must be respected and should be improved.
4. The recommendations of the Human Rights Commissioner of the Council of Europe, e. g. educate administration and judges in international law i. e. CCPR should be done.
5. Judges should not be hired, promoted and supervised by the executive power i. e. [Resolution 1685 \(2009\)](#) and [Recommendation No.R \(94\)12](#) of the Council of Europe should be followed.
6. CCPR, International Covenant on Economic, Social and Cultural Rights and the European Convention of Human Rights should be included in the Internet collection of the "laws of Germany" (www.Gesetze-im-Internet.de and <http://bundesrecht.juris.de>).
7. The German Institute of Human Rights should monitor human rights in Germany according to Paris principals.

8. Defamation should be decriminalized.

Sincerely

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Copy: [Human Right Commissioner of the CoE](#), [Fundamental Rights Agency](#), [Ausschuss für Menschenrechte und Humanitäre Hilfe](#), German Institute for Human Rights, [OSCE](#)

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9. Rejection of the suggestions of the Human Right Commissioner of the CoE by parliament Bundestag and 8 länderparliaments: http://home.broadpark.no/~wkeim/coe_resultat.htm#antworten
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14. HUMAN RIGHTS COMMITTEE. DISCUSSIONS ON DRAFT GENERAL COMMENT NO. 34- MEETING NOTES (18 MARCH – 24 MARCH 2011): <http://freedominfo.org/documents/HRCnotesMarch2011.pdf>
15. X. Baltic Sea NGO Forum, Final Statement, WS III: Human rights: http://www.bsngoforum.org/files/Final_statement.pdf
 1. We urge the CBSS to create an Ombudsman for Human Rights.
 2. In each country of the Baltic Sea Region, there shall be installed independent national Human Rights Institutes according to the Paris principles.

3. The workshop recommends that the Baltic Sea NGO Network oversee the implementation of the Universal Periodic Review (UPR) process in each country of all the CBSS member states.
16. [X. Baltic Sea NGO Forum: The role of international lawmakers and their respective influence on national legislation on access to information:](#)
<http://home.broadpark.no/~wkeim/files/ATI-BSNF.htm>

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