[DE] Higher Administrative Court Confirms Press's Right to Information in Case brought against the Land of Brandenburg

IRIS 2011-10:1/38

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In a decision of 28 October 2011, the Oberverwaltungsgericht Berlin-Brandenburg (Berlin-Brandenburg Higher Administrative Court- OVG) issued an injunction ordering the Land of Brandenburg to provide the applicant in the proceedings, the chief reporter of a national newspaper, with information in accordance with the Brandenburgisches Pressegesetz (Brandenburg Press Act - BbgPG).

The applicant had requested detailed information on a total of thirteen judges and a public prosecutor who are currently working for the Brandenburg courts and in respect of whom there is evidence that they co-operated with the Ministerium für Staatssicherheit (Ministry of State Security) of the former German Democratic Republic (GDR). The OVG partially allowed the application.

First of all, the OVG established that the applicant, as a reporter, could in principle be entitled under sections 5 and 3 BbgPG to be given information on certain facts by the respondent for the purpose of fulfilling the public service remit of the press. Moreover, it pointed out, the subject concerned was one in which the public had become interested in the light of current events.

The court affirmed that the applicant had a right to information regarding at what ordinary and specialised courts the judges concerned were employed and on how many of those judges had been in charge of restitution proceedings under the Vermögensgesetz (Property Act) and the Strafrechtliches Rehabilitierungsgesetz (Criminal Rehabilitation Act) in the past 21 years. That information could be provided in an anonymised form, i.e. without it being possible to draw conclusions as to the identity of the judicial employees concerned, so that no legitimate private interests stood in the way of the request for information at that point.

However, the OVG refused the applicant's request for the additional information (on the incriminating evidence available on the persons concerned as well as the naming of these individuals).

With regard to the incriminating evidence, the OVG referred to the priority of the Gesetz über die Unterlagen des Staatssicherheitsdienstes der DDR (Act on the Documents of the State Security Service of the GDG - StUG), pointing out that it provided for the strict application of the "purpose limitation principle" to the data

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preserved and transmitted in that connection by the Bundesbeauftragter für die Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR (Federal Commissioner for the Records of the State Security Serviceof the former GDR). In the case concerned, the purpose was the examination some years before of the reemployment of the persons concerned in the Brandenburg court service, and there was no provision for any exception to be made in favour of the press. No different conclusion could be drawn from Article 5(1) of the Grundgesetz (Basic Law - GG) since that provision protected access to generally available sources of information but not the opening up of a source of information not generally available.

With regard to the request to name the persons concerned, the respondent had a right to refuse to disclose information under section 5(2)(3) BbgPG because of the legitimate private interests involved. A consideration of those interests primarily revealed that the personality rights of members of the legal service protected by Articles 2(1) and 1(1) of the Basic Law outweighed the press's right to information and the public's interest in that information. The disclosure of the names would be a breach of the right to informational self-determination and result in the stigmatisation of the individuals concerned in both their private and their professional lives. A role was also played by the fact that they had not sought public attention and that during the appointment process they had not concealed their work for the state security service, which now lay twenty years in the past. Furthermore, the committees set up at that time to select judges and appoint public prosecutors had not expressed any reservations concerning the reemployment in the judicial service of those concerned. That employment decision now meant that the Land of Brandenburg had a legal duty of care under public service law not to disclose its employees' identity.

Beschluss des OVG Berlin-Brandenburg vom 28. Oktober 2011 (Az OVG 10 S 33.11)

http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/15ko/bs/10/page/sammlung.psml?doc.hl=1&doc.id=JURE110020039%3Ajuris-r01&documentnumber=1&numberofresults=1&showdoccase=1&doc.part=L&paramfromHL=true#focuspoin

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