[DE] Broadcasting Freedom Breached by Broadcaster Search and Seizure of Editorial Documents

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On 10 December 2010, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) decided to uphold the appeal by the Hamburg-based local broadcaster “Freies Sender Kombinat” (FSK) against an order to search its business premises and confiscate its editorial documents, and to overturn the lower instance rulings.

In October 2003, FSK had broadcast a report on alleged infringements by police officers at a demonstration. During the programme, an unknown presenter had played recordings of two telephone calls between a police press officer and somebody who had introduced him/herself in the telephone calls as an employee of the broadcaster and had given his/her name. As a result, the Landeskriminalamt (State criminal investigation department) in Hamburg brought a charge for a suspected violation of the confidentiality of the spoken word, protected under Article 201(1) of the Strafgesetzbuch (Criminal Code), since no agreement had been made for the telephone calls to be recorded. The public prosecutor’s office ordered a search, during which an employee was held responsible and cautioned, subject to the court’s ruling.

The BVerfG stressed that the basic right of broadcasting freedom, enshrined in Article 5(1)(2) of the Grundgesetz (Basic Law), protected the institutional independence of broadcasters from the obtaining of information to its dissemination. This included the confidentiality of editorial work, which prohibited State bodies from gaining insight into the work processes involved in producing reports. Organisational documents containing details of work routines or the identity of editorial staff were also covered by editorial confidentiality.

It was true that the order to search the FSK premises for the audio recording and related documents did not infringe the ban on seizure enshrined in Article 97(5) of the Strafprozessordnung (Code of Criminal Procedure). However, the proportionality of the measure was not entirely convincing. It was necessary to weigh the actual interest of a criminal investigation against the interference with broadcasting freedom that such a search would create. The effects of such an investigation on the media organisation should be taken into account, since the search of a broadcaster’s premises often disrupted the relationship of trust between the broadcaster and its sources and an unlimited search order had an extremely intimidating effect on the press organisation concerned. The BVerfG

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also ruled that the taking of photographs and drawings of the premises and the seizure of editorial documents and the copying of those documents breached broadcasting freedom, since there was no obvious need for such measures. There were also insufficient grounds for documenting where the confiscated files were found; rather, this had not even been recorded in the drawings that had been made.

BVerfG, 1 BvR 1739/04 vom 10.12.2010, Absatz-Nr. (1 - 32)

http://www.bverfg.de/entscheidungen/rk20101210_1bvr173904.html

BVerfG, 1 BvR 1739/04 of 10.12.2010, paragraphs 1-32

BVerfG, 1 BvR 2020/04 vom 10.12.2010, Absatz-Nr. (1 - 41),

http://www.bverfg.de/entscheidungen/rk20101210_1bvr202004.html

BVerfG, 1 BvR 2020/04 of 10.12.2010, paragraphs 1-41,

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