Prominent politician partially successful in dispute over social network insults

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Following an appeal by a politician and on the basis of her new submissions in the appeal proceedings and the court's additional findings, the Landgericht Berlin (Berlin District Court), in a new ruling of 21 January 2020, partly amended its original decision of 9 September 2019 (see IRIS 2019-10:1/11) on the politician's claim against the Facebook social media platform for the publication of user data. In its original decision, the Landgericht Berlin had rejected the well-known German politician's request for information about users who had insulted her on the grounds that the verbal attacks launched by the users concerned did not constitute defamation and were therefore not libellous. This decision had been heavily criticised not only by the general public but also by legal experts.

Referring to the original Facebook post, which was revealed in full for the first time in the appeal procedure, the Landgericht Berlin re-examined the 22 user comments concerned in the light of Supreme Court and Constitutional Court case law on freedom of expression. It found in the applicant's favour in six cases. In essence, the court changed its decision because it no longer assumed that the opinion quoted in the original post was fully attributable to the applicant, but considered it as a partial misquote. The court decided that doubts over the authenticity of the quote should be taken into account when evaluating the individual comments.

In this context, the judges thought that six users' comments were unlawful because of libellous content that could not be justified under freedom of expression. The disparaging nature of the comments was such that they would appear to an impartial average reader as a deliberate attack on the applicant's honour and were therefore defamatory. In these six cases, Facebook was therefore required to disclose the user's name and e-mail address, the IP address from which the comment was uploaded, and the time it was uploaded.

On the other hand, the court held that the other 16 comments did not constitute any of the offences listed in Article 1(3) of the Netzwerkdurchsetzungsgesetz (Network Enforcement Act – NetzDG) because, as already mentioned in the original decision of 9 September 2019, they concerned factual issues relating to a comment made by the politician in the Berlin regional parliament in 1986 about the criminal sanctions applicable to sexual acts with children. Since they did not

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defame the applicant, the civil chamber decided that they were not libellous.

The applicant's claim that Facebook's guidelines had been breached was considered as irrelevant as a claim for injunctive relief under civil law pursuant to Articles 823 and 1004 of the Bürgerliches Gesetzbuch (Civil Code) in connection with Articles 1 and 2 of the Grundgesetz (Basic Law). The right to information claimed by the applicant in this case was regulated by the legislator in Article 14 of the Telemediengesetz (Telemedia Act – TMG) and limited to cases in which the criminal offences listed in Article 1(3) NetzDG had been committed.

Since the court has not rectified the decision, this ruling is not yet legally binding.

Pressemitteilung des Landgerichts Berlin

https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2020/pressemitteilung.885539.php

Press release of the Berlin District Court

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