

[DE] Constitutional Court Rules on Right of Reply to Editorial Comments

IRIS 2004-1:1/18

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

By its decision of 17 September 2003 not to rule on a case, the Bundesverfassungsgericht (Constitutional Court

- BVerfG) ended a legal dispute dating back to 1998 concerning the right of reply to editorial comments published in the press.

The dispute concerned a report in the *Badische Zeitung*, which dealt with the problems faced by a football club set up by Turkish citizens in obtaining access to suitable sports facilities in a particular municipality. A section headed "Tagesspiegel", which was indisputably classified as an editorial column, contained comments on this situation, to which the right of reply was requested. The newspaper refused the request, referring to the protection provided in Article 5.1.1 of the Grundgesetz (Basic Law). The district court to which the case had been referred in the first instance upheld the complaint. The Oberlandesgericht Karlsruhe (Karlsruhe District Appeal Court) also did not consider the relevant passages of the editorial to be the expression of opinion and dismissed the defendant's appeal on 16 April 1999.

Under press law and audiovisual media law, which takes into account the relevant regional press regulations, the right of reply only applies to statements of fact. However, expressions of opinion, which regularly appear in newspaper or broadcast editorials in relation to recent events, for example, are not subject to the right of reply. As in the present case, making the necessary distinction is particularly difficult when an editorial makes reference to or includes facts.

The BVerfG's decision corresponds with the previous court rulings and is based on the lack of probability that an appeal would be successful.

Bundesverfassungsgericht, Beschluss vom 17. September 2003, 1 BvR 825/99

Constitutional Court decision of 17 September 2003, 1 BvR 825/99

