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SUI-2001-3-007

a) Switzerland / b) [Federal Court](#) / c) First Public Law Chamber / d) 27-06-2001 / e) 1P.510/2000 / f) Wottreng v. the President of the Zurich Cantonal Court / g) *Arrêts du Tribunal fédéral* (Official Digest), 127 I 145 / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

- [03.17](#) General Principles - **Weighing of interests.**
- [03.22](#) General Principles - **Prohibition of arbitrariness.**
- [05.01.04](#) Fundamental Rights - General questions - **Limits and restrictions.**
- [05.02](#) Fundamental Rights - **Equality.**
- [05.03.19](#) Fundamental Rights - Civil and political rights - **Freedom of opinion.**
- [05.03.24](#) Fundamental Rights - Civil and political rights - **Right to information.**
- [05.03.32.01](#) Fundamental Rights - Civil and political rights - Right to private life - **Protection of personal data.**
- [05.04.21](#) Fundamental Rights - Economic, social and cultural rights - **Scientific freedom.**

Keywords of the alphabetical index:

File, archive, right to inspect / Data, protection, embargo period / Interest, scientific / Dead person, criminal file, disclosure.

Headnotes:

Inspection by third parties of criminal archive files; freedom of information and scientific freedom, [Articles 16 and 20 of the Federal Constitution](#).

Cantonal law on archives (recital 2).

Basic elements in freedom of communication (recital 4b); freedom of information and scientific freedom do not generate a general right to information from sources which are not generally accessible (archive files during the embargo period; recitals 4c and 4d).

Supervision of the application of cantonal law on archives; protection of the personality rights of deceased persons, their families and third parties (recital 5).

Summary:

Willi Wottreng, a journalist and historian, intended to write a book on Martin Schippert, alias "Tino", leader of the "Hell's Angels Switzerland", who achieved notoriety in Zurich and

throughout the country in the 1960s. "Tino" and the members of his gang were charged on several occasions and convicted of various offences by the Zurich cantonal courts. "Tino" died in 1981.

To research the book, Wottreng applied to the President of the Zurich Cantonal Court for permission to inspect the relevant criminal files. This was refused, on the ground that access could not be granted during the embargo period specified in the cantonal law on archives, and might violate the interests of the persons concerned (particularly "Tino" and his family, as well as victims, informers and witnesses).

Wottreng brought a public law appeal in the Federal Court, arguing that this decision violated freedom of opinion and information, and also scientific freedom, guaranteed by [Articles 16 and 20 of the Federal Constitution](#). The Federal Court rejected this appeal.

At cantonal level, archives are regulated by a law and various cantonal orders. These orders provide that third parties may not inspect court archives for 70 years after their compilation. They may, however, be given access to judgments, documents and records before expiry of this time-limit, if the parties consent, or if this is justified in the interests of science, and the interests of the parties or other persons concerned are not violated.

The Federal Constitution guarantees freedom of opinion as a basic aspect of freedom of communication; it gives everyone the right to form, express and disseminate his/her opinions freely. On the other hand, freedom of information, freedom of the media, scientific and artistic freedom are specific rights. In particular, freedom of information gives everyone the right to receive information freely, obtain it from generally accessible sources and disseminate it. Scientific research is also protected.

Under the Constitution, freedom of information applies only to generally accessible sources, such as television and radio programmes, parliamentary debates and public court hearings. Its scope is regulated by law. Access to the archives of government departments and courts, for example, is regulated by the law on archives. If the latter specifies a period during which files may be inspected only with special authorisation, then these files are not a freely accessible source. This means that there is no constitutional right to inspect them, and the appellant's claim that freedom of information has been violated is unfounded.

In terms of scientific freedom, the question of the extent to which researchers may consult archives before the embargo expires must also be raised. This basic freedom cannot be recognised as going further than freedom of information and offering broader access to archives which are not freely accessible. Protection of the privacy of the persons concerned and equality of treatment are also at issue here. It is true that scientific freedom extends to the human and social sciences, but the appellant may not rely on it in the present case. He can consult numerous generally accessible sources for his project, and is not dependent on access to the court files.

In his lifetime, "Tino" did not consent to inspection of the files. Even though he might now consent, the court was thus correct in refusing access under cantonal law. Protection of his personality rights may have ceased with his death, producing no present effects in his own case, but his family is still entitled to protection against violations of the deceased's personality rights.

The fact that the family could bring proceedings to protect themselves against any such violation by the journalist is not decisive. The President of the Cantonal Court was thus entitled to take their interests into account. Third parties - such as witnesses, victims or informers - also merit protection against inspection of the files and disclosure of their names and situations.

The President of the Cantonal Court did not therefore violate the prohibition on arbitrary treatment contained in [Article 9 of the Federal Constitution](#) by refusing the appellant access to the court archives under the cantonal law on archives. The situation might change and need to be reviewed if the appellant obtained the family's consent and undertook not to disclose the names of third parties.

Languages:

German.