[DE] Constitutional Court can inform journalists in advance

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Sebastian Klein
Institute of European Media Law

In a judgment of 25 August 2022 (case no. 3 K 606/21), the *Verwaltungsgericht Karlsruhe* (Karlsruhe Administrative Court) decided that the *Bundesverfassungsgericht* (Federal Constitutional Court) did not infringe third-party rights by informing journalists of its decisions before they were officially published.

The *Bundesverfassungsgericht* gives full members of the *Juristenpressekonferenz* (conference of legal journalists) access to important decisions the evening before they are officially published. The *Juristenpressekonferenz* is a private association which, according to its statutes, is made up of journalists “who continuously and predominantly report on the case law of the highest German and European courts, including the work of the federal prosecutor and legal and judicial policy issues”. In order to report accurately on the court’s decisions, its members are able to collect a paper copy of the press release concerning a judgment the evening before it is published. They promise to keep its content confidential until the decision is officially published the following morning. The court has followed this practice for some time, during which its decisions have never been leaked.

This practice was disputed by "*Alternative für Deutschland*" (AfD), a German parliamentary party that had itself been involved in a court procedure in which the judgment had been revealed to journalists the evening before it was officially published. It claimed that its right to a fair trial (Article 103 and Article 20(3) in conjunction with Article 2(1) of the *Grundgesetz* (Basic Law – GG)) and its general privacy rights (Article 2(1) in conjunction with Article 1(1) GG) had been infringed.

The court rejected the action as inadmissible. The AfD had no standing to bring proceedings because it had failed to provide sufficient evidence that its rights may have been breached. The court ruled that providing selected journalists with a press release about a judgment the evening before its publication could not be challenged. It was clear that the court had not breached the state’s duty of neutrality in commercial competition by unfairly treating a party to a case which – as a political party – was not a press outlet itself and not in commercial competition with the selected journalists.

There was also no basis for a claim that future press releases should be submitted in advance to the AfD. Although the court did not allow an appeal against the

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judgment, the AfD can apply for leave to appeal.

Urteil des Verwaltungsgerichts Karlsruhe

https://openjur.de/u/2450618.html

Judgment of the Karlsruhe Administrative Court

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