[DE] Confiscation Did Not Breach Press Freedom

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In a ruling of 22 August 2000, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) rejected a complaint by daily newspaper TAZ that the Constitution had been infringed. The newspaper had appealed against rulings concerning the seizure and confiscation from its editorial offices of an original letter of confession that it had published, as well as the application of Article 97.5.2 in comparison with Article 97.2.3 of the Strafprozessordnung (Code of Criminal Procedure - StPO).

In September 1995, TAZ had published an abridged version of a letter it had received from the group "Das K.O.M.I.T.E.E". In the letter, the group admitted carrying out an arson attack in October 1994 and an attempted bombing. The original letter was confiscated from the newspaper offices. The confiscation order was upheld by the Bundesgerichtshof (Federal Supreme Court - BGH) on the grounds that, since writing the letter had constituted a criminal offence, it was not protected from confiscation by Article 97.1 StPO. The freedom of the press had therefore not been breached.

The Constitutional Court explained that, in principle, the freedom of the press guaranteed under the Constitution included protection of the relationship of trust between the press and private informers. The press could not ignore private statements. However, this source of information would only be productive if informants could rely on the confidentiality of the press.

Nevertheless, the freedom of the press was restricted by general laws, which themselves were to be interpreted with regard to the freedom of the press as well as Articles 53.1.5 and 97.5 StPO. The protection from confiscation provided for in Article 97.5 StPO did not infringe the Constitution because it created a reasonable balance between the freedom of the press on the one hand and the interests of criminal prosecution on the other. The way the law had been applied in this particular case was also beyond reproach: the BGH had weighed up the importance of the unsolved crime and the confiscated letter's value as evidence on the one hand, and the right of the press to an unrestricted flow of information on the other. In doing so, it had considered the possibility that such confiscations could in future stem the flow of information between the press and terrorists. Such a risk was thought to be rather small in this case, since the authors of the letter had deliberately used the press informants in order to pursue aims that went beyond the mere publication of the letter. The authors had attempted to

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avert suspicion surrounding the accused in a criminal case.

Beschluss des Bundesverfassungsgerichts vom 22. August 2000, Az.: 1 BvR 77/96

Decision of the Federal Constitutional Court, 22 August 2000, case no. 1 BvR 77/96

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