

IFLA/FAIFE World Report: Libraries and Intellectual Freedom



Germany

Population:	81,922,000 (1996)
GNP per capita:	\$ 28,870 (1996)
Government / Constitution:	Federal republic
Main languages:	German
Main religions:	Christianity (Catholicism and Protestantism)
Literacy:	-
Online:	21,74% (August 2000)

20 December 2000

[Deutsch](#)

Legal basis

Since the founding of the Federal Republic of Germany in 1949 freedom of opinion and information, including the freedom of the press, has been guaranteed by the Basic Law (Grundgesetz) as a fundamental right. Censorship in the sense of preliminary censure i.e. pre-publication scrutiny and approval by a state agency is prohibited by the constitution. In the wake of reunification the purview of the Basic Law was extended to the whole of Germany. Both state censorship and considerably restricted freedom of opinion, information and the press had existed in the former German Democratic Republic.

The freedom of opinion and information guaranteed in Article 5 Par. 1 of the Basic Law ("Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources. [...] There will be no censorship") is not, however, boundless. Limits are set by the extent to which this freedom violates other basic rights, such as human rights or the protection of the family. For this reason Article 5 Par. 2 of the Basic Law stipulates: "These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of the youth, and in the right to personal honor."

These restrictions are defined mainly in the Code of Criminal Law. The following offences are indictable:

- Incitement to aggressive war (Criminal Code § 80a StGB)
- Distribution of propaganda material emanating from constitutionally prohibited organisations (Criminal Code § 86 StGB)
- Incitement of the people (Criminal Code § 130 StGB)
- Incitement to a criminal offence (Criminal Code § 130a StGB)
- Portrayal of violence and incitement to racial hatred (Criminal Code § 131 StGB)
- Revilement of religious faiths, religious communities and ideological associations (Criminal Code § 166 StGB)
- Distribution of pornographic publications (Criminal Code § 184 StGB)
- Slander (Criminal Code § 186 StGB)
- Libel (Criminal Code § 187 StGB)

The Law on the Distribution of Publications and Media Content Liable to Endanger Juveniles (1997) prohibits the dissemination of certain media to children and juveniles. „Immoral and brutalizing publications inciting to violence, acts of crime or racial hatred" and pornographic documents may not be distributed to children and juveniles (§ 3 and § 18); audiovisual and electronic media are regarded as „publications".

The Law on the Protection of Juveniles in Public Places (1994) further stipulates that prerecorded video cassettes and comparable graphic media may only be made available to children and juveniles if the media have been approved and issued with an age limit by a federal provincial authority.

Problems

Libraries are committed to the constitutional principle of the freedom of information. At the same time they are also subject to the stipulations of the Code of Criminal Law and the laws on the protection of juveniles. Since Article 5 Par. 3 of the

Basic Law stipulates the freedom of the arts, sciences, research and teaching, academic libraries experience less conflict than public libraries, since it is their duty to make all kinds of material available for research and academic purposes. Public libraries on the other hand must take particular care to ensure that media with content of a criminally indictable nature or liable to endanger juveniles is not placed on the open shelves and hence made available to all. Special provision must be made for the storage of such material in public libraries. Only in exceptional cases is it permissible to issue such works to a user, and then only when the user provides a written declaration that the material is to be used personally and exclusively for research purposes.

In the seventies there were isolated cases of public libraries being accused of possessing and issuing on loan publications of the terrorist organisation „Red Army Fraction" („propaganda material of constitutionally prohibited organisation"); the exception made in § 86 of the Criminal Code (the distribution prohibition does not apply to academic research and teaching) was, however, interpreted in the favour of the libraries' commitment to the freedom of information.

With the increase in right-wing extremist tendencies in the last few years the question of the treatment of national socialist literature has once more come to the fore (reprints of Hitler's *Mein Kampf* and neo-Nazi publications). These publications may not be made generally available without proof of explicit academic interest on behalf of the user and in no circumstances may they be issued to children and juveniles. The same applies to pornographic publications and media.

The making available of indictable publications or works and media content liable to corrupt the young is no longer merely a question of book issue; it has spread increasingly to the use of the internet, where it is extremely difficult to control. Public libraries offering their users Internet computer terminals have adopted various security measures to ensure children and juveniles do not have access to right-wing extremist and pornographic web sites (the disabling of certain URLs and the installation of proxy servers and filter software).

In the nineties considerable uncertainty was generated in public libraries by a problem arising in a jurisdictional grey area: the treatment of unsolicited ideological literature, e.g. the publications of religious sects. The Church of Scientology used particularly aggressive methods in its attempts to disseminate its literature in libraries. In 1997 the Ministers of the Interior of the federal provinces established that the organisation harboured „aspirations against the free and democratic fundamental political order", since this time the organisation has been kept under observation by the Constitutional Defence Agency (Verfassungsschutz). Without any formal requirements being issued by their superior authorities, public libraries in general declined to include Scientology publications in their stock, justifying this course of action with recourse to their entitlement to freedom of stock selection.

Aspects of library politics

Libraries in Germany take their comprehensive information commitment seriously and aim to provide access to all desired information via their holdings and services independently of media format. They are however bound by existing laws. In the same way as copyright regulations must be complied with, so must the restrictions on the distribution of information imposed by the Code of Criminal law and the laws on the protection of juveniles be observed. Thus libraries – above all public libraries – are subject to the politically justifiable conflict between the freedom of opinion and information on the one hand and their legally imposed restrictions on the other.

National socialist primary literature (e.g. Hitler's *Mein Kampf*) is available in academic libraries but is not placed on open access and is not issued on loan to under-age persons, since not only the Criminal Code but also the laws on the protection of juveniles are applicable. Neo-Nazi and right-wing extremist literature (e.g. publications denying the existence of the Holocaust - the provisions of § 130 Par. 3 of the Criminal Code – „Auschwitz Lie" were tightened in 1994) are dealt with in a similar manner. These publications have recently become available on the Internet in considerable quantities, so that public libraries have had to introduce special security measures for their public Internet terminals, as far as these are used by under-age juveniles.

In view of the history of Germany in the 20th century, libraries feel themselves obliged to combat the return of nationalist and national socialist tendencies. Serious academic work with historic and contemporary source material is promoted, not hampered by the libraries. They do however – notwithstanding their subjection to current legislation – have a vested interest in ensuring that material of a politically doubtful nature does not fall into the wrong hands. The accusation of „self-censorship" occasionally made by other countries is unjustified.

In the procedures they have developed concerning access to certain material and restrictions on its use, German Libraries know that they comply with European outline conditions such as the communication of the Commission on „illegal and harmful content on the Internet" (COM(96)487) and subsequent reports and action plans.

Libraries' treatment of confessional, philosophical and ideological literature presents a different kind of problem, especially when – as is generally the case with the publications of the Scientology sects – this literature has totalitarian aims coupled with opaque methods of new member recruitment. Each individual library is free to choose whether to include this literature in its holdings and if so, which titles to include, especially since public libraries regard their information commitments as fulfilled if they themselves offer critical and explanatory literature on new religious groups whilst the appropriate primary sources are available in other libraries in the area.

In the nineties various federal provincial ministries classified the Scientology organisation as dubious and issued a warning concerning the general proliferation of their publications, but this was not binding in the sense of a „directive". In the wake of the general uncertainty which arose above all in the public libraries of the new federal provinces, the German Library Institute recommended in 1995 sending unsolicited book donations back to the sects or at any rate ensuring they were not available for public loan [Bibliotheksdienst 29, 1995, II,9 A.1485]. In 1994 the DBV Association of the federal province of Baden-Württemberg had already declared its intention to ensure that Scientology publications „would not be made available in public libraries". These recommendations in no way affected the autonomy of the individual libraries.

As a result the vast majority of German libraries has declined to include the publications of these sects in their holdings. This has led the Scientology organisation to launch repeated campaigns against alleged „book censorship in public libraries" (the last campaign was in October 2000, s. Buch und Bibliothek No. 12/2000). In a „Testimony" on July 14th 2000 Scientology denounced the „officially sanctioned discrimination against religious minorities" in Germany [<http://germany.freedommag.org/>], whereby no distinction was made between unproven allegations, global allegations and obvious misrepresentation of the facts.

German libraries as a body provide unimpeded access to all available information according to the constitutionally guaranteed freedoms of opinion and information, notwithstanding legally binding restrictions on availability to under-age persons. Libraries play a decisive and independent role in the field of information brokerage in Germany, summed up as follows in the Survey 2000 from the independent non-government organisation „Freedom House": „Print and broadcast media are free and independent, their coverage spanning the full spectrum of political views. Neo-Nazi propaganda is illegal. The Government has attempted to block Internet access to pornographic, violent and other,dangerous‘ material." [<http://www.freedomhouse.org/pfs2000/reports.html>]