[DE] Federal Constitutional Court rejects excessive demands on applicants requesting temporary legal protection in relation to information requests made under freedom of the press rules

IRIS 2015-1:1/10

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Excessive demands may not be made of a journalist who requests temporary legal protection in order to obtain information under German press law, according to a decision issued by the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) on 8 September 2014 (case no. 1 BvR 23/14).

The BVerfG based its decision on the fundamental right to effective legal protection, enshrined in Article 19(4) of the Grundgesetz (Basic Law - GG). It ruled that the press can be granted temporary legal protection if the level of public interest and topical relevance of the reporting are high. Limiting temporary legal protection to urgent cases represents a disproportionate intrusion on the freedom of the press.

Nevertheless, the BVerfG dismissed the complaint of the editor in question in the specific case at hand, because he had failed to provide sufficient proof of the urgency of his application. His application for a temporary injunction was therefore also rejected.

The complainant was an editor for the German daily newspaper “Tagesspiegel”. In September 2013, he asked the Bundesnachrichtendienst (Federal News Service - BND) for information about the export to Syria between 2002 and 2011 of so-called “dual-use goods”, which can be used to make weapons. The BND employees responsible refused to provide the requested information on the grounds that they only reported to the Federal Government and the relevant bodies of the Bundestag (lower house of parliament). In any case, the Federal Government’s export committee did not meet in public. In October 2013, the complainant therefore applied to the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) for temporary legal protection. However, in a decision of 26 November 2013 (case no. 6 VR 3.13), the BVerwG refused the application for a temporary injunction in the first instance.

The BVerfG did not identify any infringement of fundamental rights in the disputed BVerwG decision. It found that the BVerwG had rightly held that the granting of temporary legal protection depended, at least partly, on how the

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administrative courts were likely to rule on the main issue. Although questionable in view of the guarantee of effective legal protection enshrined in Article 19(4) GG, the demands that had been laid down for temporary legal protection to be granted in this case were found to be compatible with the Constitution.

However, the BVerfG questioned the compatibility with the Constitution of the BVerwG's view that the press should regularly accept a certain loss of topicality and that an exception can, at best, apply if the events under discussion irrefutably require an immediate journalistic explanation that cannot be delayed, for example if there are clear indications that state authorities are breaking the law or if direct state intervention might urgently be required to stave off threats to the public interest. According to the BVerfG, the BVerwG's interpretation of the notion of a serious disadvantage was too narrow and therefore imposed a standard that did not take sufficient account of the role of the press in a free democratic state.

Indeed, the role of the press is, first and foremost, to provide the public with information in order to support the formation of public opinion. Acting within the law, journalists themselves can decide whether and how they will report on a particular issue. This autonomy includes the freedom of the press to decide whether an issue should be reported on immediately. However, if the press can only obtain such information from public authorities by applying to the courts for temporary legal protection under the conditions laid down by the BVerwG in the disputed decision, this will constitute a disproportionate limitation of temporary legal protection from a press freedom point of view.

Beschluss des BVerfG vom 8. September 2014

http://www.bverfg.de/entscheidungen/rk20140908_1bvr002314.html.

Decision of the Federal Constitutional Court of 8 September 2014

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