

Media & Entertainment - Switzerland

Court rules on journalists' access to FIFA decision

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On May 11 2010 the Prosecutor's Office of the Canton of Zug decided to discontinue the criminal investigation against the International Federation of Association Football (FIFA) and two of its employees concerning accusations of corruption. The decision to stop the criminal proceedings was based on the fact that the implicated FIFA employees paid SFr5.5 million as compensation to cover the damage.

Requests from various journalists to access the Prosecutor's Office decision to abandon the criminal proceedings were approved by the Prosecutor's Office and the Zug Cantonal High Court in 2011. FIFA, as well as the individuals affected, did not want to be named in the decision itself or for journalists to access the decision. However, on July 3 2012 the Federal Supreme Court rejected the appeal filed by the individuals, and FIFA subsequently withdrew its appeal.

The Federal Supreme Court stated that the right to access a decision to abandon a criminal proceeding is subject to a legitimate interest to obtain such information. However, it is sufficient that the petitioner can credibly demonstrate a serious interest in accessing this information. Furthermore, predominant public and private interests must not be considered more important than a right to access for publication purposes. However, in case of conflicting interests, an abbreviation and/or partial anonymisation of the respective decision must be considered.

According to the court, the right of an interested person who was not involved in criminal proceedings also exists in matters in which a criminal proceeding was closed down due to a compensation payment, as in this case (Article 53 of the Criminal Code).

The court concluded that the outcome of this case was of great interest to the public. Furthermore, the accusations of corruption within FIFA represents a legitimate interest for journalists wishing to access such decision. Thus, the court affirmed the controlling function of the media relating to the activities of the public authorities and the judiciary.

Therefore, the names of the affected individuals, their dates of birth, legal counsels and functions within FIFA, as well as information concerning their financial circumstances, must be disclosed to the media. According to the court, this is the only way to understand the scope of the accusations, as well as the effect of the compensation paid to cover the damage, as a reason to end the proceedings.

The court was well aware that the publicity surrounding this decision and the permission to view the findings and other personal information will affect the personal rights of the individuals concerned. However, it was of the opinion that the private interests in defending such personal rights are sufficiently protected through the possibility of the judicial challenge of unjustified media reports, under Article 28 of the Civil Code and the strict professional code of ethics for Swiss journalists. According to the court, addresses belonging to the affected individuals will be kept anonymous to ensure that there will be no disproportionate pillory effect.

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