[DE] BVerfG Considers “Crazy Woman” Comment Not Protected by Freedom of Expression

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In a ruling of 11 December 2013 (1 BvR 194/13), the 3rd chamber of the First Senate of the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) decided that the description of somebody as a "durchgeknallte Frau" (“crazy woman”) on an Internet portal was not covered by the fundamental right to freedom of expression.

The complainant, a former district administrator and member of the Bavarian parliament, posed for Playboy magazine at the end of 2006. The photos were published in 2007.

The defendant in the original procedure had published the images on its website, along with a text containing the following commentary:

“I tell you, you are the most frustrated woman I know. Your hormones are in such a mess that you no longer know what’s what. Love, longing, orgasm, feminism, reason. You are a crazy woman, but don’t blame your condition on us men.”

In the original procedure, the complainant had applied for an injunction against the defendant’s publication of various individual comments, including the description of her as a “crazy woman” (summarising the previous passages), as well as appropriate compensation. Although she had been successful in the first instance, her claim had been entirely rejected on appeal.

The politician appealed against this ruling to the BVerfG, claiming that her general personality rights enshrined in Article 2(1) in conjunction with Article 1(1) of the Grundgesetz (Basic Law - GG) had been breached. The BVerfG ruled firstly that the disputed decision had infringed the complainant’s general personality rights by considering the use of the phrase “a crazy woman” lawful. When weighing the defendant’s freedom of expression under Article 5(1)(1) GG against the complainant’s general personality rights, the appeal court had overlooked the limitation of personal honour expressly mentioned in Article 5(2) GG. Since these judgements had no connection whatsoever with a public debate or with the complainant’s behaviour, the court considered them purely speculative claims concerning the core of her personality as a private individual and as judgements concerning the most intimate part of her private life. These could not be justified by the freedom of expression.

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The BVerfG considered that the appeal court had, in this case, failed to appreciate the extent of the intrusion on the complainant's personality rights. The decision was therefore lifted and the case referred back to the Oberlandesgericht München (Munich Appeal Court) for a new ruling.

Beschluss des Bundesverfassungsgerichts vom 11. Dezember 2013 (Az. 1 BvR 194/13)

http://www.bundesverfassungsgericht.de/entscheidungen/rk20131211_1bvr019413.html

Decision of the Federal Constitutional Court of 11 December 2013 (case no. 1 BvR 194/13)

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