[DE] Protection of Journalists` Information

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In a criminal case involving official secrets, the Landgericht Bremen (District Court - LG) held, in its verdict of 13 August 1999, that the search of a broadcasting organisation`s newsroom together with the seizure of a draft report and the decisions leading thereto were unlawful due to the absence of authority to prosecute on the part of the high regional authorities concerned.

The plaintiff is a broadcasting organisation. It reported in a TV magazine on the Bremen City Court of Audit`s budget, which was still confidential at the time of transmission. Information on the budget had until that time been communicated only to the regional high authorities. The President of the Court of Audit issued the relevant Public Prosecutor's Department with the authority to prosecute required under § 353b para. 4 of the criminal code. The Public Prosecutor accordingly had the plaintiff`s premises searched and the report found there was seized. In the view of the Public Prosecutor, investigations indicated that the report had been leaked to the media by the finance department. The finance minister rejected the issuing of the authority to prosecute and proceedings were suspended.

The Court had to weigh the government`s interest in successfully pursuing a criminal case against the requirements of press and broadcasting freedom. It considered the fact that the provisions of the code of criminal procedure on the possible seizure of objects in the possession of members of a broadcasting organisation are only consistent with Article 5 § 1 sentence 2 of the Constitution when, in a given instance, the Public Prosecutor observes the principle of proportionality, i.e. by refraining from excessive use of his powers of intervention or causing lasting prejudice to media activity.

In Germany, press freedom is safeguarded by the right of media employees to refuse to give evidence. Here, it was a case of an exception to the ban on seizure linked to the right of refusal to give evidence due to criminal implication i.e. involving objects emanating from a criminal act or used for a criminal purpose. However, it was precisely because the case lay in the the sensitive area of the press that, in the view of the LG, only limited use of powers of search and seizure might be made. Before applying to the local court for a search to be made, it was imperative that prior authority to prosecute be obtained from the other regional high authorities concerned. The search and seizure proceeded despite this latent constitutional rights impediment - which subsequently materialised. At the time of

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the search, the continuance of the investigative proceedings had not been secured

- hence the unlawfulness of the action by the Public Prosecutor.

In this connection, the current discussion and legislative initiative on the extension of journalists` right of refusal to give evidence to cover their own researched material is of interest. According to present law, under the constitution a journalist is entitled only in isolated cases not to disclose material he has developed himself. This is not yet embodied in the rules of criminal procedure, which until now cover only journalists` right to silence on those persons providing them with information, and information communicated. Henceforward, the coverage may be extended to include the authors of productions not appearing regularly and the staff of information and communications services.

Urteil des LG Bremen vom 13. August 1999; AZ 14 Qs 356/96#1.

Judgement by the District Court of Bremen of 13 August 1999; file N°. 14 Qs 356/96#1.

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