[DE] Constitutional Court Strengthens Rights of Journalists

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In a ruling of 27 February 2007, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) strengthened the freedom of the press and the protection of sources, as enshrined in Art. 5.1.2 of the *Grundgesetz* (Basic Law - GG). In their decision, the judges declared that both a search of the editorial offices of political magazine *Cicero*, and the confiscation of computer data in September 2005 were actions that were unconstitutional.

These actions were taken following the publication of an article by a freelance journalist concerning the terrorist Abu Mussab al Sarkawi in April 2005. In a description of the background and life story of al Sarkawi and the attacks for which he had been responsible, a "classified" report of the *Bundeskriminalamt* (Federal Criminal Police Office - BKA) was referred to - in great detail in places - and also cited. Charges were then brought by the BKA for a suspected violation of official secrecy in accordance with Art. 353b of the *Strafgesetzbuch* (Criminal Code - StGB). The responsible public prosecutor's office also instigated preliminary proceedings against the chief editor of the magazine and the author of the article for aiding and abetting in the commission of this offence. As part of the investigation, the editorial offices of *Cicero* were searched and computer data was seized. The magazine's chief editor complained to the Constitutional Court, arguing that the freedom of the press, a fundamental right, had been breached.

The *1. Senat* (1st Chamber) of the BVerfG expressly stated that the mere publication by a journalist of an official secret within the meaning of Art. 353b StGB was not sufficient, in view of Art. 5.1.2 GG, to justify the suspicion that the said journalist had aided and abetted a breach of official secrecy. The searches and confiscation of material had been based on such a suspicion. Rather, specific factual evidence was required to show that the person concerned had deliberately published the secret and thus committed the offence of aiding and abetting a breach of official secrecy. Otherwise, as the judges further stated, there was a risk that public prosecutors could instigate preliminary proceedings against editors or journalists solely, or mainly, in order to discover the identity of the source and chief culprit. This, however, would infringe the right of sources to protection, enshrined in constitutional law, with the result that searches and seizures as part of preliminary proceedings against members of the press should, in principle, be considered unconstitutional if they were solely, or mainly, aimed at establishing a

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source's identity.

The Court concluded that the measures that had been taken were not justified under the Constitution for the reason that when the searches and seizures took place, the publication of the report had been the only clue that official secrecy might have been breached. Furthermore, nothing had been known about the identity of the culprit, let alone his motive. Rather, the wording of the decision to conduct the searches itself had suggested that the main purpose was to discover the identity of the suspected *BKA* source.

Urteil des BVerfG vom 27. Februar 2007 (Az.: 1 BvR 538/06, 1 BvR 2045/06)

http://www.bverfg.de/entscheidungen/rs20070227_1bvr053806.html

BVerfG ruling of 27 February 2007 (case no. 1 BvR 538/06, 1 BvR 2045/06)

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