[DE] Press photos Seized by Appeal Court judge - Federal Court Decides

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On 11 February 1998, the Federal Court (Bundesgerichtshof - BGH) ruled that a complaint lodged by a publishing house and a free-lance press photographer concerning a measure ordered by the presiding judge in proceedings in the Frankfurt Appeal Court (Oberlandesgericht - OLG) was inadmissible.

The judge had noticed, during a break in the proceedings, that the photographer was taking pictures of one of the witnesses against her will - and ordered him to hand over the film-disk, which he duly did. The complaint against this order lodged with the Federal Court chiefly cited the basic right to freedom of the press enshrined in Article 5 (2) of the Basic Law (Grundgesetz - GG).

In its reasons, the third Criminal Chamber of the Federal Court declared that, in making the order complained of, the presiding judge had been exercising the authority conferred on him by Section 176 of the Courts Act (Gerichtsverfassungsgesetz - GVG) to keep order in court. The right which this gave him to take all measures required for that purpose, or for protection of the parties, extended, in spatial terms, to occurrences in the immediate vicinity of the court. In temporal terms, too, the measure served to keep order, since the incident took place during a break in the proceedings.

The Court pointed out that, under Section 181 of the Courts Act, measures of this kind ordered by presiding judges in appeal court proceedings were not open to complaint even when penalties (fines or detention for contempt of court, cf. Section 178 of the Act) were involved - when, in other words, individual rights were affected by direct financial loss or loss of personal liberty. This legislative position deserved special attention in cases like the present one, where temporary loss of power to dispose of an object was the only issue. The Federal Constitutional Court (Bundesverfassungsgericht - BVerfG) has had to consider similar questions on various occasions in the past - in recent years, mainly in connection with reporting of the trials of senior members of the former State Council of the German Democratic Republic (see IRIS 1996-3: 11). Striking a balance between basic broadcasting and press freedoms, protection of the general personality rights of the parties, and maintenance of order during the proceedings was important in all of these cases. In a 1994 decision, the Constitutional Court emphasised that the trials were historically important, and that the accused must therefore accept a measure of publicity. This being so, a

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total prohibition on filming in the courtroom, extending to periods before and after hearings and to breaks in the proceedings, would violate the requirement of proportionality. On the other hand, in 1996, the Court, having weighed up the consequences, refused an application for an interim order, authorising direct transmission during the proceedings. A decision on the main issue in this case is still pending and should, when it comes, indicate whether Section 169, sentence 2, of the Courts Act is compatible with the constitutional rights guaranteed by Article 5 (2) of the Basic Law.

Bundesgerichtshof, Beschluß vom 11. Februar 1998 - Gesch.-Nr.: 3 StE 7/94 - 1 (2)

Federal Court, judgment of 11 February 1998 -- Case No. : 3 StE 7/94 - 1 (2)

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