

[DE] Right of Reply to Ambiguous Remarks

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In a decision on general principle, the *Bundesverfassungsgericht* (Federal Constitutional Court - *BVerfG*) ruled that the right of reply to ambiguous remarks should not be granted if the breach of personality rights is the result of only one possible and reasonable interpretation of a text. If a text has a hidden message, the right of reply must be limited to content whose meaning is irrefutable for the reader.

In 2004, the plaintiff published a magazine article about a private individual who was ordered to pay back millions received in compensation. The person concerned was granted the right to publish a reply by the civil courts. The courts argued that, although the article did not necessarily create the impressions that the applicant claimed in their complaint, any possible interpretation could suffice to justify the granting of the right of reply where ambiguous remarks were concerned, as long as this was not too far-fetched. The *BVerfG* overturned the decisions appealed by the plaintiff on the grounds that they infringed the freedom of the press protected in Art. 5 para. 1.2 of the *Grundgesetz* (Basic Law).

In its reasoning, the Court explained that in cases in which – as was the case here – it was unclear whether a hidden meaning lay beneath the obvious one, decisions should be based on the principles for dealing with ambiguous remarks. It was necessary to decide whether an injunction should be granted or whether damages, compensation or the right of correction should be awarded. In the latter case, the freedom of opinion was violated if a court based its decision on one interpretation without first excluding other interpretations, which did not justify such a sanction. If a writer had to fear punishment for making remarks even though the wording and context of those remarks could be interpreted in a way that would not result in such a punishment, this could lead to the suppression of an admissible comment and a form of intimidation that contradicted the basic freedom of communication. However, an injunction could be granted if the remarks concerned could be interpreted in such a way as to breach an individual's personality rights.

In the contested decisions, the courts concerned had wrongly assumed that the principles that applied to injunctions were applicable. However, according to the *BVerfG*, in contrast to an injunction, there was a danger that a reply could have intimidating effects, particularly that the publication of a reply could cause almost irreparable damage to the image of the publishing company concerned. A reply

could lead readers to doubt and distrust any truthful reporting in a way that would later be virtually irreversible. Therefore, the Court ruled that the principles applicable to damages, compensation and correction should apply to the right of reply. It was therefore compatible with the Constitution to only grant the right of reply if the hidden remarks that were the basis of the complaint were understood by the reader as the irrefutable message of the text.

Entscheidung des Bundesverfassungsgerichts vom 19. Dezember 2007 (1 BvR 967/05)

http://www.bundesverfassungsgericht.de/entscheidungen/rk20071219_1bvr096705.html

Ruling of the Federal Constitutional Court of 19 December 2007 (1 BvR 967/05)

