"Elsaesser against Ditfurth" – The verdict of Munic, Dec. 12, 2014

The German Version:
http://www.jutta-ditfurth.de/dl/dl.pdfa?download=Elsaesser-gegen-Ditfurth-I-Instanz-20141210.pdf
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Munich District Court I
(Az.: 25 O 14197/14)

In the dispute between

Elsaesser, Juergen, Brandenburger Strasse 36, 14542 Werder
- Plaintiff -

Attorney of Record
Attorneys von Sprenger, von Lavergne, Ohmstraße 1, 80802 München, Gz,: 136/14 S01.

Against

Ditfurth, Jutta, ÖkoLinX-ARL im Römer, Bethmannstraße 3, 30311 Frankfurt
- Defendant -

Attorneys of Record
CBH Rechtsanwälte GbR, Bismarckstraße 11-13, 50872 Cologne

for an injunction.

The Munich Regional Court I, Civil Chamber 25, write the following through the regional chief justice Gröncke-Müller as the sole judge concerning the oral trial from October 08 2014.

Final Decree

1. The defendant is enjoined to cease referring to the plaintiff as a "fervent anti-Semite", as occurred in the television broadcast "Kulturzeit" on 3SAT on April 17, 2014, with a fine of up to EUR 250,000 or imprisonment of up to six months or two years in case of repetition.

2. The defendant is enjoined to pay the plaintiff EUR 1,029.35 with an interest rate of 5% over the base interest rate accruing from September 27 2014.

3. The defendant is enjoined to make the sum of EUR 642.60 available in order for the plaintiff to pay the invoice for the attorney von Sprenger issued on September 04, 2014.

4. The plaintiff shall have costs resulting from the case reimbursed by the defendant.

5. The judgment shall be enforceable on a preliminary basis upon the posting of a surety bond totaling 110% of the sum to be paid in paragraphs 2 and 4, and totaling EUR 15,000 in paragraph 1.

6. The amount in dispute is fixed at EUR 16,462.60.

Facts of the Case

The plaintiff demands that the defendant cease referring to him as a "fervent anti-Semite". Over and above this, the defendant must reimburse the costs of the attorney's fees from the pretrial period of EUR 1,029.35 plus interest and must make available the sum of EUR 642.60 to cover the requirement for submission of a concluding statement.

The plaintiff is a journalist, author, and co-owner and editor-in-chief of the monthly magazine "Compact". Another co-owner of this magazine is, alongside Kai Homilius, the Muslim lawyer Andreas Rieger, who is also the publisher of the Islamic newspaper. The plaintiff wrote for the General Jewish Weekly for a period of ten years, ending in 2002.

The defendant was the co-founder of the political party "Die Grünen" ("The Greens") and is a member of the city council in Frankfurt am Main for the party "OekoLinX".

The defendant was interviewed on April 17 2014 on the television program "Kulturzeit" on the channel "3SAT". In reply to this question from the presenter:

> "You have been very active in handling this topic. Who is behind it, who is behind these calls for a unified movement, or are they different, individual activists?"

She answered:

> "There are several different levels. In a nutshell, there are three names of relative importance at the moment. There is the propagandist, the former radio presenter Ken Jebsen who also appears under other identities. Then there is Juergen Elsaesser, the former Communist now turned fervent anti-Semite and homophobe and his magazine COMPACT, and then there is the organizer of these peace demos, Lars Maehrholz, who acts like an innocent individual but obviously has a background in, erm, right-wing, erm, right-wing esoteric circles."

For further content from the interview refer to appendix K1.

The plaintiff issued a warning to the defendant about the phrase "fervent anti-Semite" on April 24 2014.

Lars Maehrholz, mentioned in the interview that is the subject of this case, said the following in an interview with *Voice of Russia* on April 07 2014:

> "What is the reason behind all the wars in the history of the last 100 years? And what is the cause of all of them? And if you tease apart all the threads and have a really close look at it, then you find that in reality, the American Federal Reserve – the American central bank –

> which is a private bank, that they have been pulling the strings of this planet for over 100 years."

On his website, Lars Maehrholz temporarily published a caricature ("Hello there, my name is Jacob Rothschild") that shows Jacob Rothschild and a picture of the Simpsons cartoon villain Mr. Burns with the following text:

> "HELLO THERE,
> MY NAME IS JACOB ROTHSCHILD.
> MY FAMILY IS WORTH 500 TRILLION DOLLARS.
> WE OWN NEARLY EVERY CENTRAL BANK IN THE WORLD.
> WE FINANCED BOTH SIDES OF EVERY WAR SINCE NAPOLEON.
> WE OWN YOUR NEWS, THE MEDIA, YOUR OIL AND YOUR GOVERNMENT.
> You have probably never heard of me."

For the exact form and details refer to corresponding appendix for the document from September 15, 2014.

Ken Jebsen, also referred to in the interview, asked the following question of the Chancellor of Germany:

> "Why is the following statement anti-Semitic? The nationalists have occupied Israel like the Nazis occupied Germany for 33 years."

He wrote to Henryk M. Broder

> "I know who invented the Holocaust as PR, the nephew of Freud, Bernays. In his book propaganda he wrote how to carry out such a campaign, Goebbels read this and implemented it."

The co-owner of the magazine Compact, Andreas Rieger, said the following in 1993:

> "We are a group of German Muslims and we are delighted to be accepted by our Turkish brothers in such a friendly way (…). Here today, we have seen many, many fighters and future fighters for the Deen of Islam, and that has given us a lot of courage (…). Just like the Turks, also we Germans have often in history fought for a good cause, even though I must admit, that my grandfathers were not completely thorough with our archenemy."

Since then he has undoubtedly distanced himself from this view several times. The Islamic Newspaper that he publishes stood for a settlement with Israel subsequent to the presentation of the plaintiff, which was not denied by the defendant. The newspaper is a vehement critic of Hamas and distances itself from radical Islam.

The plaintiff made the following statement at the Brandenburg Gate on April 21 2014:

> "… the international financial oligarchy, which strangles and chokes the 99% in its interest noose. That 99% includes workers, the unemployed, the destitute and also many firms. And international financial oligarchy – that could sound a bit abstract. That is why I want to say, with Bertold Brecht, that crimes have names and addresses and telephone numbers. And we can certainly name some names. Who belongs to this financial oligarchy? Messrs Rockefeller, Rothschild, Soros, Cholokowski, the English monarchy and the Saudi-Arabian monarchy. And

> why should it be anti-Semitic to talk about how this tiny little slice of the money-aristocracy use the Federal Reserve to plunge the entire world into chaos."

The plaintiff continued:

> "These oligarchies have no religion, they pray to no god whether Yahweh or Allah, the worship only one tin god, the cold Mammon."
>
> In a presentation on June 28 2013, the plaintiff made the following statement on the goals of the EU:
>
> It is all about one thing. To put it in words,
> "Planned attack on the traditional livelihood of humanity, lead by the Anglo-American finance industry, especially Wall Street and the City of London."
> …
> "These two most important institutes for the destruction of Europe are in the hand of Goldman Sachs."
> …
> The case will go on until:
> "As much as possible of the German savings – around 400 trillion euros – have been transferred. And of course it won't go to the Greeks – it will go to Goldman Sachs."

The plaintiff traveled to Iran in 2012 as a member of a group consisting of several people. There he met with President Ahmadinejad, a serial Holocaust denier who had organized a symposium on that subject. While there, the plaintiff also met with parliamentarians representing the Jewish and other minorities.

The plaintiff took the following position (extract) as regards the film "Valley of the Wolves", where in one scene a Jewish doctor removes organs from prisoners and trades them:

> "The claim of anti-Semitism is also inapplicable: Indeed there is a Jewish doctor in the film who removes and sells organs from prisoners, however, he attempts to put the brakes on the actual killer in some instances. In comparison to him, he is rather a harmless figure – not, as in the cliché, the string puller, but rather the low-level profiteer of US aggression. Who would argue against the fact that this is an accurate allegory of the relationship between the governments in Jerusalem and Washington?"

In the rules of the blog run by the plaintiff (juergenelsaesser.wordpress.com) it says:

> "On this blog, there will be no discussion of the years 1933 to 1945. Holocaust deniers, Hitler fans and Stalin fans can vent their frustrations elsewhere."

In his blog entry on February 09, 2010, the plaintiff had the following to say about the right-wing radical demonstration to commemorate the bombardment of Dresden of February 13, 1945:

> "Of course one cannot join the Nazis. They are using and abusing memory of those lost in order to make advertising for Nazism. Their buzzword "bombing holocaust" sets things on the same level that cannot be set on the same level. Nazi Germany unleashed the World War and carried out the murder of the European Jews – this must not be forgotten and also not relativized."

On February 23 2009 on the same blogspot, the plaintiff wrote:

> "No one is to say anything against Jews on this blog, otherwise he will be thrown out."

On May 31, 2004, the defendant made an online callout for material and information pertaining to the anti-Semitism of the plaintiff (Appendix K 6).

The plaintiff obtained a temporary injunction against the defendant on May 26, 2014, reference number 25 O 9817/14, which forbade the defendant from referring to the plaintiff as a fervent anti-Semite. The order was lifted in the first instance upon the defendant's appeal in a judgment from July 30, 2014, as the enforcement period of § 929 II ZPO was seen as unwarranted.

In a lawyer's letter dated June 30, 2014, the plaintiff demanded that the defendant recognize the temporary injunction as the final judgment. The plaintiff had incurred costs for the warning based on a trial cost of EUR 15,000.00, already-paid lawyer fees of EUR 1,029.35 (1.3 fee) and for as yet unpaid costs EUR 642.60 (0.8 fee) for the official written letter.

The plaintiff submits that he is not an anti-Semite, and certainly not a "fervent anti-Semite". Indeed, he is the opposite of this. An anti-Semite who is fervent about his anti-Semitism would wear his message openly and would be identifiable by this. On the contrary, he has never said anything whatsoever against Jews, has never attacked the Jewish religion or said anything pejorative about the generality of people described as Jewish. He has declared himself in favor of memorializing the Holocaust and against denying it. He also never agreed with the Holocaust denials of the former Iranian President Ahmadinejad. As a journalist, he could not allow the opportunity to speak with a foreign head of state to slip away.

The statement is therefore short on merit and unsubstantiated. In as far as the statement can be seen as a statement of opinion, it is a slander. The only thing that the defendant wished to do was to insult and disparage the plaintiff, so that viewers would turn away from him in disgust. The statement is an argument-stopper, meant only to stigmatize, and is a formal insult.

The plaintiff is indeed a critic of international financial capital, but his criticism does not touch upon anti-Semitism and is not in any way racist. He does not make use of any codes, he has always clearly distanced himself from anti-Semitic usage of criticism of the FED or international financial capital. The quotation from Maerholz cited above can only be understood as anti-Semitic if you believe that most large financiers are Jewish, which is however not the truth.

The plaintiff holds no influence over the statements of third parties. He does not work together with Ken Jebsen, and with Lars Maerholz he worked together only once, an appearance on April 21, 2014. The study quoted by the defendant has been presented in a one-sided fashion and falsely received.

The plaintiff files,

1. To enjoin the defendant to cease and desist from calling him a "fervent anti-Semite" as happened on the program Kulturzeit on April 17, 2014
with a penalty of EUR 250,000 or imprisonment of up to six months or up to 2 years in case of repetition.

2. The defendant is enjoined to pay the plaintiff the sum of EUR 1,029.35 with an interest of 5% above the base interest rate since the judgment was issued.

3. The defendant is enjoined to pay the sum of EUR 642,60 of the invoice of the attorney von Sprenger, issued on September 04, 2014 for the case of Elsaesser Vs Ditfurth, for the issuance of a concluding statement.

The defendant files:

For dismissal.

The defendant is of the opinion that her statement was a statement of opinion that does not go over the boundaries into slander. Slander must be narrowly defined due to its limiting effect on freedom of speech, so long as it only occasionally occurs in questions of public interest and is normally limited to the level of a private feud. Because in this situation the accused is engaged in a political conflict with a group with whom the plaintiff occupies a leading role and where he, with substantial skill, is bringing right-wing populist views to the people, this is neither a private feud, nor is the defamation of the plaintiff the main goal.

The defendant states that openly fascist circles have moderated their language and now make use of a code. For example, they do not say that they doubt that six million Jews were killed by the German Nazis, instead they say or hint that the "east coast" or "the FED are to blame". This is not about unambiguously anti-Semitic statements made by the plaintiff, rather statements encrypted by the code. The plaintiff is certainly too skillful and clever to make statements that can be revealed as unambiguously anti-Semitic.
The defendant criticized the plaintiff together with the other main figures of the "Friedensdemo" ("peace demonstrations"), Lars Maehrholz and Kai Jebsen. Those who appear in close association with these people invite criticism that involves them.

The metaphor used by the plaintiff on April 21, 2014 of the "interest noose" corresponds to the term "interest shackles", adopted by the NSDAP in their program of 1920. The plaintiff's criticism of the Anglo-American finance industry and Goldman Sachs in his speech on June 28, 2013 conveys an unambiguous picture. This bank with an obviously Jewish tradition sucks the blood of European states and therefore also German taxpayers through its close background ties with US power. This is about the old cliché of financial Judaism, the Jews are to blame for everything.

The echo from the plaintiff's activities is of importance. A study shows that this goes in a direction that one can judge to be anti-Semitic, which is why this term can also be applied to the plaintiff.

The plaintiff's meaning in the scene in the movie Tal der Wölfe ("Valley of the Wolves") is purely anti-Semitic.

The co-owner of the magazine Compact, Andreas Abu Baki Rieger, can without hesitation be accused of being an anti-Semite.

In addition to the facts of the case, the legal documents exchanged by the parties including appendices and the minutes of the oral proceedings are taken into account. The new facts presented by the defendant in the document presented on October 24, 2014 were only taken into account to the extent that the defendant refers to the new submission of facts from the opposing document of October 06, 2014, because more was not made available to the defendant.

Grounds of the Verdict

The permissible suit is founded, because the claim of the defendant that the plaintiff is a "fervent anti-Semite" on April 17, 2014 injures the plaintiff in his general personal rights, and so he has a claim to an injunction according to §§ 1004 analogue 823 I BGB. The foundation for this verdict is only the facts submitted by the parties, in as much as it can be taken into account in the verdict, because of the principle of production of evidence (Beibringungsgrundsatz) of the ZPO ("Civil procedure code of Germany").

1. The statement at the center of the case is a statement of opinion. Statements of fact are different from value judgments because in the latter, the subjective relationship between the statement and reality is of paramount importance, while the former is characterized by the objective relationship of the person making the statement and the content of said statement (compare German Constitutional Court, NJW 2000, 199, 200 with further citations). Fundamental for the classification of the statement as a factual description is whether or not the truth of the statement can be shown with evidence, which is not the case with statements of opinion, because they are characterized by the subjective relationship the person making the statement to its content, as well as the elements of opinion and taking sides, and therefore cannot be proven to be true or untrue (Federal Court of Justice of Germany, Verdict of February 23, 1999, VI ZR 140/98).

   Underlying the judgment of whether a person is a fervent anti-Semite is an evaluation of the statements and actions of the person thus accused, in which the subjective view of the accuser is so significant that this is a statement of opinion. This is also valid regarding the fact that the terms anti-Semite or anti-Semitism have a general meaning.

2. According to a "working definition" used by the European Forum on Antisemitism (EFA), anti-Semitism is a particular perspective on Jews that can express itself as hatred of Jews. Anti-Semitism is orientated in word or deed towards Jewish or non-Jewish individuals and/or their property, or towards Jewish community or religious institutions. Moreover, the state of Israel, that can be understood as a Jewish collective, can be the goal of such attacks. Anti-semitic statements often include the charge that the Jews run a conspiracy against humanity and are responsible for the fact that "things are not running correctly". Anti-Semitism manifests in word, image and text as well as in other forms. It uses negative stereotypes and implies negative personality traits.

   Current examples of anti-Semitism in public life, in the media … are, among others: false, dehumanizing or stereotypical accusations against Jews or the power of Jews as a collective – especially the myths of a Jewish world conspiracy or of Jewish control of the media, economy, government or other community institutions (http://www.european-forum-on-antisemitism.org/working-definition-of-antisemitism/).

   In an interview , the president of the Central Council of Jews in Germany, Dieter Graumann, defined an anti-Semite as follows: Anyone who senses a pervasive, worldwide Jewish conspiracy or who holds "the Jews" responsible for all bad things that transpire among nations. Anyone who denies Israel's right to exist, demonizes it or is prepared to accept its annihilation. Anyone who makes plump comparisons with Nazis to condemn Israeli policies. (r-p online from January 14, 2013, Article: "Ich bin kein Antisemit" ("I am no anti-Semite").

According to the definition in Duden (www.duden.de/), "fervor" means "a great intensity of feeling, being enthusiastic, excited," fervent is defined as "full of an intensity of feeling, passionate, strong".

A fervent anti-Semite is therefore a person who is filled with an intense feeling and who passionately, in word or deed, acts against Jewish people and/or their property, as well as against Jewish community or religious institutions or the state of Israel as a Jewish collective, and for example makes use of false, dehumanizing, demonizing or stereotypical accusations against Jews or the power of the Jews as a collective – especially the myths of a Jewish world conspiracy or of the control of the media, economy, government or other community organizations by the Jews.

Whether the statements or actions of a person correspond to this is significantly characterized by the assessment of the accuser and is therefore a statement of opinion.

3. Statements of opinion in this case are fundamentally protected, without regard to their quality or especially their truthfulness, by article 5 paragraph 1 GG, and they are only to be prohibited in narrowly defined exceptional circumstances, such as when they have an insulting or slanderous character. A statement can be characterized as slander if and only if the defamation of the person of the opponent, rather than the conflict in question, is given prominence, and if it goes beyond even polemical or exaggerated criticism in disparaging the person of the opponent; a disparaging effect for the affected party is not sufficient (compare 1. BGH VI ZR 14107; Vi ZR 51199; VI ZR 276/99; VI ZR 298/03; BVer/GE 82. 272, 284; 93. 266, 294; BVeriG. NJW 1991, 95,96; 1991,1475.1477: 1993, 1462; 2003, 3760; 2004,590,591; 2013, 3021; Az: 1 BvR 444113).

Whether the characterization of the plaintiff in the argument in question can already be judged as slander, or if another sufficient fact of the statement is given can be left aside, because the personal rights of the plaintiff of articles 1, 2 GG outweigh the right of freedom of expression of article 5 GG of the defendant. Also, as far as a statement of opinion does not represent a slander, the weighing up of the balance of the affected basic rights can lead to injury of personal rights (compare the chamber decision of the German Constitutional Court on May 24, 2006 – 1BvR 55/00, 1BvR 2031/00 -, Rz. 43, juris).

In the judgment on the application for an injunction, it is therefore offered to dispense with weighing up the balance between the right of the plaintiff to defend his character from article 1 paragraph 1, article 2 paragraph 1 GG and the right of the defendant to express her opinion anchored in article 5 paragraph 1 GG. This is because the uniqueness of personal rights as a framework right means its reach is not absolutely defined, but must be determined by weighing up the conflicting interests protected by basic rights, in which the particular circumstances of the individual case and the affected basic rights are to be taken into consideration led by interpretation (BGH verdicts of December 09, 2003 - – VI ZR 373/02, VersR 2004, 522, 523 mwN; of April 20, 201(1- VI ZR 245108, NJN 2010,2728 Rn, 12). Encroachment on personal rights is only then unlawful when the interest of protection of the affected party outweighs the protection-worthy interests of the other party (BGH verdict of February 09, 2010 - VI ZR 243108. VersR 2010,673 Rn. 14 – Online archive 11: of April 20 2010 – VI ZR 245108).

4. The term "fervent anti-Semite" is an insult in the sense of § 185 StGB and a term that

is well suited to injuring the personal rights of the plaintiff in a substantial and far-reaching way. It must also be taken into consideration that against the background of the crimes of the Nazi dictatorship and the Holocaust, the term "fervent anti-Semite" is especially suited to denigrate the person so named, and to impugn his reputation. This is because this term expresses that the person shares the convictions that led to the murder of 6 million Jews under the National-Socialist reign of terror, attacking the people only for their religious affiliation and blaming them for the evils of the world.
In the weighing up of the balance of the personal rights of the plaintiff and the freedom of expression of the defendant, it must therefore be considered whether the defendant possesses enough supporting evidence and verifiable facts to demonstrate a fervently anti-Semitic conviction or position of the plaintiff, in the sense delineated in clause 2.

5. The statements and acts of the plaintiff presented and invoked here by the defendant do not offer the court sufficient supporting evidence to judge that the plaintiff is a "fervent anti-Semite".

5.1 In as far as the defendant refers to the joint appearances of the plaintiff with those also named in the interview, Lars Maerholz and Ken Jebsen, these are not sufficient, regardless of whether or not there has really been a joint appearance involving all three, to conclude a that the plaintiff has a passionately anti-Semitic viewpoint.

It is correct that the caricature that Lars Maerholz temporarily posted on his Internet page can be judged to be anti-Semitic. The same is true of the questions quoted by the defendant that Ken Jebsen posed to Henryk M. Broder or the German Chancellor. To conclude from this that the plaintiff has corresponding convictions would only then be justified if he had stated that he shares these convictions or at least that he agreed with the publication of the caricature or agreed with the questions quoted above. This conclusion can however not be drawn from joint appearances, especially as the defendant only names the plaintiff as a fervent anti-Semite, and does not include the other two in this term. With this, the defendant also makes clear that she differentiates between the people she names.

5.2 The long-lasting cooperation with the co-publisher of the magazine "Compact", Andreas Rieger, also does not provide sufficient evidence for the statement in question.

Rieger's statement invoked by the defendant comes from the year 1993, which is 21 years ago. The defendant has not denied the fact that Rieger has distanced himself from the statement several times and that the magazine he publishes argues for a settlement with Israel and distances itself from radical Islam. Therefore the cooperation with Rieger cannot lead to the conclusion today that the plaintiff is a fervent, and therefore passionate, anti-Semite.

5.3 The statement that the defendant quotes from April 24, 2014, made after the interview in question with the defendant, also does not provide sufficient basis on which to judge the plaintiff as a fervent anti-Semite.

In the quoted statement, the plaintiff is talking about his view of the international financial oligarchy, naming as members of this, alongside the English and Saudi monarchies and Rockefeller, the names Rothschild, Cholokowski and Soros, with

whom he meant Jewish bankers, entrepreneurs or investors. Neither the term "interest noose" used by the plaintiff nor his statement that "this tiny little slice of the money-aristocracy uses the Federal Reserve to plunge the world into chaos" refers exclusively or only mainly to Jews, which could justify judging the statement as anti-Semitic. The question the plaintiff binds to this, why this statement should be anti-Semitic, is, according to his (undenied) claim, a reaction to the accusation made by the defendant. It cannot be taken from this statement that the Jews control the "financial oligarchy" and therefore the accusation that the Jews are responsible for the interest noose that the plaintiff denounces. This is because the plaintiff speaks of and blames Christians and Muslims in the same way, despising them all for being godless and worshiping only Mammon. Therefore, the denigration due to Judaism or Jewish background that is vital for anti-Semitism cannot be taken from this statement, regardless of whether or not one shares the plaintiff's conviction.

5.4 The same holds for the statements made by the plaintiff on June 28, 2013 on the goals of the EU and the threat the EU poses and the involvement of the bank Goldman Sachs.
As far as the plaintiff flags up the role of the bank in lining the public debt through Greece and refers to the fact that Mario Draghi and Klaus Regling (managing director of the Euro rescue package) worked for Goldman Sachs, the defendant does not call this into question for Mario Draghi and the behavior of the bank in Greece. The conclusions that the plaintiff draws, that this puts "the most important institutions for the destruction of continental Europe in the hands of Goldman Sachs" and that because of the guarantees given for rescuing Greece, "as much as possible of the German savings – around 400 trillion euros – will be transferred. And of course it will not land in the hands of the Greeks, but of Goldman Sachs" can, because of the background that Goldman Sachs is a bank with a Jewish tradition, be taken as anti-Semitic. In any case, this conclusion is neither forced nor unambiguous and can just as easily be taken as a criticism of the conduct of the bank, without reference to its Jewish tradition, especially because the plaintiff continues that the bank is exploiting the European people in the same way as the Habsburgs did, and therefore explicitly does not create a reference to the Jewish background of the bank.

A criticism such as this must be possible, whether or not it is correct, and it is not a sufficient fact for naming the critic as a fervent and therefore passionate anti-Semite.

5.5 The trips that the plaintiff has taken to Iran and his meeting with the then-President Ahmadinejad as part of a group is not sufficient evidence to claim that the plaintiff is a fervent anti-Semite. One meeting with the Iranian president, in spite of his Holocaust denial, is not enough to draw a conclusion of a passionate anti-Semitic orientation of the plaintiff, especially as he met with other politicians, including Jewish members of parliament, on the same trip.

5.6 In as much as the defendant makes reference to the fact that the plaintiff defends the movie "The Valley of the Wolves" from accusations of anti-Semitism, one does not have to share the view of the plaintiff, but this is not sufficient evidence for the claim that the plaintiff is a fervent anti-Semite. It must be possible to represent different views on the question of whether a movie (or a scene in a movie) is anti-Semitic without the one who finds that the film is not anti-Semitic being open to the charge of anti-Semitism, because otherwise freedom of expression would be severely compromised.

The movie criticism of the plaintiff therefore offers no sufficient evidence that the plaintiff is of fervently anti-Semitic persuasion.

5.7 Even when taken altogether, the statements and behaviors presented by the defendant do not provide sufficient evidence to lead to the conclusion that the plaintiff is a fervent anti-Semite. Joint appearances with Ken Jebsen and/or Lars Maerholz and the quoted statements of the plaintiff and even the meeting with the former President of Iran Ahmadinejad do not convey the impression of a person who sets himself passionately in word and deed against Jewish people and/or their property or indeed Jewish community institutions, religious organizations or the state of Israel as a Jewish collective. The quoted statements of the plaintiff on his blog must also be taken into consideration, where the plaintiff expressly sets himself against anti-Semitic behavior or anti-Semitic statements (appendices K 7 to K 10). In as much as the defendant in the document from 10 June, 2014 contrary to her declaration in the meeting for the oral proceedings now presents a joint appearance of the plaintiff with Lars Maerholz and Ken Jebsen, this changes nothing in terms of the resolved judgment.

The new fact in this document on the July 26, 2014 appearance of the plaintiff at an "Anti-Censorship Conference" was not made available to the defendant, which also applies to the fact of the plaintiff's participation at the conference "Let the earth live" in Moscow in 2009 and his contribution "Break the dictatorship of the politically correct" ("Brecht die Diktatur der politisch Korrekten"). It was only possible for the defendant to reply to new facts in the response, not to add more over and above this. The presentation of facts is not about replies in the response, rather it is about new facts, which therefore could not be considered. A further entry in the oral proceedings according to § 156 ZPO was therefore not arranged, particularly because there are no grounds for this according to § 156 II ZPO. This also applies to the documents subsequently added to the file by the plaintiff.

6. In the balance of the personal rights of the plaintiff from articles 1, 2 GG and the freedom of expression of the defendant in the conflict of political opinions from article 5 GG, the personal rights of the plaintiff win out. Hereby, the significant injury to this right caused by calling the plaintiff a fervent anti-Semite on the one hand must be weighed against the right of the defendant to attack and argue in a sharp, pointed and polemical way about the plaintiff's stated views and his appearances in connection with the Monday Demonstrations which she criticizes. In this balance, it must be noted that the plaintiff, in his statements and behavior, as far as they have been presented by the parties and were eligible for consideration, do not provide sufficient evidence for such a label.

Against this background, the right of the defendant from article 5 GG must take second place to the personal rights of the plaintiff. The political battle of opinions and the conflict over the Monday Demonstrations do not justify injury to the personal rights of the plaintiff in this way without sufficient evidence, so the defamation is not justified. With this, the defendant is not unreasonably restricted in terms of her freedom of speech, because she can continue to make and spread her arguments against the Monday demonstrations and her reservations about the plaintiff without this massive injury to his personal rights.

The plaintiff therefore has a claim to an injunction against this statement.

7. Because the plaintiff's claim to an injunction underlying this caution has been granted, the plaintiff has a claim to reimbursement of the incurred costs against the defendant from § 823 I BGB at the established level of EUR 1,029.35 (1.3 fee at the same time a lump sum number 7002 VV RVG of a value of a claim of EUR 15,000.-).

8. Over and above this, the plaintiff is entitled to exemption from legal fees for requesting a concluding statement after the imposition of the temporary injunction.

   The reason for the entitlement is founded in the principles of operating a business without claim according to §§ 677, 683, 670 BGB (BGH, verdict from February 04, 2010 – I ZR 30/08 – juris, Rn. 26; st. Rspr.). The request for a concluding statement does not belong to the initial summary proceedings in terms of the attorney fees, rather it is part of the main proceeding. The concluding statement is therefore to be seen as a new matter that is to be independently honored I.S. § 17 No 4 lit. b RVG (BGH, a.a.O., Rn 27). If the attorney, after obtaining a preliminary injunction, demands on behalf of his client that the opponent recognize the injunction as a binding ruling and to waive the rights from §§ 924, 926, 927 ZPO, then the attorney wants his client to no longer require legal protection ("klaglosstellung"), and therefore to achieve a goal that can only be determined by the main trial.

   At the moment of the concluding statement, the temporary injunction was in place, the cease and desist order was also given for this case, so that the plaintiff can claim exemption from the legal fees incurred up to the relevant amount.

The cost is based on § 91 ZPO. The verdict on the provisional enforceability is based on § 709 ZPO. The amount under dispute was fixed at EUR 15,000.- in accordance with the interests of the plaintiff according to § 3 ZPO. Added to this is the request for exemption at EUR EUR 642.60.

Instruction on right to appeal

An appeal can be lodged against this decision. The appeal is allowed only if the value of the complaint exceeds EUR 600 or the court of first instance has allowed the appeal in the verdict.

The appeal must be made within a statutory period of one month at the

Higher Regional Court of Munich
Prielmayerstr.5
80335 Munich.

The period begins with the delivery of the full decision not later than the expiration of five months from the date of the decision.

The appeal must be lodged in writing by a lawyer. The notice of appeal must include the name of the contested verdict and include the declaration that an appeal will be filed.

The appeal must be justified within two months in writing by an attorney. This period also begins with the delivery of the full decision.

A complaint may be filed against the decision by which the sum has been fixed only if the value of the complaint article exceeds 200 euros, or if the court has permitted the complaint.
The complaint must be made within six months at the

Landgericht München I
Prielmayerstraße 7
80335 Munich.

The period begins with the onset of the enforcement of the verdict on the main part or other parts of the proceedings. If the amount in dispute was fixed later than one month before the expiry of the period of six months, the complaint may be lodged within one month of service or informal notification of the decision. In the case of informal notification, the decision is considered to have been made known the third day after it is posted.

The appeal must be filed in writing or by declaration to the records of the office of that court. It may also be declared to the records of the office of any District Court; the deadline is only observed if the protocol is received in good time by the court named above. A lawyer's participation is not mandatory.

Signed

Gröncke-Müller
Presiding Judge of the District Court

Announced on 10 December, 2014

Signed
Aycan, JAng
Clerk of the office