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Constitutional Court allows house search on basis of stolen bank data

The Constitutional Court has rejected a complaint from a taxpayer against a court order for a house search after the secret service gave a CD with income data from Liechtenstein to the tax authorities.

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Recently, the tax authorities have come into possession of a number of CDs and other records showing the details of Liechtenstein and other tax haven bank accounts held by German residents. In one such case, they proceeded against an apparent tax defaulter on suspicion of tax evasion over a five-year period in amounts shown on the CD. They sought to confirm or deny this suspicion with a house search for incriminating evidence. The taxpayer protested against the grant of the necessary court order, claiming that the initial information had been obtained illegally - it had been passed to the tax authorities by the secret service - and could not serve as evidence at court. The Constitutional Court has now rejected the complaint, making the distinction between evidence founding a suspicion and that used in support of a conviction. The illegal procurement of evidence did not prevent the authorities from acting on the suspicion it raised, unless they, themselves, had acted illegally. However, there was no support for a claim that the secret service had actively striven for the data as opposed to having accepted an offer to buy it. The illegal act of the seller was not the illegal act of the authorities. To that extent different standards applied, depending on the purpose the data was to serve. Thus, the court did not rule on whether data purchased from an informer acting illegally could, on its own, serve as the basis for a conviction in a criminal trial. (AM)

Constitutional Court resolution 2BvR 2101/09 of November 9, 2010 published on November 30

Schlagwörter

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