

Die Zeit journalists lose lawsuit against German satirical television show

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Josef Joffe, editor of *Die Zeit*, the most widely read German weekly newspaper, and Jochen Bittner, a regular contributor to the newspaper, have failed in their lawsuit against the ZDF television satirical show “Die Anstalt.” In a third hearing of the case, the Federal Supreme Court overturned a ruling by the Upper State Court in Hamburg that prohibited ZDF from focusing on the two journalists’ relationships with influential security policy lobby groups.

The programme, moderated by Max Uthoff and Claus von Wagoner on April 29, 2014, highlighted the incestuous relations between so-called A-list journalists and various transatlantic think tanks, such as the Aspen Institute, the Trilateral Commission, the German Institute for Foreign Affairs and the Federal Academy for Security Policy, all of which support a German military buildup.

The subject at the time, at the height of the Ukraine crisis, was extremely topical. Just three months earlier, German President Joachim Gauck, Foreign Minister Frank-Walter Steinmeier and Defence Minister Ursula Von der Leyen announced the end of German military restraint at the Munich Security Conference.

As well as Bittner and Joffe from *Die Zeit*, the programme also took aim at Stefan Kornelius from the *Süddeutsche Zeitung* and Günther Nonnenmacher and Klaus-Dieter Frankenberger from the *Frankfurter Allgemeine Zeitung*. On a chart, Uthoff and von Wagoner outlined the numerous connections between the five journalists and diverse lobby groups, characterising them with the comment, “They don’t research there, they are members of advisory bodies, executives.”

The journalists affected subsequently sought to put ZDF under pressure. Joffe wrote a letter of complaint to ZDF head Peter Frey, who, like Kornelius and

Frankenberger, is a member of the advisory council for the Federal Academy of Security Policy. Bittner and Joffe demanded in addition an official statement of retraction, and when ZDF refused to sign one, they sought an injunction.

Such statements of retraction and injunctions are popular methods of suppressing critical journalists and media organisations in Germany. Normally, the person concerned receives a demand from the complainant’s attorney that he or she voluntarily avoid making certain statements again. In the event of a breach of this agreement in the future, moreover, the “perpetrator” agrees to pay a large fine. If the targeted individual refuses to sign, he or she faces costly legal proceedings.

Even if the victim of this process signs a retraction statement, he or she frequently has to pay an exorbitant fee to the attorney who wrote the statement. For media organisations with limited financial resources, such actions can threaten their existence.

For ZDF, which is funded by public contributions, the financial issue does not play a major role, but the lawsuit by Bittner and Joffe was obviously intended to ensure that any such criticism on mainstream media with millions of viewers be prohibited in future. In essence, their lawsuit is no different from that pursued by Turkish President Recep Tayyip Erdogan against satirist Jan Böhmermann, which outraged many German media outlets.

At their first hearing at the Hamburg State Court, Bittner and Joffe had their suit rejected. The court deemed it insignificant that Joffe was a member in only seven organisations, and not eight as had been claimed. Ultimately, the court ruled, the case concerned a satirical programme.

Bittner also wanted to block the information coming out that he had reported positively on Gauck’s speech

at the 2014 Munich Security Conference that he had assisted in compiling. In fact, Bittner was named as a member of the working group on the paper “New Power, New Responsibility,” on which Gauck’s speech was largely based.

The second hearing, at the Hamburg Upper State Court, overturned the lower court’s ruling to the benefit of Bittner and Joffe. It came to the conclusion that Joffe was only connected with six transatlantic organisations rather than the eight alleged by the satirical programme. This had been a “misrepresentative deviation” which “was used to restrict the social standing of the complainant.”

The Supreme Court sharply rejected the attempt to restrict journalistic criticism by means of such nitpicking. It accused the Hamburg High Court of having “quoted statements from the defendants of an inaccurate character.” With a “correct examination of the content of the statement,” the cabaretists [comedians] would have “not made the statements cited above, so that they cannot be forbidden.”

According to the Supreme Court, the assessment of the substance of a declaration must “always be judged within the full context in which it was made.” In a satirical television broadcast it also had “to be kept in mind what message is presented to an uninitiated and understanding viewer given the vast number of impressions concentrated within a single moment.”

“On this basis,” the short press release from the court concluded, “one can in essence only draw the conclusion that the links between the complainants and the organisations named in the broadcast do exist. This statement is correct.”



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