

Professor Jörg Baberowski loses on all counts in suit against University of Bremen students

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On June 1, Professor Jörg Baberowski's attempt to use the courts to ban student criticisms of his radical right-wing positions ended in complete defeat.

The Humboldt University professor withdrew his application for an interim injunction against the University of Bremen Asta (Student Union), which had quoted him in a leaflet and described him as a right-wing radical and racist. This followed an oral hearing at which the Cologne Higher Regional Court made an unambiguous statement that it was preparing to issue a judgement against Baberowski. The Berlin professor must now bear the entire cost of the court case.

With the withdrawal of the suit, the entire construct of legal claims and allegations by means of which Baberowski sought to silence his critics has collapsed. In this reactionary campaign, he had been supported by large sections of the media and many academics.

In his legal suit, Baberowski asserted that the Bremen Asta had torn quotations from interviews he had given out of context and misinterpreted them in order to vilify and defame him. He attacked criticisms of his right-wing political and historical views as an attack on freedom of scholarship and on his reputation as a recognized historian.

The Cologne Higher Regional Court rejected this view. Following a thorough study of detailed written submissions from both the Bremen Asta and Baberowski, the court came to the conclusion that Baberowski had essentially been quoted accurately and that the criticisms of him were legitimate.

Right at the beginning of her remarks, Margarete Reske, chair of the 15th Civil Court Senate of the Higher Regional Court, rejected Baberowski's assertion that the texts circulated by the Asta were an attack on freedom of scholarship.

The controversial statements Baberowski wanted to bar the Asta from repeating were drawn from a panel discussion at the German Historical Museum and from an interview on broadcaster 3SAT. The judge noted that in these contexts, Baberowski had decidedly not appeared as a scholar. The interviews concerned controversial questions of daily politics that were under intense public discussion at the time. Baberowski had ventured into territory where one had to be prepared to face such sharp criticism. He had to be protected from being falsely quoted, but not from being harshly

criticized, the judge said.

Reske stressed that the statements made by the Asta did not constitute vilification, but pertinent criticism. She went into the two quotations that the Cologne District Court in an earlier ruling had prohibited the Bremen Asta from repeating.

In November of 2016, the Cologne District Court imposed an injunction against the Bremen Asta at the request of Baberowski. On 15 March of this year, the order was narrowed at an oral hearing and the Asta was permitted to call Baberowski a right-wing radical because there was "a sufficient starting point" for the use of such a term. The lower court, however, upheld the remaining points of the interim injunction.

The Asta appealed this decision to the Higher Regional Court, which made clear it was preparing to rule in its favour.

Baberowski's application for an injunction was occasioned by a press release issued by the Bremen Asta in October of 2016. It said of the Humboldt professor: "Described by his followers as an honourable academic, his recent theses were characterized by open forms of agitation and by frightening brutality. In a panel discussion at the German Historical Museum in October of 2014, on the topic of Germany as an interventionist power, Baberowski said, 'And if one is not willing to take hostages, burn villages, hang people and spread fear and terror, as the terrorists do, if one is not prepared to do such things, then one can never win such a conflict.'"

In his legal case, Baberowski complained that the Asta had not cited ensuing paragraphs in which he explained that it was well to consider "what type of war is one prepared for, and whether one can win. And if you cannot win, then you should stay out of it." The lower court had asserted that these sentences showed "the plaintiff does not approve of applying the means of war mentioned in the passage cited."

This argument was rejected by Judge Reske. Looking at the remarks that followed the quotation, she said "we do not agree that the plaintiff said the war should not be carried out." He was only saying that one could not win the dispute with these means, with self-imposed moral limits. "Whether he considers the moral limits to be right, he does not say in this context," she added, concluding that Baberowski's thesis was that war against terror could be won only with counter-terror.

The court did not consider the statement to be ambiguous,

Reske said, because it did not know what other meaning could be attributed to it. She considered it questionable that the plaintiff has argued in this connection against the conduct of such wars, particularly in light of the wider context of Baberowski's published writings.

Reske referred to texts cited by the Asta in its written submission documenting Baberowski's militaristic standpoint. As an example, she quoted one of his columns in the *Baseler Zeitung* of August 5, 2016: "But how can one end a war if one does not want to fight?... Indifference and altruism are bad advisers... The terrorists consider us cowardly and effete, and they parade our cowardice in front of our noses day by day."

Reske also emphasized that the designation of Baberowski's statements at the German Historical Museum as "open agitation" and theses of "frightening brutality" were views protected by freedom of expression.

The judge argued similarly in relation to the second quotation the Bremen Asta had been banned from repeating. In their press release, the students wrote: "At the same time, as a guest contributor in the FAZ [*Frankfurter Allgemeine Zeitung*], he regards the integration of refugees as a breach of a German 'cultural continuity' and consequently a threat to 'the social glue that once held our society together.'"

"Of the burning down of a refugee home in Tröglitz and the two-day attack by right-wing extremists on a hostel for refugees in Heidenau, Baberowski commented tersely with the words: 'Wherever citizens are not integrated it naturally comes to aggression.' Jörg Baberowski does not research violence, but legitimates it and virtually invites it. His views are not a constructive contribution to the culture of debate, but an academically advanced form of rabble-rousing, which trivialises arson attacks and besieging of refugee facilities as a natural reaction of disgruntled citizens."

Here, too, Baberowski insisted he had been falsely quoted. He had also said, "Thank God, no one has perished in Germany." Although asylum-seekers' homes had been set on fire, and this was bad enough, "I believe, in face of the problems we have in Germany with the immigration that is now taking place, it is rather harmless what we have."

In its ruling, the lower court had asserted that these statements did not permit the conclusions that the Bremen Asta drew from them. This, too, did not apply, according to the Higher Regional Court judge. Seen in its entire context, the statement admits of the interpretation the defendant had drawn, the judge said. She added that apparently for Baberowski, the problems with immigrants were more serious than the violence against them. To call his comment "terse" is therefore justified.

Baberowski did not appear at the hearing that he himself had sought. His attorney, Sebastian Gorski, tried to defend the ludicrous arguments of his client and argue the position that criticism of right-wing policies is detrimental to scholarly freedom.

Gorski's law firm, Schertz Bergmann, had filed a 52-page

document that justified Baberowski's right-wing positions, including his assertion that Hitler was not vicious and his defence of Nazi apologist Ernst Nolte and Nazi lawyer Carl Schmitt. In addition to the Bremen Asta, the written submission fiercely attacked the Socialist Equality Party of Germany (SGP) and its youth organization, the International Youth and Students for Social Equality (IYSSE), because they had systematically criticised Baberowski's right-wing views.

But Gorski made little headway against the arguments of the judge in the courtroom, which was filled with students. "I can see that I am not on the winning track today," he said at the end, withdrawing the application for the injunction that he had sought for seven months to enforce in behalf of his client. He did so in order to prevent the arguments put forward by the judges from being stated in writing in an official ruling.

Despite this manoeuvre, the result of the oral hearing at the Higher Regional Court is clear: Baberowski has failed in his attempt to use the courts to ban criticism of his right-wing agenda. The persistent arguments of his defenders, who claimed the professors' critics had torn quotations out of their context, have been completely refuted.

The Bremen Asta had shown in its 33-page written submission that Baberowski presented right-wing extremist positions in dozens of newspaper articles and interviews and on talk shows, and that he was celebrated in right-wing circles. The Asta accused the professor of trying to "abuse the court to silence critical students and suppress any criticism of his right-wing agenda." The significance of the judgement, they wrote, would go "far beyond this case."

This assessment has been confirmed by Baberowski's defeat. The Asta of the University of Bremen explained in an initial statement: "This is an important day in the fight against right-wing propaganda and for freedom of expression on campus and everywhere else!"



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