[DE] Press Entitled to Consult Land Register

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The Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) has again given the press greater freedom through its decision of 28 August 2000.

A finance magazine publisher asked the land registry - initially without explaining her reasons for doing soto grant an editor access to certain pages of the land register. The request was rejected on the grounds that the registered landowner should be consulted first. Furthermore, the land registry thought that the journalist should explain her reasons for consulting the register in order to weigh up the public interest, as asserted by the press, against the individual interests of the landowner. The publisher's appeal against this decision was subsequently rejected by the Oberlandesgericht (Court of Appeal - OLG).

In her complaint to the Constitutional Court, the publisher complained of a breach of the freedom of the press to gather information. The Court quashed the disputed ruling on the grounds that the OLG's interpretation and application of Article 12.1 of the Grundbuchordnung (land registry code - GBO) had unfairly restricted the freedom of the press. The Constitution did not prevent the OLG from requiring the press to explain their reasons for consulting the land registry. However, the Court ruled that the requirement that legitimate reasons be given and explained should take into account the peculiarities of the free press. As a result, the right of access enjoyed by the press often took precedence over the registered landowner's personal rights where issues of essential public concern were involved, provided the land register was consulted as part of a serious and relevant debate. The Court of Appeal's conclusion that the landowner should be consulted in every case was incompatible with the freedom of the press. The success of the investigation could be permanently jeopardised if the land registry were to inform the landowner that enquiries were being made. This in turn could lead to countermeasures being taken, in particular the destruction of evidence. The case was referred back to the Court of Appeal.

Beschluss des Bundesverfassungsgerichts vom 28. August 2000, Az.: 1 BvR 1307/91

Decision of the Federal Constitutional Court, 28 August 2000, case no. 1 BvR 1307/91

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