[DE] Constitutional Court Discusses News Agencies' Duty of Care

IRIS 2003-10:1/28

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision announced at the end of September, the Bundesverfassungsgericht (Federal Constitutional Court BVerfG) decided not to rule on complaints filed by a news agency against injunctions imposed by the Landgericht Hamburg (Hamburg District Court) and the Hanseatische Oberlandesgericht (Hanseatic Appeal Court).

The Constitutional Court can decide not to rule if the complaint does not raise any issues of fundamental constitutional relevance or if it is not indispensable to the plaintiff's ability to assert a fundamental right because it has no chance of being upheld. The Constitutional Court only examines previous civil court decisions to see whether they have interpreted and applied legal provisions on the basis of a misjudgement of the plaintiff's fundamental position; that was not the case in this instance.

In its reporting of the 2002 Bundestag election campaign, the news agency had conducted an interview during which an image consultant talked about the image of the top candidates of the two main German parties. The consultant claimed, amongst other things, that the current head of government dyed his hair, which was detrimental to his credibility with the people. Partly as a result of reports carried in the audiovisual and print media in Germany and elsewhere concerning the legal steps taken by the Federal Chancellor against this claim, the image consultant's views were reported in numerous media outlets. The news agency lost the case. The decisive factor was the extent to which the agency was responsible for checking the substance of specific comments that might affect an individual's personality rights. Disparaging comments must not be reported if they are untrue or if they cannot be proven to be true. If, as in the present case, the comments of a third party are reported, responsibility for those comments depends on whether certain precautions are taken. The plaintiff made no attempt to substantiate the comments and its actions could not be justified by the claim that the report had to be released to the media without delay. According to the civil courts, the topicality of the report was not sufficient to justify the urgency with which it was released.

Neither the specialist courts nor the Constitutional Court agreed with the plaintiff's argument that, as a news agency, it did not have to meet such high standards of care: in particular, the courts stated that the fact that the role of agencies had become more prominent recently, with individual reports being

© European Audiovisual Observatory (Council of Europe) 2026

distributed by some media without further editing, should be taken into account.

Beschluss des Bundesverfassungsgerichts vom 26. August 2003, Az. 1 BvR 2243/02

http://www.bverfg.de/entscheidungen/rk2003

Ruling of the Federal Constitutional Court of 26 August 2003, case no. 1 BvR 2243/02

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026