[DE] Ban on Reporting on Stasi Activity Confirmed

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Germany's second public service television channel *Zweites Deutsches Fernsehen* (ZDF) may no longer broadcast, in the form that was the subject of the action, a remark by the Federal Commissioner for Stasi Documents that Gregor Gysi, the leader of the Die Linke party in the Bundestag, "knowingly and deliberately" reported to the Stasi on a critic of the GDR regime.

This was decided on 23 March 2010 by the *Hanseatisches Oberlandesgericht Hamburg* (Hanseatic Court of Appeal - OLG, which confirmed the judgment of the lower court. On 4 September 2009, the *Landgericht Hamburg* (Hamburg Regional Court) had established in response to the action brought by Gysi that the plaintiff's general personality rights had been infringed and prohibited the broadcasting of the report in issue. However, it did not forbid ZDF from ever broadcasting the Federal Commissioner's remark, stating that the channel had neither agreed with it - but, rather, compared it to the plaintiff's position on the issue and therefore tried to get to the bottom of the matter - nor could it be made liable as the disseminator of a public suspicion.

In its reasons for the judgment, the Regional Court only referred to the description in the news programme "heute-journal" of 22 May 2008, in which ZDF made it clear that the Federal Commissioner had only expressed an unproven suspicion and that the circumstances had not been clarified. However, the court went on, according to the principles established by the *Bundesgerichtshof* (Federal Court of Justice) a report on a suspicion was only permissible when there was a significant public interest in its dissemination, the circumstances had been carefully researched, there were sufficient indications that the suspicion was factually correct and that the case had been presented in a balanced way without it resulting in the person concerned being convicted in advance. In the report, however, the court ruled that the facts that might militate against the truth of the Federal Commissioner's remark had only been mentioned in brief and incompletely. Finally, the report had accordingly been "insufficiently balanced and frank".

The Hanseatic Court of Appeal essentially agreed with this assessment. According to information from ZDF, it stressed that there was a considerable public interest in the question of whether Gysi had worked for the state security service at the time of the GDR, but the channel should have questioned him on the remarks and

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gone into his arguments in his defence in greater detail.

ZDF intends to examine the possibility of appealing against the decision, which is not yet final.

Urteil des LG Hamburg (Az. 324 O 836/08) vom 4. September 2009

http://lrha.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=ha&nr=2819

Judgment of the Hamburg Regional Court (Case 324 O 836/08) of 4 September 2009

Pressemitteilung des ZDF zum Urteil des Hanseatischen OLG Hamburg vom 23. März 2010

http://www.heute.de/ZDFheute/inhalt/2/0,3672,8059170,00.html

ZDF press release on the Hanseatic Court of Appeal's judgment of 23 March 2010

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