[DE] Federal Supreme Court confirms obligation to interpret comments in context

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Katrin Welker
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a ruling of 27 May 2014 (case no. VI ZR 153/13), the Bundesgerichtshof (Federal Supreme Court - BGH) decided once again that, when considering whether a comment should be classified as disparaging, the comment must always be interpreted in the context in which it was made. Comments must not be interpreted in isolation or out of context.

Even though the comment in the case at hand was published in a newspaper, the ruling is also relevant to the interpretation of comments made on television or in other audiovisual media.

The plaintiff, who edits a German daily newspaper, was interviewed by the authors of the book “Die vierte Gewalt”, who wanted to include the interview in their book. However, the plaintiff later withdrew her consent for the interview to be published. After withdrawing her consent, however, she told the authors of the book that the interview had been “well transcribed”. The defendant, who was the publisher of another German newspaper, published a story about this incident, giving the plaintiff’s full name, describing the dispute over consent to publish the interview and outlining the positions of the plaintiff on the one hand and of the book’s authors on the other. In the newspaper article, the plaintiff was also accused of behaving in a manner that had been condemned in a campaign run by her own newspaper, criticising the lunacy of the consent rule that applied to press interviews.

The BGH rejected the plaintiff’s appeal against the decision of the Landgericht Berlin (Berlin District Court) of 26 February 2013 (case no. 27 S 13/12).

The BGH explained that the article in question did not infringe the plaintiff’s personality rights. The defendant’s comment complained about by the plaintiff, who had been accused in the article of praising the quality of the transcription before then refusing to authorise its publication, had no significance whatsoever in the context of the article as a whole, and therefore was not detrimental to the plaintiff’s public reputation.

It also made no difference that, when taken in isolation, the disputed sentence gave the impression that the plaintiff had contradicted herself by initially praising an article before suddenly preventing its publication for no comprehensible

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reason, and that she was therefore unreliable and weak-minded - character traits that could be harmful to someone in her professional position.

Rather, the decisive factor was the perspective of the average reader, who, on reading about the opposing positions of the plaintiff and of the books' authors, would have considered the article to be an unbiased account of the dispute over consent to publish the interview. According to the BGH, the article then pointed out that the plaintiff's behaviour was inconsistent with a campaign run by her newspaper against the lunacy of the consent rule that applied to press interviews.

In the overall context of the article, this was the actual accusation against the plaintiff, which was merely derived from the fact that, by refusing to authorise the publication of an interview she had given, she had herself had behaved in a manner that had been criticised by a campaign in her own newspaper.

Bundesgerichtshof, Urteil des VI. Zivilsenats vom 27.5.2014 - VI ZR 153/13 -

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=68254&pos=0&anz=1

Federal Supreme Court, ruling of the 6th civil chamber, 27 May 2014 - VI ZR 153/13 -

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