

Media & Entertainment - Switzerland

Overriding public interest justifies quotation of confidential official information

Contributed by **Pestalozzi Attorneys at Law**

January 29 2015

Facts
Court decision
Swiss Press Council decision

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In August and September 2012 a journalist, X, published two articles regarding a corruption affair involving the cantonal pension fund in the Canton of Zurich. In the articles X quoted extensively from a draft report of the parliamentary investigation committee dealing with the corruption affair. X was aware that the draft report was confidential and that publication of the report was planned for the beginning of October 2012. After the first newspaper article was published, the president of the parliamentary investigation committee reminded X of the confidentiality of the draft report. The president informed X that he intended to file a criminal complaint if X continued to quote from the report.

Soon after publication of the second newspaper article quoting the draft report, the president filed a criminal complaint against X.

In March 2013 the city judge of Zurich fined X Sfr800.

Court decision

In November 2014 X appealed to the Zurich District Court and was acquitted by the sole judge for criminal matters at the Zurich District Court. The decision has not been published and it is unknown whether it is yet final or whether an appeal is pending.

The court held that the quotation from the draft report was justified by an overriding public interest, even though X infringed Article 293 of the Criminal Code, which prohibits the disclosure of confidential official information. The court confirmed that the parliamentary investigation committee had an interest in maintaining the confidentiality of the draft report. The committee had a particular interest in continuing the investigations diligently without having its preliminary findings discussed in public. However, according to the court, the public interest in the quotation from the draft report was substantial and therefore overriding. Criminal proceedings against the individuals accused in the corruption affair commenced in Summer 2012 and the affair was intensively discussed in newspapers. The timely relationship between the newspaper articles and the criminal proceedings was of major importance to the decision. Further, the court emphasised that X had not only quoted from the draft report, but also conducted his own investigations – including interviews with individuals involved – in order to assess the facts.

The court referred to another decision of the city judge of Zurich regarding a newspaper article in connection with the corruption affair. Only a few months before publication of X's two articles, another journalist quoted a confidential expert opinion ordered by the parliamentary investigation committee. A criminal complaint against this journalist was dismissed because of the overriding public interest in the information.

Swiss Press Council decision

The Swiss Press Council dismissed a parallel complaint against X. The council held that X had complied with the press code of conduct that there was an overriding public interest in publication of the confidential information, and that government or governmental authorities must not determine newspaper content.

For further information on this topic, please contact [Clara-Ann Gordon](mailto:clara-ann.gordon@pestalozzilaw.com) or [Michael Reinle](mailto:michael.reinle@pestalozzilaw.com) at Pestalozzi Attorneys at Law by telephone (+41 44 217 91 11), fax (+41 44 217 92 17) or email (clara-ann.gordon@pestalozzilaw.com or michael.reinle@pestalozzilaw.com). The Pestalozzi website can be accessed at www.pestalozzilaw.com.

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Authors

Clara-Ann Gordon



Michael Reinle



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