[DE] Federal Constitutional Court refuses to examine partial prohibition of poem that insulted Turkish president

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In a decision of 26 January 2022, the *Bundesverfassungsgericht* (Federal Constitutional Court – BVerfG), as the supreme guardian of fundamental rights in Germany, refused to accept a constitutional complaint by well-known German TV presenter Jan Böhmermann relating to a poem he had written, insulting the Turkish president. As a result, previous civil courts rulings, in which parts of the poem were declared unlawful, are now legally valid.

The case, which attracted a high level of media attention in Germany after it triggered a general public debate on the limits of artistic freedom and freedom of speech, followed the broadcast of a satirical music video in the NDR programme "*extra 3*", which had criticised the flouting of press freedoms in Turkey in a humorous way. In response to the video, the Turkish president had summoned the German ambassador in Turkey to provide an explanation, and demanded, through the Turkish government, that the video be taken down. This political reaction, which was considered excessive in view of the harmless nature of the video, had caused numerous satirists in Germany to respond with similar pieces of satire. On 31 March 2016, for example, Jan Böhmermann, in his programme "*Neo Magazin Royale*" (ZDFneo), tried to demonstrate in a satirical way what was allowable in Germany under freedom of expression and what was not by reciting an abusive poem about the Turkish president. The poem contained insults which the presenter himself had acknowledged were "forbidden". In the ensuing court proceedings, the *Landgericht Hamburg* (Hamburg regional court) ruled that parts of the poem were unlawful because they crossed the boundary between satire and abusive criticism.

In the court's view, even though criticism of the Turkish president was allowed under freedom of expression (an argument based on artistic freedom was left unanswered), especially if it was satirical in nature, some of the poem's contents had overstepped the mark in terms of what a politician should have to put up with. Although viewers would realise that the absurd descriptions of his sex life, for example, had no connection with reality, the president should not have to accept such insults and abuse just because they were clearly not meant to be taken seriously. In addition, the poem unlawfully referred to existing prejudices against Turkish people and insults that were especially offensive to Muslims. On the other hand, the court held that lines such as "Er ist der Mann, der Mädchen

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schlägt" ("He is the man who beats up girls") or "sackdoof, feige und verklemmt" ("stupid, cowardly and uptight") were acceptable under freedom of expression because they were a form of political criticism (e.g. violence against women in Turkey). After the ruling had been upheld in subsequent court decisions, the TV presenter appealed to the Constitutional Court, arguing that the civil courts' partial prohibition of the poem breached fundamental rights, in a final effort to have the original decision overturned. By refusing to accept the complaint, the BVerfG blocked this possibility, with the result that the previous rulings can no longer be challenged. Through its decision, for which it was not required to provide grounds, the BVerfG therefore determined that the case had no fundamental constitutional importance, possibly because it had previously ruled on the relevant point of constitutional law. In view of the ongoing public debate concerning the case, it is unfortunate that the Constitutional Court did not provide a clear explanation of the fundamental aspects of the case. Nevertheless, with its decision, the BVerfG has underlined that the level of media attention a case receives and the public profile of the parties involved are irrelevant when it comes to applying the principles of application and interpretation developed in its established case law.

BVerfG, Beschluss der 2. Kammer des Ersten Senats

http://www.bverfg.de/e/rk20220126_1bvr202619.html

Federal Constitutional Court, decision of the 2nd chamber of the First Senate

LG Hamburg, ECLI:DE:LGHH:2017:0210.324O402.16.0A

https://www.landesrecht-hamburg.de/bsha/document/JURE170025881

Hamburg regional court, ECLI:DE:LGHH:2017:0210.324O402.16.0A

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