[DE] Personality Rights v. Free Speech - Two Courts, Two Judgments

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In separate judgments, the Federal Court and the Constitutional Court recently decided that protection of freedom of opinion, guaranteed by Article 5, para. 1 of the Basic Law, took precedence over protection of personality rights, guaranteed by Article 2, para. 1, in conjunction with Article 1, para. 1. The Federal Court's judgment of 16 June 1996 was concerned with an application by the President of the Land Brandenburg (Ministerpräsident) for an injunction against the author of allegations that he had "for over 20 years, worked informally for the State Security Service (of the German Democratic Republic) under the code name secretary". The defendant had made this allegation in a television interview given in April 1996, in connection with the referendum on unification of the Länder of Berlin and Brandenburg.

In weighing protection of freedom of opinion against protection of personal honour, the Federal Court decided that the defendant's comments as a whole were protected by Article 5, para. 1 of the Basic Law. In its judgment, it found that the plaintiff's honour had indeed been seriously impugned by the unproven allegations complained of, but that the defendant had been entitled to assume that he could speak freely. Significant here was the fact that the statement had not been made privately to secure some personal advantage, but in the course of political debate on a matter of real importance to the public. Moreover, the plaintiff was himself, as Ministerpräsident, very much a party to political discussion, and was exposed, as a public figure, to the full glare of public debate. There were no overriding interests associated with his personality rights to prevent the defendant from claiming the constitutional right of free speech.

In its decision of 24 March 1998 on a constitutional complaint, the Constitutional Court also ruled that the right to freedom of opinion outweighed general personality rights. In the early 1990s, the applicant had claimed http://services.obs.coe.int/en/index.htm in two television interviews that she had been sexually abused by her father for many years, starting in her childhood. The father denied these accusations and sought an injunction against her. His application was rejected by the Regional Court, which decided on the evidence that he had abused her regularly from the age of eight on. The Court of Appeal partially allowed his subsequent appeal, and ordered the applicant to cease making accusations of abuse in which either her father's or her own name was mentioned. The Constitutional Court decided that this judgment violated the

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applicant's constitutional right to freedom of opinion, and also her general personality rights, and partly set it aside. It held that giving one's name in connection with a statement was covered by freedom of expression, particularly when the statement in question was one with which the speaker identified closely or in which he/she described his/her own experience. Moreover, the possibility of giving one's name, as an expression of one's identity and individuality, was also covered by general personality rights. Prohibiting a person from describing highly personal experiences in a way which related them identifiably to him/her interfered decisively with his/her freedom of communication and self-expression. The Court held that the Court of Appeal had not taken sufficient account of these interests of the applicant.

Urteil des BGH vom 16. Juni 1998, Az. VI ZR 205/97.

Judgment of the Federal Court of 16 June 1998. File No. VI ZR 205/97.

Beschluss des BVerfG vom 24. März 1998, Az. 1 BvR 131/96.

Judgment of the Constitutional Court of 24 March 1998, File No. 1 BvR 131/96.

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