[DE] Federal Court of Justice upholds conviction of journalist for publishing investigation files

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In a ruling dated 31 July 2025 (no. 5 StR 78/25), the Federal Court of Justice (*Bundesgerichtshof* – BGH) dismissed a journalist's appeal against his conviction by the Regional Court of Berlin I (*Landgericht Berlin* I) on 18 October 2024 for publishing decisions from an investigation into members of the "*Letzte Generation*" group. The regional court's decision is now legally binding.

In August 2023, the accused journalist had published on the internet decisions issued by the investigating judge of the Munich District Court (*Amtsgericht München*) in an ongoing investigation against members of the "*Letzte Generation*" group suspected of forming a criminal organisation (Section 129 of the Criminal Code (*Strafgesetzbuch* – StGB)). The published decisions, which related to orders for telecommunications surveillance, searches and seizures, reflected the status of the investigation at the time the respective applications were filed. Although the defendant had redacted personal data of the accused, the documents had been published almost in their entirety.

The Berlin regional court convicted the defendant for publishing the decisions on a website operated by him, which amounted to unlawful disclosure of information about court proceedings. According to Section 353d(3) StGB, it was a criminal offence to publicly communicate official documents of criminal proceedings, in whole or in substantial part, before they had been discussed in public hearings or the proceedings had been concluded. Publication on the internet was covered by the provision. The defendant had been aware of this, but had acted with the aim of asking the Federal Constitutional Court (*Bundesverfassungsgericht* – BVerfG) to review the constitutionality of this rule, which he considered to be outdated.

In his appeal on the merits, the defendant essentially argued before the BGH that the criminal provision of Section 353d(3) StGB was unconstitutional because it violated Article 5 of the German Basic Law (*Grundgesetz* – GG) and Article 10 of the European Convention on Human Rights (ECHR).

The BGH disagreed. In the opinion of the 5th Criminal Senate (*5. Strafsenat*), the criminal provision represented a permissible, proportionate and strictly time-limited restriction of freedom of expression and freedom of the press. Article 10 ECHR did not guarantee the right to freedom of expression, including freedom of

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the press, without restriction; limits could be found in Article 10(2) ECHR. The criminal provision of Section 353d(3) StGB was a legal restriction within the meaning of Article 10(2) ECHR. The European Court of Human Rights had developed case-specific criteria for assessing national publication bans, particularly in connection with court proceedings. Decisive factors included the origin and content of the information, its contribution to a debate of general public interest, possible effects on the (criminal) proceedings in question and the proportionality of the sanction imposed. The BGH found that Section 353d(3) StGB complied with this margin of appreciation and was necessary within the meaning of Article 10(2) ECHR. The national legislature had already taken into account the requirements of Article 10 ECHR, Article 5(1) GG and the relevant case law when enacting it. Section 353d(3) StGB was narrowly defined: intentionally communicating to the public the wording of all or significant parts of official documents from criminal, administrative or disciplinary proceedings was only prohibited for a limited period of time. Reporting on the content remained permissible at all times, as did the reproduction of insignificant passages, ensuring that neither "secret justice" nor a reporting-free space was created. The provision thus interfered only moderately with the freedom of publication and did not establish a general publication ban. It was necessary within the meaning of Article 10(2) ECHR as it protected not only privacy rights but also, in particular, the impartiality of the parties to the proceedings and the functioning of the criminal justice system. There was no general or automatic ban on publication. Similar, equally cautious regulations, such as the French Press Act, had not been criticised by the European Court of Human Rights.

German criminal law provided sufficient mechanisms to take into account the weighing-up criteria developed by the European Court even in unusual situations. These included, in particular, an interpretation of the offence that conformed with the constitution or a teleological reduction in the case of abstract endangering offences. In this specific case, however, there was no reason to apply these corrective measures: a restriction was out of the question, as the documents in question had not previously been made public within the meaning of Section 353d(3) StGB.

The Senate also saw no reason to suspend the proceedings and initiate a judicial review. In particular, it pointed out that the BVerfG had repeatedly confirmed the constitutionality of the rule, even taking into account the freedom of the press and changes in the media. For example, the BVerfG had ruled in 1985 that the provision was compatible with fundamental rights as a general law within the meaning of Article 5(2) GG. It did not violate the requirement of legal certainty or the principle of equality. In particular, it was constitutionally unobjectionable that criminal liability was linked to an abstract threat and did not provide for a case-by-case consideration of fundamental rights in the offence.

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This line was confirmed by the BVerfG in 2014 and 2024. The fact that Section 353d(3) StGB may have gaps in protection or could be circumvented did not make it unconstitutional, but reflected a desire to protect fundamental rights and the principle of legal certainty.

The defendant's appeal was therefore dismissed as unfounded.

Link zur Pressemitteilung des BGH zur Rechtskraft des Beschlusses vom 31.7.2025

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2026/2026023.html

Link to the BGH press release on the legal force of the decision of 31 July 2025

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2026/2026023.html

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