[DE] Courts Decide on Election Advertising

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By judgements on 1 September 1998 and 7 September 1998 the District Courts in Mainz and Cologne respectively decided on the admissibility of a party political broadcast by 'The Republicans" a party authorised to take part in the parliamentary elections. The same issue also arose before the District Court of Munich IThe background was the refusal by private broadcasters SAT 1, RTL, PRO 7 and Kabel 1 to broadcast the programme. In it, photos of the former German Chancellor Konrad Adenauer (German Christian Democratic Party) and the then opposition leader, Kurt Schumacher (German Social Democratic Party) were shown, together with the text : "today Konrad Adenauer and Kurt Schumacher would vote for the REPUBLICANS too". The initially unidentifiable portraits of the politicians were, inter alia, accompanied by a voiceover with the words : " Unchecked mass immigration has brought criminal foreigners into our country". According to § 42 paragraph 2 of the Agreement between the Federal States on Broadcasting (Rundfunkstaatsvertrag), during parliamentary election campaigns the private broadcasting establishments are to allow parties appropriate airtime on payment of their own fees.

The private broadcasters took the view that this party political broadcast in several respects clearly violated criminal law and tarnished the memory of two of the most important German politicians of this century. The District Courts in Mainz and Munich I held that the statement made in the broadcast was to be viewed as an expression of opinion, guaranteed under article 5, paragraph 1 of the German Constitution, particularly at times of public political dispute during an election campaign.

In the Courts' view, private broadcasters are only entitled to check whether election broadcasts are clearly in breach of the law. Even a possible infringement of the (post mortem) right of privacy does not justify, in the absence of a clear and grave violation of criminal law, a refusal to put the broadcast on the air. By contrast , the State Court in Cologne regarded the programme in question as no longer covered by the principle of freedom of opinion under Art. 5 para 2 of the German Constitution. In particular, the exploitation of the politicians' good name and their being used for other purposes was tantamount to a libellous attack on their reputation clearly infringing §§ 823, 1004 of the Civil Code.

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Urteil des LG Mainz vom 01.09.1998, Aktenzeichen 1 O 377/98

Judgment by Mainz District Court on 1 September 1998, reference 1 O 377/98,

Urteil des LG Köln vom 7. September 1998, Aktenzeichen 28 O 409/98

Judgment by Cologne District Court on 7 September 1998, reference 28 O 409/98

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