[CH] Federal Court Rules That Source Must Be Revealed After Drug Dealer Report

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The Bundesgericht (Federal Court) has ordered a journalist at the Basler Zeitung to disclose to the public prosecutor's office the name of a cannabis dealer profiled in one of her articles. In October 2012, the journalist had published a lengthy article entitled "Zu Besuch bei einem Dealer" (Visiting a dealer) in the printed and online versions of the Basler Zeitung. Another article headed "Schmuggelware aus Holland" (Smuggled goods from Holland) had appeared on the same page of the newspaper, dealing more generally with cannabis consumption in Switzerland and the political debate on the state-controlled sale of cannabis, which the Basel government had recently rejected.

The main article described a visit to the flat of a slim, blond man, given the pseudonym "Roland" by the journalist. He was at the bottom of a long chain of dealers and funded his own drug habit by selling drugs. "Roland" favoured the legalisation of cannabis because it would enable him to buy a better quality product. He had been selling grass, hashish and pollen to customers known to him for ten years. He earned approximately CHF 2 per gram that he sold, totalling around CHF 12,000 per year.

Under Swiss law, dealers in soft drugs such as hashish are subject to harsher penalties if they make substantial profits - over CHF 10,000 according to case law (Art. 19(2) of the Betäubungsmittelgesetz - Narcotics Act). Although the Swiss Strafgesetzbuch (Criminal Code - StGB) allows professional journalists to protect the content and sources of their information, Article 28a(2)(b) StGB lists around two dozen types of offence for which source protection can be broken in order to aid criminal investigations. As well as murder and other serious crimes, these include violations of Article 19(2) of the Narcotics Act.

According to the Federal Court, the Swiss legislator decided that, in principle, the public interest in the prosecution of such offences outweighs the need to protect editorial confidentiality. The obligation to divulge "Roland's" identity was also proportionate in view of the circumstances. It was true that the alleged offence was less serious than the other offences listed in Article 28a(2)(b) StGB. However, it was not insignificant, since several people had bought drugs from "Roland" and he was part of a large-scale dealing organisation.

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In these circumstances, there needed to be substantial public interest in the newspaper report if the protection of sources was, by way of exception, to take precedence. According to the Federal Court, this would be the case, for example, if serious abuses in politics, business or public administration had been uncovered. This was not the case here. The description of the Basel cannabis scene contained in the newspaper report hardly brought to light such a serious abuse. Rather, a long-term offender had been given a free advertising platform on which to promote his drugs business and play it down as a virtually “normal” occupation. The report could even be interpreted as an invitation to its readers to generate additional income easily by copying “Roland”.

The Federal Court therefore confirmed the order of the Basel public prosecutor’s office, under which the journalist had no right to withhold evidence and was obliged to disclose the relevant information. Representatives of the Basler Zeitung have told the media that the Federal Court’s decision will be challenged before the European Court of Human Rights (ECtHR).

Urteil des Bundesgerichts vom 31. Januar 2014 (1B_293/2013)

http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=31.1.2014_1B_293/2013

Federal Court ruling of 31 January 2014 (1B_293/2013)

Zeitungsartikel „Zu Besuch bei einem Dealer“ vom 9. Oktober 2012

http://bazonline.ch/basel/stadt/Zu-Besuch-bei-einem-Dealer/story/31180807

Newspaper article "Visiting a dealer", 9 October 2012

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