[DE] Politician Renate Künast wins another partial success following Facebook insults

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On 11 March 2020, the *Kammergericht Berlin* (Berlin Appeal Court) issued another decision in the case concerning German Green Party politician Renate Künast. It partially amended, in the politician's favour, the decision taken by the *Landgericht Berlin* (Berlin District Court) following Künast's claim against a social media platform for the publication of user data, and decided that a further six of the 22 disputed user comments were libellous. The district court's original decision not to classify any of the posts as libellous had been heavily criticised by the general public and had already been partially amended in January of this year.

The case concerns a controversial comment made by Künast in the Berlin regional parliament in 1986 on the subject of paedophilia. She had been accused of supporting a call for sex with children to be decriminalised. The politician had denied this. In 2015, her comment was misquoted in a Facebook post in an effort to once again create the impression that she would support the decriminalisation of sex with children, whereupon numerous users posted abusive comments underneath the article.

Under the latest decision, in addition to the six cases already approved by the district court, the social media platform can disclose the user's name, e-mail address and IP address in a further six cases. The judges stressed that this was initially a preliminary claim, which, from both a procedural and substantive point of view, was clearly different from further claims for an injunction and financial compensation. It was not yet necessary in the current proceedings to rule on the claims against the social media platform operator.

According to the appeal court, the content of the six comments that have now been classified as libellous was so defamatory that they should be categorised as '*Schmähkritik*' (critical defamation) or '*Formalbeleidigung*' (an equivalent term meaning an insult resulting from the form of the comment) and therefore constituted the offence of libel under German criminal law. Even bearing in mind the context, the verbal attacks had to be classified as abusive comments made about the complainant outside a factual debate. Contrary to the district court's original decision, the judges did not think the comments had been relevant to the debate. The politician had been subjected to excessively sexist, degrading, obscene insults under the anonymity of the Internet. The broad limits of the

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admissible expression of opinions had clearly been exceeded.

However, the same did not apply to the other ten comments that had been examined by the courts. Although some of them were disparaging, they did not, under constitutional case law, constitute libellous insults under Article 185 of the *Strafgesetzbuch* (Criminal Code – StGB). The decision is final.

Pressemitteilung des Kammergerichts Berlin vom 24. März 2020 zum Beschluss – 10 W 13/20 – vom 11. März 2020

https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2020/pressemitteilung.911281.php

Berlin Appeal Court press release of 24 March 2020 on decision 10 W 13/20 of 11 March 2020

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