[DE] Investigations against satirist approved

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On 15 April 2016, the German Chancellor announced that the Federal Government would grant a request to allow investigations to be conducted against a German satirist for insulting a foreign head of state. The satirist had made controversial comments in a television programme about the President of Turkey in the form of a poem entitled Schmähkritik (abusive criticism). On 8 April 2016, the Turkish government had sent the German government a request for criminal proceedings to be brought.

The German satire programme Extra 3 had produced a music video featuring the Turkish President that took a critical look at his policies, whereupon the Turkish government summoned the German Ambassador. The satirist against whom the proceedings now underway have been brought took this incident as an opportunity to speak to his viewers and the Turkish President in his satire programme and explain to them the difference between satire, which is permitted in Germany and is protected by freedom of speech and freedom of the press, and abusive criticism, which is not. Schmähkritik is a concept employed by the Bundesverfassungsgericht (Federal Constitutional Court) and establishes the borderline beyond which statements are no longer permissible. The term applies when a person is disparaged and no discussion on the matter takes place. In such cases the disparagement must be the aim and object of the expression of an opinion. In order to delinetae between the indisputably permissible satirical video in the programme Extra 3 and prohibited abusive criticism, the satirist read out in his programme a poem on the Turkish President that should, in the former's own estimation, be classified as abusive criticism and therefore not be broadcast on television. The statements concerning the President that he then read out constitute abusive criticism in themselves, but when interpreting the words as an "explanation of abusive criticism" in the context of the programme, the view that the poem falls within the scope of satirical freedom can justifiably be held. In the present case, the conflicting interests will have to be weighed by the Public Prosecutor's Office and the courts.

The satirist's statements might constitute the offences of slander and defamation, pursuant to sections 185 ff. of the Strafgesetzbuch (Criminal Code - StGB), so criminal investigations might be commenced in the event of an application for a prosecution. The relevant applications have in fact been made, and the Mainz Public Prosecutor's Office, which has jurisdiction in this case, has already begun

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its investigations.

However, as the person affected by the statements in the present case is not a private individual but the Turkish President, the offence of insulting a foreign head of state, pursuant to section 103 of the Criminal Code, may apply. According to this provision, anyone who insults a foreign head of state could face up to three years' imprisonment or a fine. This offence differs from slander and defamation in two respects, pursuant to sections 185 ff.: firstly, the threat of punishment is more severe because an insult under section 185 is punishable by up to only one year's imprisonment or a fine; and secondly the protection provided also differs. Sections 185 ff. protect the personal honour of the person about whom the statements are made, whereas section 103 not only protects personal honour but also serves to ensure the functional protection of foreign states and the protection of the diplomatic interests of the Federal Republic of Germany. Owing to this difference in protection afforded, section 104(a) StGB sets out specific conditions that must be satisfied for criminal proceedings to take place. For example, the Federal Republic of Germany must have diplomatic relations with the state concerned and reciprocity must be guaranteed, which means that Germany must enjoy the same legal protection in that state. Furthermore, the foreign government concerned has to call for a punishment to be imposed, and Germany must authorise criminal proceedings.

Now that the Turkish government has demanded a prosecution and the German government has announced its intention to grant the necessary authorisation, criminal investigations into insulting a foreign head of state can begin. However, this process has no legal effect on the decision of the Public Prosecutor's Office on whether to classify the statements as abusive criticism and bring an indictment, or to rule that the statements are covered by freedom of expression and to discontinue the proceedings.

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