[DE] Constitutional Court Approves Order to Provide Information on Telephone Communications

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In a decision of 12 March 2003, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) dismissed constitutional appeals by journalists complaining that investigations had been made into their telephone communications data.

The investigating authorities presumed that certain journalists had been in telephone contact with persons under suspicion of committing serious crimes. At the request of the investigating authorities, the courts had ordered the relevant telecommunications companies to provide the authorities with information regarding communications data. In this way the authorities hoped to gather information about the wanted persons' whereabouts. The journalists lodged a constitutional complaint against these court orders.

The secrecy of telecommunications is protected by Article 10.1 of the Grundgesetz (Basic Law - GG). Under Article 10.2 of the Basic Law restrictions may only be introduced in accordance with a law. Article 5.1 of the Basic Law governs broadcasting and press freedom and Article 5.2 provides that it may be restricted in accordance with the provisions of a law. The BVerfG also recognises in its case-law that the constitutionally guaranteed freedom of broadcasting also implies the protection of information gathering. The confidential relationship between journalists and their sources as well as the confidentiality of editorial work are to be strictly observed.

The secrecy of telecommunications and the freedom of broadcasting and the press are restricted by the Fermeldeanlagengesetz (Telecommunications Installations Act), article 12 of which provides that in the course of criminal investigations a court may demand information from telecommunications companies about communications (replaced on 1 January 2002 by Articles 100g and 100h of the Strafprozessordnung (Code of Criminal Procedure - StPO).

The BVerfG emphasised that interferences with the secrecy of telecommunications and broadcasting and press freedom under article 12 of the Telecommunications Installations Act were justified only if they were used for the prosecution of a particularly serious crime. There also had to be firm grounds for suspicion and a sufficiently sound factual basis for the assumption that the person

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affected by the order was in contact with the accused via telecommunications installations.

In the cases before it, in which the criminal proceedings related to credit fraud amounting to thousands of millions of marks, fraudulent bankruptcy, tax evasion and multiple murder, the BVerfG considered the court orders justified and dismissed the constitutional appeals.

Urteil des Bundesverfassungsgerichts vom 12. März 2003, Az. 1 BvR 330/96 und 1 BvR 348/99

http://www.bverfg.de/entscheidungen/rs20030312_1bvr033096.html

Federal Constitutional Court of 12 March 2003, Case nos. 1 BvR 330/96 and 1 BvR 348/99

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