

Federal Constitutional Court Reverses the Hate-Speech Conviction Of Journalist Who, For an Article About a Local Political Candidate, Penned the Headline: “Culture: A Jew?”

Suggested Citation: *Federal Constitutional Court Reverses the Hate-Speech Conviction Of Journalist Who, For an Article About a Local Political Candidate, Penned the Headline: “Culture: A Jew?”*, 1 German Law Journal (2000), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=11>

[1] The First Chamber of the First Senate of the Federal Constitutional Court (FCC) recently reversed the hate-speech conviction of a Regensburg Journalist holding that the conviction violated the Journalist’s constitutional right to Freedom of Opinion (Art. 5.1 of the Basic Law).

[2] In coverage of the local campaign for the heads of administrative departments, the Journalist authored an article about the seven candidates competing for the positions in the Justice, Culture and Environment departments. The front-page of the newspaper carried the following headline for a story carried on the paper’s second page: “Election of Department Heads Heats-up. Culture: A Jew? Justice: Rosenmeier! Environment: Schoernig?! Seven Candidates and a Comeback – page 2.” The story described forty-six-year-old Rolf Kuelz, one of the candidates for the Head of Culture, as “introverted” but capable of accomplishing his goals. The article noted Kuelz’s experience producing exhibitions as an independent cultural manager in Berlin. As an aside, the article also noted that Kuelz is Jewish.

[3] The Journalist was prosecuted and convicted only for the headline, which declared “Culture: A Jew?”. The conviction was based on Section 130 of the German Criminal Code that prohibits “Volksverhetzung” or the “incitement of the people.” The legislation aims to criminalize conduct similar to that conduct criminalized by American hate-speech laws. Section 130 specifically criminalizes any (written or broadcast) declaration that disturbs the peace by (1) promoting violence and discrimination out of hate for a group of people in society; or (2) results in an injury to human dignity.

[4] The case represented a conflict between, on the one hand, the freedom to express one’s opinion as guaranteed by Article 5.1(1) of the Basic Law and, on the other hand, the state’s obligation to protect and promote human dignity pursuant to Article 1.1 of the Basic Law. The statutory provision itself, however, does not run afoul of the right to free speech because in Article 5.2 the Basic Law itself anticipates the need to limit that freedom especially in order to protect children and to promote the respect for human dignity demanded by Article 1.1.

[5] The FCC took exception with the lower courts’ interpretation of Section 130 and their application of the crime to the case at hand. The Court first noted that the case did not involve the Basic Law’s free press guarantees (Article 5.1(2)) because it concerned a conviction for the expression of an opinion without respect for the medium through which the opinion was disseminated. Second, the Court found that the lower courts should have weighed the limitations on free speech imposed by the criminal law against the harm caused by the speech if it were to go unchecked. The Court found that, to the degree the lower courts conducted this weighing, they failed to consider the role of the headline in the context of the article as a whole. Viewed in the context of the article, the FCC found the reference to the fact that the candidate is Jewish (in the headline and the article) as informative and that it was not intended to promote violence or discrimination. Similarly, the FCC found that any harm caused did not rise to the significant level required Article 1.1 (and attending hate-speech crimes), which seeks to protect human dignity but does not prohibit every injury or affront to one’s honor. Instead, the Court held, Article 1.1 serves to protect higher concerns like the respect shown to a person and the social value accorded a person. Article 1.1 prohibits the state from making humans mere objects for its manipulation. Article 1.1, the Court concluded, aims to ensure that humans have the right to enjoy life as an equal member of society. The FCC ruled that none of these high ideals were compromised in the present case. Finally, the FCC noted that Germany’s Nazi history still required a special sensibility for matters touching on Judaism, even if the facts of this case did not amount to a disregard for the necessary sensitivity.

[6] In rendering its decision the FCC relied heavily on its decision in the “Soldiers are Murder” case (93 BVerfGE 266 (1995)). In that case the FCC upheld, on Article 5.1 free speech grounds, the right to express pacifist views with materials that employed the phrase “Soldiers are Murders,” coined by the great German poet Kurt Tucholsky. In that case, as here, the FCC emphasized the importance of weighing the highly valued freedom of speech against the potential harm caused by the speech.

For more information:

English language version of the Basic Law on-line:

<http://www.uni-wuerzburg.de/law/gm00000>">www.uni-wuerzburg.de/law/gm00000

The decision of the FCC in the "Jewish Headline Case" can be found on the web at:

<http://www.bundesverfassungsgericht.de>">www.bundesverfassungsgericht.de

The decision of the FCC in the "Soldiers are Murder" case can be found on the web at:

<http://www.uni-wuerzburg.de/dfr/bv093266.html>">www.uni-wuerzburg.de/dfr/bv093266.html

The German Criminal Code (Strafgesetzbuch) on line, select "Strafgesetzbuch" and then "Besonderer Teil" at:

<http://www.eufi.de/index.htm>">www.eufi.de/index.htm

See, authoritative treatment of this issue in Donald Kommer's *The Constitutional Jurisprudence of the Federal Republic of Germany* (2d ed.) Duke University Press (1997).