[AT] Supreme Court Relaxes its Practice regarding the Interpretation of Political Statements

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A remarkable decision has been taken by the *Oberster Gerichtshof* (Supreme Court – OGH) on the question of the principles that apply to the interpretation of political statements when an assessment has to be made of whether the person making the statement is to be punished for the resulting injury to the honour of the politician criticised.

The origin of the case was a caricature in a publication for politically interested readers that appeared in the year 2000. It showed Mr K, a politician of the *Freiheitliche Partei Österreichs* (Austrian Freedom Party – FPÖ), surrounded by women and children and wearing a uniform reminiscent of the National Socialist *Sturmabteilung* (SA). In the picture, he was wearing an abdominal belt and a tie with a conspicuous capital F on a white background. Next to the photo, below the initials FPÖ, was a sentence in Gothic script reading “Our offer: honour and loyalty (“Unser Angebot: Ehre & Treue”).

The criminal courts ruled, both at first instance and on appeal, that this constituted the offence of defamation (*üble Nachrede*) and ordered the publication’s owner to pay compensation. The reader, the courts said, could only understand the caricature to mean that the person depicted held National Socialist views.

The Supreme Court set the judgments aside and expressly departed from its previous case law, according to which the most unfavourable meaning for a person who has made an ambiguous political statement must always be assumed to be the correct interpretation: “When assessing a piece of text and a pictorial representation, … the meaning … must be established from the overall context of the statements with which they are connected, that is to say the situational context into which the statement must be placed. … However, when several interpretations cannot be ruled out when assessing the meaning of a statement, the *in dubio pro reo* principle that applies in criminal proceedings must be applied and the alternative that is most favourable for the accused assumed to be the correct one … The contrary judicial doctrine that a person who has made a statement must accept the application of what is for him or her the least favourable meaning in the case of several possible interpretations …, can accordingly not be upheld for judgments in criminal cases.” Here, the court

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endeavoured to meet the criteria of the European Court of Human Rights (ECHR) on the protection of freedom of expression.

In the case in issue, the criminal courts had also failed to take sufficient account of the fact that the caricature had to be understood as a reaction at that time to statements recently made by FPÖ officials: the Supreme Court noted that in June 2000 an FPÖ official had used the slogan “Our honour is loyalty” (“Unsere Ehre heisst Treue”), which is derived from the *Schutzstaffel* (SS) motto, at an event to honour long-standing party members, while another official had referred to “honour and loyalty” as being among the prime virtues. Similarly, no account had been taken of the fact that the picture had been based on an election poster of the time depicting Mr K as the FPÖ’s top candidate in Vienna with the advertising slogan “Our offer: free nursery schools” (“Unser Angebot: Kindergarten kostenlos”).

These aspects, the Supreme Court said, were crucially important as they had made it possible to establish the meaning of the publication, which was that, in the light of the broad discussion that took place in the year 2000 (especially with reference to the words “honour” and “loyalty” as an offer made by the FPÖ), the statements made at that time and the attitude of the FPÖ leadership at that time were subjected to critical scrutiny as part of a reasonable comment on a matter of public interest. On this basis, it would have been possible to answer in the publication owner’s favour the question of whether in this particular case a value judgment concerning top political party officials and based on the relevant facts was not punishable under the criminal law and was not excessive.

Entscheidung des OGH vom 8. Mai 2008 (15 Os 6/08h, 15 Os 7/08f), abrufbar unter:

http://www.ris2.bka.gv.at/Dokument.wxe?QueryID=Justiz&Dokumentnummer=JJT_20080508_OGH0002_0150OS00006_08H0000_000

Supreme Court decision of 8 May 2008 (15 Os 6/08h, 15 Os 7/08f)

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