

[DE] Federal Court of Justice: Freedom of expression only protected for deliberate statements of opinion

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*Sandra Schmitz-Berndt
Institute of European Media Law*

In its judgement of 28 April 2026 (case no. VI ZR 113/25), the 6th Civil Division of the Federal Court of Justice (*Bundesgerichtshof* – BGH) ruled that, when assessing whether a written news article infringes a subject's general personality rights, conflicting interests protected by fundamental rights must be balanced as a matter of principle, taking into account all the circumstances of the individual case.

The court had to decide whether a report in the *taz* newspaper describing a lawyer, named in the report, as a "far-right extremist" infringed his general personality rights and thus gave rise to a claim for damages, including reimbursement of pre-trial legal costs. The newspaper's publisher had published an article on its website *taz.de* about various demonstrations against price rises in Germany. The article had stated, with regard to the claimant, that "many right-wing extremists" had taken part in the march, "including NPD members [...] and [...], a prominent lawyer for the Querdenken movement".

After the Kreuzberg District Court (*Amtsgericht Kreuzberg* – AG) had classified this as defamatory criticism and ordered the publisher to reimburse the lawyer's pre-trial legal costs, the Berlin II Regional Court (*Landgericht Berlin II* – LG) ruled that there was no entitlement to reimbursement of these costs. The reasoning given was that readers could understand the assessment and, where appropriate, form their own, possibly more favourable judgement if press articles disclosed the key facts on which an opinion detrimental to the person concerned was based. Consequently, general personality rights were less severely infringed than in cases where a disparaging opinion was disseminated without justification.

Central to the case was the balancing of the subject's general personality rights (Articles 1(1) and 2(1) of the Basic Law) against the freedom of expression of the press (Article 5(1) of the Basic Law). The BGH initially classified the statement at issue as a value judgement rather than an assertion of fact. The description as a "far-right extremist" also infringed the claimant's general personality rights, as it could undermine his public reputation, particularly as a lawyer. General personality rights relating to the protection of professional honour and social reputation were at stake here.

The BGH found that the assessment by the appeal court – which had deemed the infringement of the claimant's general personality rights not to be unlawful because his interests did not outweigh the legitimate interests of the publisher – was flawed.

Being labelled a "far-right extremist" could significantly infringe someone's personality rights, particularly with regard to the aforementioned professional honour and social reputation. When weighing up the conflicting interests, which was crucial in determining whether a statement was unlawful, all the circumstances of the individual case must be taken into account. This included, amongst other things, the content, form and effect of the statement. The BGH also attached particular importance to the subsequent correction of the article in question by the publisher. Following a cease-and-desist notice, the publisher had corrected the report and added: "An earlier version of this text contained a misleading phrase which could be interpreted as suggesting that we also regarded Markus Haintz as a member of the far right. We have clarified this phrase and are sorry for the error." Whilst the correction does not directly affect the question of whether the original statement was unlawful, it could, however, give rise to doubt as to whether it was in fact intended to label the person concerned as a right-wing extremist, or whether he had merely appeared alongside such individuals. Due to possible punctuation errors and contradictory arguments put forward by the publisher during the proceedings, the BGH concluded that the correction, together with other circumstances, cast doubt on whether the statement in question was in fact intended in such a way that a reasonable reader would have to understand it as implying that the person concerned was a right-wing extremist. It could not be ruled out that the disputed wording was based on a factual error and had not been intended at all. Should such a mistake exist, this could tip the balance of fundamental rights in favour of the claimant's personality rights and mean less importance should be attached to the publisher's freedom of expression, since freedom of expression would merit less protection if the objective content of the statement was not at all intended by the author.

Since the lower court had not issued sufficient findings on this point, the BGH quashed the decision and referred the case back to the appeal court for further investigation. The appeal court must, in particular, clarify whether the author had in fact intended the disputed statement in this form. If the lawyer's rights had been breached, it would also be necessary to examine whether his appointment of a solicitor had been necessary and appropriate.

The decision underlines the importance of a careful, case-by-case balancing between personality rights and freedom of expression in the context of evaluative statements in the media, including consideration of possible errors of interpretation.

Link zum Urteil des BGH

https://www.bundesgerichtshof.de/SharedDocs/Entscheidungen/DE/Zivilsenate/VI_ZS/2025/VI_ZR_113-25.pdf?__blob=publicationFile&v=1?__blob=publicationFile&v=1

Link to the Federal Court of Justice ruling

