[CH] Federal Tribunal objects to exclusion of media from criminal proceedings

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Through a recent landmark judgment, the Swiss Bundesgericht (Federal Tribunal) strengthened the principle of public court proceedings and the right of the media to effectively monitor the judicial system. The court unanimously upheld a complaint lodged by four journalists following their exclusion from a criminal trial concerning the attempted murder of a man by his wife's lover. The Zürcher Obergericht (Zurich High Court) had banned the media (and other members of the public) from attending the proceedings and the subsequent sentencing on the grounds that the victim and his two children might have been further traumatised by media coverage.

The Federal Tribunal decided in favour of the excluded journalists. In its unanimous ruling, it acknowledged that a criminal court should protect victims of crime and their children from excessive publicity. However, this must be weighed against the legitimate interests of media reporting on criminal trials. The courts' handling of violent crime in particular needed to be effectively monitored. Journalists' watchdog function helped to promote thorough and fair court proceedings. The general public had a right to information in accordance with constitutional law principles (publicity of court proceedings, media freedom and freedom of information).

Referring to the case law of the European Court of Human Rights (ECHR), the Federal Tribunal emphasised that court judgments could never be kept completely secret, even when important interests needed protection. Although a ruling could be published in anonymous and abbreviated form, the media had to be able to understand the court's reasoning. Simply reading out the verdict was not sufficient, and a brief media release issued by the Zurich High Court was inadequate. The Federal Tribunal therefore ordered the court to give the journalists the full text of its reasoned judgment (in anonymous form).

The decision to exclude the accredited journalists from the court proceedings was also deemed disproportionate. Access to a main hearing, which should in principle be open to the public, should only be limited in exceptional circumstances and with great caution. The Federal Tribunal pointed out that Swiss law required police and public prosecutors' investigations to be kept secret, which in itself was a restriction of public access to the judicial process.

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In its ruling, the Federal Tribunal also stressed that the right to attend a court trial was not a free pass for reckless media reporting. Journalists had to respect both legal boundaries (for example, the protection of privacy) and the rules of media ethics, and should therefore, in principle, only report on the trial in anonymous form.

Urteil 1B_349/2016, 1B_350/2016 des Bundesgerichts vom 22. Februar 2017

http://relevancy.bger.ch/cgi-bin/JumpCGI?id=22.02.2017_1B_349/2016&lang=de

Judgment 1B_349/2016, 1B_350/2016 of the Federal Tribunal of 22 February 2017

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