[DE] Koblenz Appeal Court on the Duty to Show Party Political Broadcasts

IRIS 1999-5:1/6

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In a judgement of 9 February 1999, the Koblenz Appeal Court (Oberlandesgericht - OLG) reversed a decision of the Mainz District Court (Landgericht - LG) of 1 September 1998 on the admissibility of a party political broadcast (see IRIS 1998-9:7) and, at the same time, dismissed an application for a temporary injunction to be granted. The plaintiff had hoped to oblige the defendant to broadcast, at certain specified times on 1, 5, 10 and 17 September, a party political broadcast on behalf of the plaintiff containing the words "Today Konrad Adenauer and Kurt Schumacher would vote for the Republicans". The Mainz District Court had granted the temporary injunction which was now being challenged.

The Appeal Court based its decision to dismiss the application and reverse the judgement on the fact that the plaintiff did not have a right to force the broadcaster to show the party political broadcast, since it would have constituted a clear and serious infringement of the posthumous personality rights of Konrad Adenauer and Kurt Schumacher. It was true that, under §42.2 of the Agreement between Federal States on Broadcasting (RundfunkstaatsvertragRStV), political parties authorised to take part in elections were entitled to appropriate airtime for the purposes of party political broadcasts, but this was subject to certain conditions. The Court did not deny that the principle of freedom of speech, as reinforced by Article 21.1.1 of the German Constitution (Grundgesetz - GG), should be particularly defended during disputes between political parties in an election campaign. Therefore, a television broadcaster should only be allowed to refuse to broadcast a party political broadcast if it represented an obvious and grave violation of the law. In this case, the Appeal Court found that there had been such a grave violation. Article 1.1 of the German Constitution protects individuals from violations of their human dignity, even after death. Accordingly, deceased persons may be protected from gross misrepresentations of their lives, which they can no longer challenge themselves, at the request of their relatives. In the Appeal Court's opinion, the image of both politicians was tarnished, grossly misrepresented and distorted by the party political broadcast. In view of the principles and objectives clearly seen in the life and work of both these individuals and which were blatantly opposed to those defended by the Republicans, the claims made in the plaintiff's party political broadcast were completely without foundation. As part of the conflict between the freedom of opinion guaranteed by Article 5.1 GG and the provisions of Article 1.1 GG, deceased persons were also protected against statements which, although they might not constitute

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defamation of character, amounted to a gross misrepresentation of their lives, against which the deceased were unable to defend themselves.

Urteil des OLG Koblenz vom 9. Februar 1999, Az. 4 U 1641/98.

Judgement of the Koblenz Appeal Court, 9 February 1999, file no. 4 U 1641/98.

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