# [DE] Hamburg Regional Court prohibits repetition of “abusive criticism”

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In a decision of 17 May 2016 (Case 324 O 255/16), the Landgericht Hamburg (Hamburg Regional Court) issued an injunction against TV presenter Jan Böhrmermann prohibiting him from repeating large parts of an “abusive poem” that he read out in a TV programme. In addition to a criminal prosecution, the President of Turkey had made an application under civil law in fast-track proceedings to stop the presenter from repeating the poem.

The satirist had read out a poem about the Turkish President entitled “Schmähkritik” (“abusive criticism”) in his TV show “Neo Magazin Royale”, which was rebroadcast on the niche channel ZDF neo on 31 March 2016. The poem had been the presenter’s response to an article in the satirical magazine Extra3 and the resulting summoning of Germany’s ambassador to Turkey (see IRIS 2016-5/7). According to the presenter, his intention in reading out the poem was to make clear the limits between the lawful exercise of freedom of the press, enshrined in Article 5 of the Grundgesetz (Basic Law), and abusive criticism, which is not protected by this provision and is a breach of personality rights, which are protected by Article 2(1) in conjunction with Article 1(1). He therefore did not read out the poem in isolation but included it as part of a series of statements on the borderline between freedom of art and abusive criticism, and repeatedly interrupted his narration with relevant comments. After he had refused to issue a provisional cease-and-desist statement, the Turkish President made an application in fast-track proceedings for a civil injunction, in addition to an application for Jan Böhrmermann to be prosecuted, with the aim of stopping him from repeating the poem.

The Court considered the presenter’s rights to freedom of expression and artistic freedom, enshrined in Article 5 of the Basic Law, and a person’s personality rights, protected by Article 2(1) in conjunction with Article 1(1). The Court decided, firstly, that the poem was a satirical piece containing exaggerations and distortions, which President Erdoğan, as a political leader, was obliged to tolerate in the same way as harsh criticism. It noted, however, that the highest courts had ruled that freedom of expression and artistic freedom, and therefore permissible satire, had their limits in cases of pure abuse or verbal insults. The Court therefore divided the poem into different parts. With regard to permissible passages, that are protected by Article 5 of the Basic Law and deal with current

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political events in Turkey, the Court dismissed the Turkish head of state's application. With respect to prohibited passages containing racist, religious, and sexual insults, it issued an injunction stating that the presenter must not repeat them.

The decision is not final, and an oral hearing will have to be held if the presenter challenges the decision. If the Turkish President immediately appeals against the partial dismissal of his application, it will be for the Hanseatisches Oberlandesgericht (Hanseatic Higher Regional Court) to rule on it.

The Landgericht Köln (Cologne Regional Court) had to rule on with Böhmermann's abusive criticism in another civil action. Mathias Döpfner, CEO of the Springer publishing group, described the poem as well-written in an open letter to the Die Welt newspaper, stating that he fully agreed with the wording and the abuse and embraced it in every legal form. The Turkish President then also applied for an injunction against Mr Döpfner, but in a decision of 10 May 2016 (Case 28 O 126/16) the Court dismissed his application in its entirety, stating that, in its opinion, the remarks were protected by the right to freedom of expression provided by Article 5 of the Basic Law. Furthermore, as there was a fundamental difference between the poem itself and the mere expression of solidarity, it was not important to examine the legality of the poem. The Turkish President lodged an immediate appeal, which was dismissed by the Higher Regional Court (OLG) of Cologne. This decision is final.

### *Urteil des LG Hamburg vom 17. Mai 2016 (Az.: 324 O 255/16)*

https://openjur.de/u/887161.html

*Judgment of the Hamburg Regional Court of 17 May 2016 (Case 324 O 255/16)*

### *Beschluss des LG Köln vom 10. Mai 2016 (Az.: 28 O 126/16)*

https://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2016/28_O_126_16_Beschluss_20160510.html

*Decision of the Cologne Regional Court of 10 May 2016 (Case 28 O 126/16)*

### *Beschluss des Oberlandesgerichts Köln vom 21. Juni 2016 (15 W 32/16)*

https://www.justiz.nrw.de/nrwe/olgs/koeln/j2016/15_W_32_16_Beschluss_20160621.html

*Decision of the Higher Regional Court of Cologne of 21 June 2016 (15 W 32/16)*

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