[DE] TV cameras in court - Federal Constitutional Court says no

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The Federal Constitutional Court recently refused to make an interim order allowing N-TV, a television news channel, to broadcast live from the courtroom during the trial of Egon Krenz, former East German leader and Party Chairman, on charges which included intentional homicide in connection with the shooting of people trying to escape across the border to West Germany.

The presiding judge in the trial court had refused permission under Sections 176 and 169 of the Courts Act (Section 169, Sub-section 2 prohibits television coverage of court proceedings). N-TV appealed this decision to the Federal Constitutional Court and also applied for an interim order, allowing it to televise all or at least part of the main proceedings. It argued that the prohibition imposed on it under Section 169 violated broadcasting freedom, and suggested that Sub-section 2, being directly aimed at broadcasting, might be unconstitutional. Even if it were not unconstitutional, it still needed to be interpreted in a manner consistent with the Constitution and with broadcasting freedom. The balance which had to be struck between broadcasting freedom, on the one hand, and the need to protect the parties' personal interests and preserve order during the proceedings, on the other, did not warrant a complete ban on television coverage. On the first point, the accused in such case were, to some extent at least, modern historical figures and as such already in the public eye. On the second, the principle of publicity of proceedings already had some influence on the various parties by exposing their conduct during the proceedings to inspection. Any inhibiting effects which this might produce were accepted as something which could not, in the nature of things, be avoided.

The Federal Constitutional Court decided that N-TV's constitutional appeal was neither manifestly founded nor manifestly ill-founded, and thus that the consequences of making an interim order were the only question which it needed to consider. The fact that the case was historically important was certainly in the application's favour. If permission for television coverage were refused, the reporting of the proceedings and the whole opinion-forming process would be irreparably compromised. On the other hand, if the order was made, and the constitutional appeal was later dismissed, the parties' personal rights and the process of arriving at the truth and ascertaining the law would have suffered in the meantime. One of the principal forms which the violation of personal rights could take was violation of a person's right to his image. Moreover, the general

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right to protection of personal rights - taken in conjunction with the right to a fair trial - meant that a person accused in criminal proceedings must be able to exercise his rights without certain impairments. The impairment caused by television coverage was greater than that caused by admission of the public to the courtroom. The accused could observe amd assess the latter, but not the former. The process of arriving at the truth and ascertaining the law might also suffer. The possibility that television coverage might have a more seriously inhibiting effect on the parties than the mere presence of spectators in the courtroom could not be ruled out. In the court's opinion, these considerations outweighed the others, and it accordingly rejected the application.

Beschluß des Bundesverfassungsgerichts vom 11.01.1996, 1 BvR 2623/95.

Decision by the Federal Constitutional Court of 11 January 1996, BvR 2623/95.

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