[DE] Federal Administrative Court Bases Press Information Right Directly on Article 5 of the Basic Law

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Martin Rupp
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 20 February 2013, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) rejected a complaint by a journalist who had tried to assert the press's legal right to information vis-à-vis the Bundesnachrichtendienst (Federal Intelligence Service). He had requested information about the number of full-time and unofficial employees with a National Socialist past who had worked for the Federal Intelligence Service and its predecessor organisation during specific periods between 1950 and 1980.

The BVerwG firstly stated that the press's right to information under the press laws of the Länder (in this case: Article 4(1) of the Berliner Pressegesetz (Berlin Press Act - BlnPrG)) did not apply in this case. The authorities covered by Article 4(1) BlnPrG did not include the Federal Intelligence Service, since the Länder did not have the legislative power to grant such a right to information from this particular federal authority. According to Article 73(1)(1) of the Grundgesetz (Basic Law - GG), the right to information from the Federal Intelligence Service fell under the exclusive legislative competence of the Federal Government in relation to foreign affairs and defence. However, insofar as is relevant, the Gesetz über den Bundesnachrichtendienst (Federal Intelligence Service Act - BNDG) does not provide for a right to information for journalists.

However, this does not mean that such a right to information is excluded per se, according to the BVerwG. The duty to protect the fundamental right of press freedom enshrined in Article 5(1) GG required the legislator to create such a right to information in view of the fundamental role played by the press in a free and democratic society. If such a right was not created under normal legislation such as the BNDG, a minimum obligation to provide information could be derived directly from Article 5(1) GG. There was therefore a right to information under the Basic Law, as long as it did not infringe the protected interests of private individuals or public bodies, as reflected in the restrictions on the information rights granted under press legislation (see Article 4(2) BlnPrG).

In the present case, the plaintiff was unable to obtain the information it wanted by asserting its right under Article 5(1) GG because the Federal Intelligence Service did not possess any information about the number of employees with a National Socialist past at the relevant time. However, the right to information did not

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create an obligation for the recipient of the request to obtain the required information, but only to provide information currently available.

The Federal Minister of the Interior has announced plans to assess whether legislation on the right to information from federal authorities should be reformed.

Pressemitteilung des Bundesverwaltungsgerichts zum Urteil vom 20. Februar 2013 (Az. 6 A 2.12)

http://www.bverwg.de/presse/pressemitteilungen/pressemitteilung.php?jahr=2013&nr=11

Press release of the Federal Administrative Court on the judgment of 20 February 2013 (case no. 6 A 2.12)

Pressemitteilung des Bundesministers des Innern vom 21. Februar 2013

http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2013/02/auskunftsrecht-presse.html

Press release of the Federal Minister of the Interior of 21 February 2013

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