

**FEDERAL CONSTITUTIONAL COURT**

**- 1 BvR 1595/92 -**

**- 1 BvR 1606/92 -**

**IN THE NAME OF THE PEOPLE**

**In the proceedings**

**on the constitutional complaints of**

1. the ZDF broadcasting corporation, ..., represented by its Director General ...,

- 1 BvR 1595/92 -,

2. a) the BR broadcasting corporation, ...

b) the NDR broadcasting corporation, ...

c) the SDR broadcasting corporation, ...

d) the SWR broadcasting corporation, ...

e) the HR broadcasting corporation, ...

f) *Radio Bremen*, ...

g) *Sender Freies Berlin*, ...

h) the SR broadcasting corporation, ...

i) the WDR broadcasting corporation, ...

k) the MDR broadcasting corporation, ...

l) the ORB broadcasting corporation, ...

m) the *RTL plus* broadcasting corporation, ... represented by its Managing Director ...

n) the *SAT 1* broadcasting corporation, ... represented by its Managing Directors ...

- 1 BvR 1606/92 -,

– authorised representatives: ...

against the Order of the Presiding Judge of the 27th Criminal Division – sitting as court of assize with lay judges – of the Berlin Regional Court issued pursuant to § 176 of the Courts Constitution Act, published on 3 November 1992, amended by the Order of the Presiding Judge of 9 November 1992,

here: application for preliminary injunction

the Federal Constitutional Court – First Senate –  
with the participation of Justices

President Herzog  
Henschel,  
Seidl,  
Grimm,  
Söllner,  
Dieterich,  
Seibert

held, on the basis of § 32 of the Federal Constitutional Court Act, on 11 November 1992:

**The presiding judge of the 27th Criminal Division of the Berlin Regional Court is instructed to issue the necessary orders so that a TV team representing a pool of public or private TV broadcasters (so-called media pool solution) is permitted, from 12 November 1992, to film for a reasonable time period – before and after the hearing – in the courtroom where the trial hearing in the criminal proceedings against [former political leader of the GDR] Erich Honecker and others is taking place. Before the hearing, filming shall also be permitted with the accused present in the courtroom. To this extent, the Order of the Presiding Judge published on 3 November 1992 and amended on 9 November 1992 is suspended. For the rest, the application for a preliminary injunction is rejected.**

#### **REASONS:**

##### **A.**

The constitutional complaints and applications for a preliminary injunction concern judicial orders, issued in exercise of the presiding judge's powers to maintain order in court (*sitzungspolizeiliche Maßnahmen*), regarding the permissibility of TV recordings

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in the criminal proceedings against Erich Honecker and [other high-ranking representatives of the GDR].

1. [...] The complainants wish to report on the proceedings [in the broadcasting media]. Given that the proceedings were expected to attract a large number of camera teams and media representatives, the complainant in proceedings no. 1 proposed that the presiding judge opt for the so-called media pool solution for film recordings in the courtroom [...]. Under the pool solution, only a three-person camera team of one broadcaster is granted access to the courtroom. This broadcaster must then make the film material available free of charge to all other interested radio and TV broadcasters. [...]

On 3 November 1992, the trial court's press office published the decision of the presiding judge of the 27th Criminal Division, according to which TV recordings would not be permitted in the courtroom, but only in the adjacent security area outside the courtroom.

2. On 8 November 1992, the complainant in proceedings no. 1 lodged a constitutional complaint [and an application for a preliminary injunction] against this order [...].

By order of 9 November 1992, amending his initial order, the presiding judge permitted film recordings without a microphone on the first day of the trial hearing in the courtroom for approximately five minutes before the hearing, made by a three-person camera team.

On 9 November 1992, the complainants in proceedings no. 2 also lodged a constitutional complaint and an application for a preliminary injunction against the order of the presiding judge.

All complainants claim that the exclusion of their camera teams from the courtroom violates their fundamental right to freedom of broadcasting under Art. 5(1) second sentence of the Basic Law. [...]

[...] 8-11

3. [...] 12

## B.

The application for a preliminary injunction is well-founded. In the necessary weighing of consequences, which must weigh the reasons supporting a preliminary injunction against the reasons opposing it, the reasons in favour of the injunction sought by the complainants prevail.

1. Pursuant to § 32 of the Federal Constitutional Court Act, the Federal Constitutional Court may provisionally decide a matter by way of a preliminary injunction if this is urgently required to avert severe disadvantage or for other important reasons in the interest of the common good. In the context of this decision, the reasons sub-

mitted for the unconstitutionality of the challenged act of public authority are generally not to be taken into account, unless the constitutional complaint is inadmissible from the outset or clearly unfounded. In case the outcome of the constitutional complaint proceedings cannot be foreseen, the Federal Constitutional Court must in principle only weigh the consequences that would arise if the preliminary injunction were not issued but the constitutional complaint were successful in the principal proceedings, against the disadvantages that would arise if the preliminary injunction sought were issued but the constitutional complaint were unsuccessful (cf. BVerfGE 85, 94 <95 and 96>; established case-law).

2. The constitutional complaints are neither inadmissible nor manifestly unfounded. 15

[...] 16

The constitutional complaints raise the question whether and to what extent the fundamental right to freedom of broadcasting also protects film recordings in courtrooms for television purposes, a matter not yet decided by the Federal Constitutional Court. [In its case-law], the Court did, however, decide that with regard to the presence of press journalists at trial hearings, the protection afforded by freedom of the press also encompasses free access to information (cf. BVerfGE 50, 234 <240 and 241>). Since freedom of broadcasting serves the same purpose as the other guarantees enshrined in Art. 5(1) of the Basic Law, it cannot be ruled out from the outset that it also guarantees TV journalists access and filming rights. Freedom of broadcasting must therefore be adequately taken into consideration when interpreting and applying §§ 169 *et seq.* of the Courts Constitution Act. 17

3. In essence, the outcome of the required weighing of consequences is in favour of the complainants. 18

a) If the preliminary injunction were not issued but the constitutional complaints proved to be well-founded in the principal proceedings, TV reporting of the trial hearing would be insufficient. Due to the restrictions imposed by the challenged order, documentation of the way in which the accused present themselves [in the courtroom] at the beginning of the trial hearing – an aspect the complainants correctly consider to be of historic significance – would not be ensured. The possibility of actually documenting, by means of film recordings, the further course of the proceedings would be lost irreversibly, at least until the Federal Constitutional Court rendered its decision in the principal proceedings. 19

b) If the preliminary injunction were issued but the constitutional complaints later proved to be unfounded, film recordings of the accused in the context of the trial hearing would already have been made and disseminated, even though neither the complainants nor the public would have been entitled to receive such footage. 20

However, it can be virtually ruled out [at this point] that allowing recordings would compromise the orderly course of the trial. With the media pool solution proposed by the complainants, under which only a three-person camera team would be granted 21

access to the courtroom, and a limitation of recording time to reflect the interests of both sides, it is not ascertainable that order in the courtroom could be compromised and that the hearing could therefore be adversely affected.

Nevertheless, this solution could impair the general right of personality of the accused, specifically their right to one's own image. Even if the film recordings were destroyed afterwards, the dissemination of the images could not be undone. In that respect, it is significant that, even at the present time, the accused clearly qualify as figures of contemporary society '*par excellence*' within the meaning of § 23(1) no. 1 of the Art Copyright Act; images of such persons may be disseminated without their consent, which would otherwise be required under § 22 of the Art Copyright Act. The media pool solution prevents a possible crowding of the courtroom by a large number of camera teams, which could significantly impair the right of the accused to respect for their person (*Achtungsanspruch*).

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It also appears unlikely that the TV recordings would adversely affect the physical or mental health of the accused and thereby significantly increase the burden already placed on them by the trial hearing as such. In that respect, it must be taken into account that the media pool solution is relatively unintrusive, accommodating the health interests of the accused.

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c) Based on these considerations, the disadvantages that would very likely occur if the preliminary injunction were not issued but the constitutional complaints later proved to be well-founded outweigh the disadvantages that would occur if the preliminary injunction were issued but the constitutional complaint later proved to be unfounded. However, it is sufficient, for now, to permit film recordings in the courtroom before and after the hearing for a reasonable time period. Given that the situation in the courtroom, including organisational aspects, and the changing circumstances on different days of the hearing must be taken into consideration, no fixed time period can be set in advance. Rather, it is incumbent upon the presiding judge to determine the time period during which broadcast recording is permitted, in consideration of the public interest in obtaining information and the technical requirements of TV broadcasting. [...]

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**Bundesverfassungsgericht, Beschluss des Ersten Senats vom 11. November 1992 -  
1 BvR 1595/92, 1 BvR 1606/92**

**Zitiervorschlag** BVerfG, Beschluss des Ersten Senats vom 11. November 1992 -  
1 BvR 1595/92, 1 BvR 1606/92 - Rn. (1 - 24), [http://www.bverfg.de/e/  
rs19921111\\_1bvr159592en.html](http://www.bverfg.de/e/rs19921111_1bvr159592en.html)

**ECLI** ECLI:DE:BVerfG:1992:rs19921111.1bvr159592