[DE] Were statements made by a neo-Nazi in a documentary an "offence arising from the content of a press publication"?

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

In its decision of 14.6.1996, the Third Criminal Chamber of the Federal Court (Bundesgerichtshof-BGH) dismissed the appeal on a point of law against his conviction by the Berlin Regional Court lodged by the accused, a notorious representative of neo-Nazi circles in Germany.

The charge against the accused was based inter alia on the fact that in spreading the so-called Auschwitz lieie denying that the holocaust happened - he had made statements inciting racial hatred and other insulting remarks and was therefore liable to prosecution under Sections 90a(1/1/3), 130(3 aF), 185 and 189 of the Criminal Code (cf. also the new version of Section 30(3) of the Criminal Code). The remarks were retransmitted, unchanged, in a documentary film entitled "Neo-Nazi, that's my job"(Beruf Neonazi) which chronicled the life of the accused, including various public appearances, particularly a speech he had made in Cottbus and discussions with visitors to a concentration camp.

In the lower court, the accused had been convicted of defamation of the state, and defamation of the memory of deceased persons; on a separate charge relating to the same acts he had been convicted of inciting racial hatred and of slander. He had been sentenced to three and a half years imprisonment. In his appeal on a point of law, the accused claimed that prosecution was time-barred. The acts of which he was accused were to be viewed as an "offence arising from the content of a press publication", and were therefore subject to the short limitation period applying to offences under the law governing the press, i.e. six months (in the case of a lesser offence) or one year (in the case of a serious offence).

However, in its decision the Federal Court did not follow this line of reasoning. It held that the distinguishing characteristic of an offence arising from the content of a press publication when publication took the form of a printed work (cf. Section 22(1) in conjunction with Section 6(1) of the Berlin Press Act; Sections 11(3) and 130(2-4) of the Criminal Code for the concept of "written works") was that its criminality resided conclusively in the tangible content of the printed work or comparable pictorial representation, and did not reside in the special circumstances or special way in which it was circulated. It followed that an offence

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arising from the content of a press publication occurred only when the criminal content, objectively tied to a printed work or a comparable medium, was circulated in tangible form. In the case of the film "Neo-Nazi, that's my job" the element of criminality arising from the tangible content of the pictorial representation was missing, since it was unmistakable that via the medium of film the documentary had distanced itself from its content and a critical appraisal of the criminal statements had been expressed; therefore none of the criminal acts had been committed through the documentation itself. There was thus no scope for the application of the time limitation provisions under the law governing the press which related, together with the concept of circulation, to the objective transmission in a printed work of a tangible criminal content.

A criminal statement made by an offender which was documented in a pictorial representation (film) did not therefore constitute an offence arising from the content of a press publication, if the tangible transmission of the representation failed to meet the requirements to qualify as an offence committed by the film-maker and distributor, owing to the critical distance they adopted in the film.

Bundesgerichtshof, Beschluß vom 14. Juni 1996, Aktenzeichen: 3 StR 110/96.

Federal Court, Decision of 14 June 1996, No 3 StR 110/96.

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