Extreme-right NPD wins dispute over Facebook page classified as ‘harmful to minors’

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On 27 August 2019, the German Bundesverfassungsgericht (Federal Constitutional Court) decided that, before classifying a comment as ‘harmful to minors’ on the basis of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the Protection of Minors in the Media), the author’s fundamental right to freedom of expression must be taken into account. The second chamber of the first senate of the Bundesverfassungsgericht therefore upheld a constitutional complaint lodged by a regional association of the extreme right-wing NPD party.

The case concerned the association’s Facebook page, which is freely accessible and contains articles on political topics and links to third-party content. Between 2014 and 2016, the regional association had published several articles on refugee policy, which had included grossly disparaging comments about refugees by users and the association itself. The responsible media regulator had fined the website operator on the grounds that it should have appointed a youth protection officer because it made content harmful to minors commercially available via telemedia. A local court had rejected a complaint about the fine and a subsequent legal challenge had been dismissed as unfounded by the appeal court, which had ruled that the NPD regional association’s comments were harmful to minors because they promoted indiscriminate rejection of entire ethnic groups and aggressive animosity towards religious and ethnic minorities. The site operator had then appealed to the Constitutional Court, alleging that its fundamental right to freedom of expression enshrined in Article 5(1) of the German Grundgesetz (Basic Law – GG) had been infringed.

The judges in Karlsruhe decided that the disputed comments did not fall outside the protection offered by the freedom of expression simply because they were directed at minorities, incited hatred or were potentially racist. They ruled that, when classifying comments as harmful to minors and imposing the related legal consequences, the importance of the freedom of expression should be taken into account. In the decisions taken here, this had not been the case, since the comments had all been treated as one and classified as harmful. The court should have examined the meaning of each comment individually and taken into account the full implications of the sanction imposed, that is, the obligation to appoint a youth protection officer.

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Pressemitteilung des Bundesverfassungsgerichts vom Nr. 66/2019 vom 11. Oktober 2019

https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2019/bvg19-066.html;jsessionid=31AF33C6AF1F475DB0C3E1019F620750.1_cid392

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