



## Comment on a decision

### Comments on the decision of the BVerfG of 10 November 2023 (File reference number 1BvR 2036/23)

Inadmissible constitutional complaint by a press company against a confidentiality obligation imposed in civil proceedings

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**Zusammenfassung:** Die Bild-Zeitung reichte eine Verfassungsbeschwerde gegen einen Geheimhaltungsbeschluss des OLG Köln ein, der die Berichterstattung über einen Missbrauchsfall betraf. Das OLG hatte teilweise zugunsten der Bild-Zeitung entschieden, denen im Gerichtssaal Anwesenden aber eine Vertraulichkeitsverpflichtung auferlegt. Das Bundesverfassungsgericht erklärte die Beschwerde für unzulässig, betonend, dass die Pressefreiheit gegen den Schutz der Vertraulichkeit von Gerichtsverfahren abzuwägen sei. Die Bild argumentierte gegen die Vertraulichkeitsverpflichtung, doch die Entscheidung deutet darauf hin, dass die Beschwerde nicht ausreichend begründet war. Das Gericht betonte die Notwendigkeit, Pressefreiheit und Vertraulichkeit im Interesse der Justiz und Privatsphäre auszubalancieren.

**Abstract:** Bild-Zeitung filed a constitutional complaint against a confidentiality ruling at the Higher Regional Court of Cologne concerning reporting on a case of abuse. The OLG ruled partly in favour of Bild-Zeitung, but imposed a confidentiality obligation on those present in the courtroom. The Federal Constitutional Court declared the appeal inadmissible, emphasising that the freedom of the press must be weighed against the protection of confidentiality in court proceedings. Bild argued against the confidentiality obligation, but the decision suggests that the complaint was not sufficiently well-founded. The court emphasised the need to balance freedom of the press and confidentiality in the interests of justice and privacy.

**Schlagwörter:** Pressefreiheit, Schutz des Guten Rufes, Strafrecht, sexueller Missbrauch

**Keywords:** Freedom of the press, protection of reputation, criminal law, sexual abuse

*Hier geht es zum Urteil – you may find the decision here:  
[https://www.bverfg.de/e/rk20231110\\_1bvr203623.html](https://www.bverfg.de/e/rk20231110_1bvr203623.html)*

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The reason for the constitutional complaint, which was filed by Bild-Zeitung as the complainant, was a confidentiality ruling in the context of abuse proceedings at the Higher Regional Court of Cologne, in which the main case had been decided on reports of alleged sexual offences. The Cologne Higher Regional Court ruled in favour of the challenged person in part

following an action for injunctive relief due to photo reporting, but found some passages criticised by the clergyman to be appropriate (judgement of 30 November 2023 - 15 U 132/22). The court had already ruled in advance that the public was excluded from the examination of a witness and that photojournalists were obliged to maintain confidentiality about the content of the witness's statement and the content of the discussion of the taking of evidence. The decision (dated 28 September 2023 - 15 U 132/22) was based on § 171 b para. 1 sentence 1 GVG in conjunction with 353 d no. 2 German Criminal Code (StGB). This decision is the subject of the decision of the Federal Constitutional Court discussed here

The court ruled that the constitutional complaint was inadmissible. The core issue is the balance between the freedom of the press and the protection of the confidentiality of court proceedings. The press company and its employees objected to the imposition of a confidentiality obligation and argued that this violated their rights under the German Basic Law, in particular the freedom of the press. However, the court's decision to declare the complaint inadmissible indicates that the complaint was not sufficiently substantiated to challenge the imposed confidentiality on constitutional grounds. Mention is made in particular of Bild-Zeitung's argument that individual statements on the abuse cases only belonged to the social sphere. to the core sexual events (para. 23). Individual contents of a statement could therefore only be attributed to the social sphere or the private sphere in isolation if they were considered inadmissibly individually. Instead, in the case of sexual evidence, details of the background, the course of events and the consequences as a whole should also be assigned to the private sphere

The opinion of the Bild lawyers that the confidentiality obligation went beyond what was necessary was also rightly rejected. It only relates to statements made by the witness during the ongoing proceedings. Facts that did not first come to the knowledge of Bild-Zeitung through the questioning of the witness were not to be kept secret (para. 26). The court also saw no indication at all of a violation of the principle of certainty of Art. 103 para. 2 GG (para. 26).

The decision emphasises the Court's approach of carefully balancing the fundamental rights involved, in particular the freedom of the press, against the need to protect the integrity of the judicial process and the privacy of the individuals concerned. The judgement indicates that the Court considers the confidentiality obligation to be justified in the context of ongoing civil

appeal proceedings. Although at first glance this decision may appear to restrict the freedom of the press, it must be recognised that such decisions are often highly contextual. They strike a balance between the role of the press in society and other equally important legal and ethical considerations. The imposition of confidentiality in certain circumstances, particularly during an ongoing trial, may be considered necessary to protect the fairness of the judicial process and the privacy rights of individuals. In the context of § 353d StGB, this decision reflects the need to preserve confidence in the judiciary and the protection of privacy, while at the same time respecting the freedom of the press and the public interest. Weighing up these interests is crucial, and the Federal Constitutional Court has drawn a clear line here in favour of maintaining court secrecy and protecting witness testimony in non-public proceedings. This decision shows that the court recognises the importance of the freedom of the press, but also emphasises that this freedom has its limits where the protection of the judiciary and the persons involved prevails. In the context of Section 353d StGB, this decision therefore appears to be a balanced judgement that carefully weighs up the various interests worthy of protection. On the one hand, freedom of the press is a fundamental right that is essential in a democratic society for the control of power and the freedom of information of citizens. The ability of the media to report on court proceedings contributes to the transparency of the legal system and enables the public to monitor and understand the work of the judiciary. On the other hand, the protection of the fair trial and the safety of witnesses require a certain degree of confidentiality in certain cases. The ban on the premature publication of witness statements under § 353d no. 2 StGB is intended to prevent witnesses from being pressurised or influenced and the statements of other witnesses or parties from being distorted by information that has become known in advance.

Critically, this decision could be seen as a restriction on the freedom of the press, especially if the confidentiality obligations are perceived as too far-reaching or insufficiently justified. It is important that such restrictions are carefully considered and only applied when absolutely necessary to ensure the integrity of the judicial process and the protection of those involved in the proceedings. At the same time, the justice system must remain transparent in order to maintain public confidence. This requires a constant review and possible adjustment of legal regulations and judicial practice in order to find an appropriate balance between the various interests and fundamental rights.

To summarise, the Federal Constitutional Court's decision reflects a nuanced understanding of the complex interplay between different fundamental rights. It may raise concerns among those in favour of press freedom, but it also reaffirms the role of the judiciary in balancing competing interests within the framework of constitutional law and the principles of a democratic society. Nevertheless, the restrictions placed on the work of journalists by § 353d of the StGB are still criticised, as journalists and the media could be restricted in their ability to report on abuses or relevant topics that are of public interest by § 353d StGB.