[DE] Kingdom of Morocco denied injunctive relief against German media companies due to Pegasus reporting

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In response to an appeal by the Kingdom of Morocco against various German media companies, the Federal Court of Justice (*Bundesgerichtshof* – BGH) ruled on 24 February 2026 (Case Nos. VI ZR 415/23 and VI ZR 416/23) that a foreign state was not entitled to legal recourse against domestic media in relation to freedom of expression and thus confirmed the decisions of Hamburg's lower courts.

The Kingdom of Morocco had filed a lawsuit against the operators of the *ZEIT ONLINE* news portal and the publisher of the *Süddeutsche Zeitung* daily newspaper, including its online portal, seeking an injunction against allegations that they had published. In July 2021, the media companies concerned had published several articles alleging that various countries, including the plaintiff, were using the Pegasus surveillance software to spy on high-ranking politicians, lawyers and journalists. Morocco had been accused of spying on the French president in particular. Morocco denied being a customer of the producer of the surveillance software, claiming that it had neither acquired nor used the software and that its social respect and national honour had been seriously infringed by the reporting. Regarding the legal questions underlying the facts of the case, it made no difference whether the statements had been merely disseminated in text form or via audiovisual media.

In its rulings, the BGH explained in detail that the Kingdom of Morocco had no legal claim to an injunction against the contested allegations. In principle, a claim for injunctive relief could arise from Section 1004(1) sentence 2 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) by analogy, or Section 823(1) BGB, according to which the holder of an absolutely protected legal position could defend himself against infringements. The legal positions protected by Section 823(1) BGB included the personal rights described in Articles 1(1) and 2(1) of the German Basic Law (*Grundgesetz* – GG), which comprehensively protected an individual's dignity and freedom. The BGH found – as the lower courts had done – that a state had no "personal" honour or general personal rights.

The court also held that an absolutely protected legal position could not be derived from the principle of state honour enshrined in international law. A state's reputation could not be treated as another right within the meaning of Section

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823(1) BGB, even taking into account the principle of interpreting law in a manner favourable to international law and the mandate to apply law as stipulated in the Basic Law with regard to general rules of international law. The court explained that no general rule of international law could be found in international state practice, the case law of international and national courts or international legal doctrine entitling a state to demand that private individuals from another state refrain from making statements that damaged its reputation. Likewise, the court thought there was no obligation under international law for states to exert comprehensive influence on private individuals under their jurisdiction in order to protect the reputation of other states. With regard to the plaintiff's submissions, the BGH found that the reference in the recitals to Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (*Strategic lawsuits against public participation*, OJ L 2024/1069, 16.4.2024) to the fact that abusive lawsuits could also originate from state organs did not prove that there was widespread state practice in the EU Member States entitling states to assert injunctive claims against foreign private individuals to protect their reputation.

Neither had there been an infringement of a protective provision of criminal law on which a claim for injunctive relief could be based. A foreign state did not enjoy protection under the provisions of Sections 185 *et seq*. of the German Criminal Code (*Strafgesetzbuch* – StGB), which protected general personal rights based on the guarantee of human dignity and free development of the personality as well as the honour of natural and legal persons under private law. A foreign state also did not benefit from the extension of the protection of honour under criminal law to authorities or other bodies that performed public administration tasks under Section 194(3) sentence 2 StGB. This provision only guaranteed such protection for the national sphere of sovereignty, as was suggested by the history, purpose and systematic position of the provision in the Criminal Code.

In the court's opinion, a claim for injunctive relief could also not be derived from the special provisions of the Criminal Code on "offences against foreign states" (Sections 102 to 104a of the Criminal Code), since the corresponding offences had not been committed. For example, there had been no attack on organs or representatives of the plaintiff in Germany.

Finally, the BGH also denied a claim for injunctive relief based on defamation of a foreign state or the infringement of a foreign state's reputation. Section 90a StGB only criminalised the defamation of the German state and its symbols. Similarly, the scope of anti-constitutional defamation of state organs under Section 90b StGB only extended to German constitutional organs.

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The BGH did not consider a referral to the Federal Constitutional Court (*Bundesverfassungsgericht*) to be necessary. Such a referral would only be necessary if there were serious doubts as to whether a general rule of international law was part of federal law and established direct rights and obligations for individuals. However, this question did not arise, as it was clear that there was no rule of international law that allowed a state to demand that private individuals from another state refrain from making statements that damaged its reputation or obliged other states to exert influence on their citizens in order to protect the reputation of foreign states.

Link zur Pressemitteilung des BGH

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2026/2026036.html

Link to the press release of the Federal Court of Justice

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2026/2026036.html

Link zur Entscheidung des BGH in Bezug auf ZEIT ONLINE (Az. VI ZR 415/23)

https://www.bundesgerichtshof.de/SharedDocs/Entscheidungen/DE/Zivilsenate/VI_ZS/2023/VI_ZR_415-23.pdf;jsessionid=A85B05CC0B652074D14C3E1140783260.internet011?__blob=publicationFile&v=5

Link to the decision of the Federal Court of Justice in relation to ZEIT ONLINE (case VI ZR 415/23)

https://www.bundesgerichtshof.de/SharedDocs/Entscheidungen/DE/Zivilsenate/VI_ZS/2023/VI_ZR_415-23.pdf;jsessionid=A85B05CC0B652074D14C3E1140783260.internet011?__blob=publicationFile&v=5

Link zu Entscheidung des BGH in Bezug auf Süddeutsche Zeitung (Az. VI ZR 416/23)

https://www.bundesgerichtshof.de/SharedDocs/Entscheidungen/DE/Zivilsenate/VI_ZS/2023/VI_ZR_416-23.pdf;jsessionid=A85B05CC0B652074D14C3E1140783260.internet011?__blob=publicationFile&v=7

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Link to the decision of the Federal Court of Justice in relation to Süddeutsche Zeitung (case VI ZR 416/23)

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