

Berlin Regional Court

Ref.: 27 O 298/22

On Behalf of the People Judgement

In the legal dispute

Prof. Dr. Walter Homolka, —————, ————— Berlin, Germany

- Plaintiff -

Legal representatives:

Attorneys **Behm, Becker, Geßner**,

Unter den Linden 12, 10117 Berlin, Gz.: 40150/22

against

1) **Axel Springer SE**,

represented by the Executive Board, Axel-Springer-Straße 65, 10969 Berlin

2) **Alan Posener**,

William-H.-Tunner-Straße 2, 14167 Berlin

- defendant -

Legal representatives:

Attorneys **Rosenberger & Koch**, Reinhardtstraße 17, 10117 Berlin, Gz.: 134/22 TA 12

the Berlin Regional Court - Civil Chamber 27 - by Dr. Wimmer-Soest, Judge at the Regional Court, Dr. Eissing, Judge at the Regional Court, and Ms. Riesenhuber, Judge at the Regional Court, on the basis of the oral hearing on May 4, 2023, has decreed the following:

1. The defendant is prohibited, for each violation, under penalty of a fine of up to 250,000.00 €, or imprisonment for up to six months [p. 2], of the defendant 1) to be executed by their executive board, from literally or analogously disseminating and/or making publicly accessible the following statements with respect to the plaintiff and/or permitting them to be disseminated and/or made publicly accessible:

a) "A rabbi who studied at the AGK told WELT that he knew at least two students who had sex with Bomhoff and Homolka, two who were sexually harassed, and at least six others who were sexually propositioned." (as underlined),

b) "One of the students reportedly told him that Bomhoff was supposed to find students with whom he and Homolka could have sex."

should this occur, as in an article by the defendant, from 06.05.2022, with the headline "The Homolka Method", available at the URL

<https://www.welt.de/kultur/plus238562571/Missbrauchsskandal-am-Potsdamer-Geiger-Kolleg-Die-Methode-Homolka.html>

2. the defendant of 1) is furthermore forbidden, upon avoidance of a fine of up to 250,000.00 € for each infringement, or imprisonment of up to six months, of the defendant, to be executed by its executive board, to disseminate and/or make publicly accessible and/or have disseminated and/or have made publicly accessible, verbatim or in spirit, the following statement with regard to the plaintiff:

"21 students demanded in an open letter that the entire leadership team be replaced.",

should this occur as in an article by the defendant to 1), from 02.06.2022, with the headline "Sex Scandal at the Rabbinical Seminary in Potsdam", available at the URL

<https://www.bild.de/regional/berlin/berlin-aktuell/mitarbeiter-schickte-porno-video-sex-skan-dal-am-rabbiner-seminar-80276746.bild.html>.

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3. In all other respects, the suit is dismissed.
4. Of the extrajudicial costs of the first defendant, the plaintiff shall bear 93.5% and the first defendant 6.5%. Of the extrajudicial costs of the 2nd defendant, the plaintiff shall bear 91% and the 2nd defendant 9%. Of the court costs and the extrajudicial costs of the plaintiff, the plaintiff shall bear 92.5 %, the defendant to 1) 4 % and the defendant to 2) 3.5 %.
5. The judgment is provisionally enforceable, with respect to number 1 against security in the amount of €10,500.00, with respect to number 2 against security in the amount of €1,000.00 and otherwise against security in the amount of 110% of the respective amount to be enforced.

Facts of the Case

The plaintiff was rector of the Abraham Geiger College (AGK), an affiliated institute of the University of Potsdam, which is concerned with the training of rabbis and cantors. He is partnered with Hartmut Bomhoff, who was then a research associate at the institute. In July 2019, Hartmut Bomhoff sent student ● a video showing a male erect member being manipulated. To this he wrote "As long as you don't complain about my size..." (Bl. 41 Vol. II). The student reported Hartmut Bomhoff in 2020; the preliminary proceedings were closed. The AGK established a committee consisting of Chancellor Dr. Anne Brenker and faculty members Isidoro Abramowicz and Jona Simon. The student declined the offer of mediation with Hartmut Bomhoff. It was agreed that the committee would meet again at the student's request, but this did not occur; no further

action was taken. In December 2021, the student reported the incident to Prof. Dr. Jonathan Schorsch of the School of Jewish Theology at the University of Potsdam, who addressed it at an Institute Council meeting. Thereupon, the Chairman of the Permanent Study Commission for the Jewish Spiritual Ministry, Prof. Dr. Andreas Nachama, presented the facts of the case to Prof. Dr. Schorsch in a letter dated January 10, 2022 (Attachment K 4). Prof. Dr. Schorsch complained about the plaintiff to the University of Potsdam on January 11, 2022 (Annex K 29). In March 2022, an investigative [p. 4] commission was established at the University of Potsdam, which submitted a report on 27.09.2022 (Annex K 32). In the course of the investigation, it emerged, among other things, that Hartmut Bomhoff had already sent a photo of a male genital to the student [REDACTED] in 2016 (sheet 38 vol. II). On May 19, 2022, the Central Council of Jews in Germany commissioned a law firm to investigate the events, specifically with regard to sexual harassment and violence, other abuses of power and discrimination by the plaintiff or Hartmut Bomhoff against students and members of institutions in which the plaintiff had held top positions. On November 28, 2022, the law firm submitted a preliminary assessment ("Executive Summary") (Appendix B 1).

Defendant 1 is responsible for the website welt.de. There, defendant 2 published an article with the headline "The Homolka Method" on May 6, 2022 (Exhibit K 1), an article with the headline "The Questionable Line of Defense of Walter Homolka" on May 16, 2022 (Exhibit K 40), on May 30, 2022, an article with the headline "The Explosive Background of the Homolka system" (Exhibit K 41), on July 7, 2022 an article with the headline "Sole Organ of the Foundation` - Tenure in Office 'Indefinite'" (Exhibit K 53) and on 04.24.2023 an article with the headline "The Division of Liberal Judaism as an Opportunity" (Exhibit K 71).

On Feb. 28, 2022, and May 25, 2022, the second defendant had invited Hartmut Bomhoff and the plaintiff to comment (Exhibits K 5, K 47). The plaintiff commented on 01.03.2022 and 26.05.2022 (Exhibits K 12, K 48) and issued a warning to the defendants on 13.05.2022 (Annex K 14, 15) and 25.07.2022 (Annex K 48a, K 48b) through his legal representative.

In addition, an article with the headline "Why the Growing Number of Converts is a Problem for Judaism" (Exhibit K 53a) and an article with the headline "'Unacceptable Measure' - Cantor Takes Action Against Dismissal" (Annex K 53c) appeared on the website welt.de on August 9, 2022.

The first defendant is also responsible for the website bild.de. On Feb 6, 2022 an article appeared there with the headline "Sex scandal at the rabbinical seminary in Potsdam" (Annex K 49).

All articles essentially deal with the disputes at the AGK in connection with the fact that Hartmut Bomhoff allegedly sexually harassed a student of the AGK in 2019 by sending him a [sexually explicit] video. An appropriate handling of the matter was alleged to have been prevented because those entrusted with handling the matter were alleged to be dependent on the plaintiff and therefore not impartial. It was claimed, furthermore, that the plaintiff abused his power and [p. 5] intimidated and manipulated others. He is well-connected in politics, sits on influential committees, and holds numerous offices, and is therefore able to "make and ruin careers." For further details of the report, reference is made to the articles.

The plaintiff and the Foundation for Liberal Judaism in Hanover complained to the German Press Council. The complaint was dismissed by the complaint committee on 23.03.2023 on the grounds that the complaint was unfounded with respect to four statements, and that the unsolicited sending of a video showing a masturbating man may be considered sexual harassment. As for the allegations of intimidation, threats of professional destruction, and sexual advances, the facts could not be clarified. For further details, reference is made to the exhibit submitted without designation.

The plaintiff asserts: The disputed statements are false. There was no misconduct on his part. The allegations are based on standard procedures inside the university.

The matter concerned personal misconduct by Hartmut Bomhoff. The video sent did not show him manipulating his own penis, but rather depicted the actions of an unknown man. Moreover, Hartmut Bomhoff had sent the video accidentally and subsequently apologized to IC. He – the plaintiff – had demonstrably and correctly fulfilled his duty to provide prompt investigation and punishment. He immediately declared himself biased and transferred the procedure to the chancellor.

Additionally, he and Hartmut Bomhoff had not had sex with any student, sexually harassed two students, or made sexual advances to six other students. Hartmut Bomhoff was not tasked with finding students with whom they could have sex. There had been no invitation to a hotel or to sauna evenings. He had no knowledge of conversations between Hartmut Bomhoff and students. The conversation with NZ had taken place long before the latter's application to the AGK. He – the plaintiff – had not harassed, intimidated, mistreated anyone, or threatened to end careers or professional harm. He could not distribute positions at will. The AGK, the University of Potsdam, and the Union of Progressive Jews had confirmed that there had been no misconduct and no abuse of power on his part (Exh. K 29, K 32, K 33).

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The plaintiff denies that Defendants spoke with "people familiar with the problem" or AGK faculty or students prior to publication and that the latter had reported an abuse of power. The plaintiff also disputes the statements of the witnesses named by Defendants. One witness, Akiva Weingarten, is a liar who was expelled from the AGK in 2018 for slander and pornography and is seeking revenge.

The defendants should have given him the opportunity to comment before publishing reputation-damaging statements, which they had not done regarding the accusation of sexual abuse.

He is entitled to monetary compensation in the amount of €50,000.00. The reporting was a personal campaign containing inadmissible, abusive criticism, and composed in a

sensational tabloid style. A single [act of] misconduct by a former employee of the AGK was exploited. He has been portrayed by the defendants as a liar and a greedy actor who is concerned only with power and money, and as a central figure in a sexualized educational environment who does not shy away either from sexual harassment and abuse, or the cover-up and concealment of them. His conversion to Judaism and his ordination as a rabbi were put into question. His privacy was invaded. The defendants used homophobic and anti-Semitic clichés and employed untruths and falsified documents. Defendant 2) has also spread untrue claims about him - the plaintiff - elsewhere intended to disparage and harm him. These are polemic, intellectually lowbrow and disrespectful attacks for the defendant to 2) to gain attention through disparagement and targeted denigration and damage to the plaintiff. The defendants had already engaged in such methods in the past and indulged their "digital hatred". The repeated violations of this kind constitute a chain of violations.

The plaintiff requests,

1. that the defendants be prohibited, upon avoidance of a fine of up to EUR 250,000 for each case of violation, or, alternatively, imprisonment of up to six months, from disseminating and/or making publicly accessible and/or permitting to be disseminated and/or to be made publicly accessible the following statements relating to the plaintiff:

a) Homolka is to threaten opponents with professional "destruction".

[p. 7]

b) as underlined: A rabbi who studied at the AGK told WELT that he knew at least two students who had sex with Bomhoff and Homolka, two who were sexually harassed, and at least six others who were sexually propositioned.

c) One of the students reportedly told him that Bomhoff was to find students with whom he and Homolka could have sex.

d) At the end of the proceedings, mediation was offered as if it were a personal dispute and not a structural problem of abuse of power.

e) Because that is what it is about, according to all those familiar with the problem and with whom WELT has spoken.

f) This, say all those with whom we have spoken, is the Homolka method: one hand washes the other.

g) He is concerned solely with money and power.

if this occurs as in a contribution of the defendant of 06.05.2022 with the title "The method Homolka", which can be found at the URL <https://www.welt.de/kultur/plus238562571/Missbrauchsskandal-am-Potsdamer-Geiger-Kolleg-The-Method-Homolka.html>,

h) they often recounted to me further examples of the abuse of power of the man

i) In doing so my article described "the Homolka system," a web of material dependency and moral intimidation that led Bomhoff - and, according to credible reports also available to the commission, Homolka - to believe they could behave improperly toward students with impunity.

j) It is always also a matter of abuse of power.

if this occurs as in a contribution of the defendant from 16.05.2022 with the title "The Questionable Line of Defense of Walter Homolka",

[p. 8]

available at the URL

<https://www.welt.de/debatte/kommentare/plus238782393/Nach-Missbrauchsvorwuerfen-Walter-Homolkas-Strategie-ist-fragwuerdig.html?icid=search.product.onsitesearch>

k) Invitations to hotels and sauna evenings: following reporting by WELT about sexual harassment at the Potsdam Rabbinical School, more and more victims are coming forward.

l) According to another student, it was "common knowledge" at the AGK that Homolka's husband also invited Homolka and others to a Berlin hotel for joint sauna evenings.

m) Homolka had "abused (and continues to abuse) his position by bullying, intimidating, and mistreated others"

n) This man, who is hardly morally qualified to train young rabbis was not only allowed to increase his teaching hours at the AGK to make up for lost earnings but was put in charge of the internal commission to investigate allegations of sexual harassment against Homolka's partner.

o) Homolka's project has now been exposed as a Potemkin village.

if this occurs as in a contribution of the defendant from 30.05.2022, with the title "The Explosive Background of the Homolka system",

available at the URL

<https://www.welt.de/kultur/plus239018441/Walter-Homolka-So-wurde-sein-System-ermoeg-licht.html?icid=search.product.onsitesearch>

p) After the abuse scandal at the Abraham Geiger College, founder Walter Homolka resigned from all his offices.

q) But the sexualization of education was, as WELT has always emphasized, only the most repulsive side of a system of power, which in Jewish circles is called the "Potsdam Empire" and at whose center Walter Homolka stood. And stands.

r) The abuses of power of the former management, especially its subtle as well as sometimes direct intimidation and instrumentalization of employees and [p. 9] students must not (...) continue

if this occurs as in a contribution of the defendant from 07.07.2022 with the heading " Sole Organ of the Foundation`- Tenure in Office 'Indefinite',

available at the URL

<https://www.welt.de/kultur/plus239778989/Walter-Homolka-Einziges-Organ-der-Stiftung-Amtszeit-unbefristet.html?icid=search.product.onsitesearch>

s) The article was prompted by reports of alleged sexual harassment of students at the training seminar for male and female Reform rabbis in Potsdam, which was led at the time by Homolka.

if this occurs as in a contribution of the defendant of 24.04.2023 with the heading " The Division of Liberal Judaism as an Opportunity",

available at the URL

<https://www.welt.de/debatte/kommentare/article244957840/Die-Post-Homolka-Aera-Die-Spaltung-des-liberalen-Judentums-als-Chance.html?cid=socialmedia.email.sharebutton>

2. that the defendants be prohibited, upon avoidance of a fine of up to EUR 250,000 for each case of violation, or, alternatively, imprisonment of up to six months, from disseminating and/or making publicly accessible and/or allowing to be disseminated and/or allowing to be made publicly accessible the following statements relating to the plaintiff:

a) A scandal concerning sexual harassment and abuse of power shakes Germany's only training center for liberal rabbis.

b) Suspicion of abuse of power

c) Students and staff accuse Homolka of abusing his power to protect his husband.

d) 21 students demanded in an open letter that the entire leadership be expelled.

if this occurs as in a post by defendant to 1) of 02.06.2022 with the headline "Sex Scandal at the Rabbinical Seminary in Potsdam",

[p. 10]

available at the URL

<https://www.bild.de/regional/berlin/berlin-aktuell/mitarbeiter-schickte-porno-video-sex-skandal-am-rabbiner-seminar-80276746.bild.html>

e) Whether Walter Homolka's conversion to Judaism and his appointment as rabbi took place lawfully shall be objectively negotiated elsewhere.

if this occurs as in a contribution of the defendant of 09.08.2022 with the headline "Why the Growing Number of Converts is a Problem for Judaism",

available at the URL

<https://www.welt.de/debatte/kommentare/plus240364053/Avital-Gerstetter-Konversionen-koennen-problem-for-Judaism-becoming.html?icid=search.product.onsitesearch>

f) Walter Homolka, longtime director of rabbinical training in Potsdam and himself a convert, recently came under criticism for abusing his power and covering up sexual assaults.

if this occurs as in a contribution of the defendant of 25.08.2022 with the heading "'Unacceptable Measure' - Cantor Takes Action Against Dismissal ",

available at URL

<https://www.welt.de/debatte/kommentare/plus240364053/Avital-Gerstetter-Konversionen-koennen-problem-fuers-Judentum-werden.html?icid=search.product.onsitesearch>

3. order the defendants jointly and severally to pay the plaintiff monetary compensation, the amount of which is left to the discretion of the court, but which shall not be less than €50,000.00.

4. order the defendants jointly and severally to pay the plaintiff pre-litigation legal costs in the amount of €2,002.41 plus interest in the amount of five percentage points above the prime rate since the date of the lis pendens.

The defendants request of the court

that the suit be dismissed.

[p. 11]

The defendants assert:

The factual allegations they [i.e. the defendants] made are all true. All statements concerned the social sphere of the plaintiff. They - the defendants - acted in fulfillment of their public duty to inform, and they engaged in standard due diligence. The investigation conducted by the lawyers commissioned by the Central Council of Jews revealed that the plaintiff is to be blamed for numerous instances of misconduct, which had both personal and structural causes. The existing regulations to prevent misconduct had been largely ineffective. A sexualized atmosphere had been created and sexual assaults by Hartmut Bomhoff and by the plaintiff had been tolerated and concealed. There had been sauna evenings at the Hotel Kempinski, as confirmed by numerous employees and students. The students had had the opportunity to use the fitness area, and sexualized encounters had occurred. The plaintiff and Hartmut Bomhoff had had sex with at least two students. The plaintiff made lewd remarks to students and, like Hartmut Bomhoff, had approached students in an inappropriate manner. The fact that NZ did not complain earlier about Hartmut Bomhoff sending him the photo was because he was afraid. After Prof. Dr. Schorsch had addressed the incident at the Institute Council meeting, the plaintiff left the meeting early and warned Hartmut Bomhoff. The members of the commission appointed by the AGK, Isidoro Abramowicz and Jona Simon, had been completely dependent on the plaintiff, and the chancellor had been very close with him and always kept him informed. The board ought to have been informed. The suggestion of mediation had been rightly rejected by IC as inappropriate. During the entire period of the investigation, Hartmut Bomhoff continued to teach.

The idea that Hartmut Bomhoff sent the video by mistake has been disputed. Both the plaintiff and Hartmut Bomhoff confirmed that Hartmut Bomhoff's penis could be seen.

The plaintiff's conversion to Judaism and his ordination as a rabbi were controversial in the traditional and Conservative Jewish community. The Rabbinical Conference had already unanimously determined in 1998 that the plaintiff was neither a Jew nor a rabbi. The plaintiff had threatened various persons who had made critical comments about him.

There was no serious violation of the right of personality.

For further details of the facts of the case and the dispute, reference is made to the exchanged written statements and exhibits and to the minutes of the meeting of May 4, 2023.

[p. 12]

Grounds for the Ruling

The admissible lawsuit is justified only to the extent evident from the judgment, and is otherwise unfounded. The plaintiff only has a right to prevent the publication and dissemination of the text under consideration based on § 823 paragraph 1, § 1004 paragraph 1 sentence 2 BGB, as only in this respect is his general personality right from Art. 1 paragraph 1, Art. 2 paragraph 1 GG, Art. 8 paragraph 1 ECHR violated.

Furthermore, the impairment of his personality rights caused by the reporting is not unlawful, as the balancing required with the defendants' right to freedom of opinion and media anchored in Art. 5 paragraph 1 GG and Art. 10 ECHR comes at the expense of the plaintiff. The plaintiff has no claim for payment of compensation.

I. The plaintiff has a right that the statement: "A rabbi who studied at AGK told WELT that he knows at least two students who had sex with Bomhoff and Homolka, two who were sexually harassed and at least six more who were made sexual proposals" be withheld (claim to 1b), insofar as it is claimed that the plaintiff had sex with two students and sexual proposals were made to at least six other students.

These are defamatory factual claims, the truth of which is not proven. The fact that third-party statements are reproduced does not change this. Because the defendant to 2) does not distance himself from the contents, but on the contrary incorporates them into his thought process in order to highlight his own statements. This makes the statements his own (cf. BVerfG, affirmative chamber decision of November 9, 2022 - 1 BvR 523/21 -, no. 18, juris; BVerfG, non-admission decision of September 30, 2003 - 1 BvR 865/00 -, no. 13, juris; BGH, judgment of December 17, 2013 - VI ZR 211/12 -, no. 19, juris;

BGH, judgment of November 17, 2009 - VI ZR 226/08 -, no. 11, juris). According to the evidence rule of § 186 StGB transformed into tort law via § 823 paragraph 2 BGB, the defendants bear the burden of proof for the truth of the assertions (BGH, judgment of April 27, 2021 - VI ZR 166/19 -, no. 20, juris; BGH, judgment of December 11, 2012 - VI ZR 314/10 -, no. 15, juris). The defendants have neither specifically stated which students were concerned, nor have they presented evidence. It can be assumed to be true that Rabbi Akiva Weingarten told the defendant to 2) that he knew students who had told him they had had sex with [p. 13] the plaintiff or Hartmut Bomhoff or had received sexual requests from them. However, this does not prove that this was in fact the case; it was therefore not necessary to examine Akiva Weingarten as a witness. The records only record three cases of proposals from Hartmut Bomhoff with sexual content, namely to an unknown student ("I booked a double room outside the seminar hotel. If you have the desire & time and possibly a work assignment: go ahead. Ingo Way can confirm to you that I am easy to get along with when it comes to sharing rooms and beds and time.", p. 19 vol. II), Dan Rattan ("Are you a sauna type - I am looking for encouragement for collective nudity", p. 18 vol. II) and NZ ("I am at the EAJS conference and have an apartment. So if you want to share the bed with me (or the beds, depending on the situation there): go ahead", p. 32 vol. II), however DR was not a student. These are therefore not six other students. This is not an insignificant exaggeration (cf. Wenzel/Burkhardt/Peifer, *The Right of Word and Picture Reporting*, 6th ed. 2018, 5th chapter, no. 217), because it makes a difference whether sexual proposals were made to two students, at a three-year interval moreover, or to six students.

Likewise, the factual claim that Hartmut Bomhoff was supposed to identify students with whom he and the plaintiff could have sex (claim at 1c), which the defendant to 2) also adopted, has not proven to be true. The defendants have not presented evidence for this claim.

The same applies to the allegation that 21 students demanded in an open letter that the entire leadership team be replaced (claim 2d). According to the relevant context, this statement refers to the fact that the plaintiff, as the "Chief Rabbi" of the AGK, was

accused of abusing his power to protect his life partner Hartmut Bomhoff. This alleges a fact that is sufficient to make the plaintiff look contemptible, hence the 1st defendant bears the burden of proof for the truth in this respect as well. No proof has been provided. The letter dated May 31, 2022 (sheet 81 vol. II) is signed by only 13 persons.

II.

The plaintiff is not entitled to injunctive relief with respect to the other statements.

1.

The plaintiff is not personally affected by the statements attacked with [p. 14] the claims to 1k, 1l, 1s, and 2a. Instead, the reports concern Hartmut Bomhoff or unnamed third parties who were invited to sauna evenings or were alleged to have committed sexual harassment. Only the directly injured party can take action against infringements of personality rights, not those who are only indirectly burdened by the remote effects of an infringement of someone else's personality rights, so long as these effects cannot also be qualified as an infringement of their own personality rights (BGH, judgement of December 13, 2022 – VI ZR 280/21 –, no. 36, juris). This is not the case here, because it is not simultaneously stated that the plaintiff knew about the invitations by Hartmut Bomhoff or the sexual harassment, or participated in it.

The same applies to the statement that a morally unqualified rabbi was entrusted with the leadership of the commission that was to investigate allegations of sexual harassment (claim to 1n). The plaintiff is not mentioned here; moreover, it is not claimed that he himself appointed the relevant rabbi to the leadership position.

2.

The defendants cannot be prohibited from making the statements contested at 1b, that at least two students were sexually harassed, as factual claims, because they can claim the exercise of legitimate interests i. S. v. § 193 StGB. According to this, a statement whose truthfulness is not clarified, and which concerns a matter of substantial public

interest, is not illegal if due diligent research has been done concerning its truthfulness. It should be noted that the scope of the due diligence must be measured in accordance with constitutional requirements and no demands can be placed on the obligation to truthfulness that could reduce the willingness to exercise the basic right and thus restrict freedom of expression as a whole (BVerfG, Granting Chamber Decision of November 9, 2022 – 1 BvR 523/21 –, no. 17, juris; BGH, judgment of January 30, 1996 – VI ZR 386/94 –, juris, no. 31; Wenzel/ Burkhardt, *The Right of Word and Picture Reporting*, 6th ed. 2018, chap. 6, no. 34).

According to the chats available to the defendant to 2), submitted by the defense to the claim, and not disputed by the plaintiff, at least three students were sexually harassed by Hartmut Bomhoff, namely MK ("Do we talk centimeters? All I do is to be friendly with a dick all excited", p. 12 vol. II), NZ and IC. [p. 15] It is irrelevant for the fact of sexual harassment whether the genital member that was visible in the video to IC belonged to Hartmut Bomhoff or to another person, since Hartmut Bomhoff tried to create the impression at least by the statement "As long as you don't complain about my size..." that it was his own. This statement also refutes the plaintiff's claim that the video was sent accidentally. It is also irrelevant whether Hartmut Bomhoff apologized to Itamar Cohen; the statement "Well, I'm afraid I was somewhat tired and emotional the other evening. Sorry!" made two days later does not eliminate the sexual harassment committed and does not indicate that it was a mistake. The claim that two students were sexually harassed by Hartmut Bomhoff is therefore sufficiently demonstrated.

3.

Insofar as the contested statements in different formulations accuse the plaintiff of "abuse of power" (claims to 1d, 1h, 1j, 1p, 1r, 2b, 2c, and 2f), these are opinions protected by Art. 5 Para. 1 S. 1 GG, Art. 10 ECHR. While factual claims are characterized by the objective relationship between statement and reality, value judgments and opinions are characterized by the subjective relationship of the speaker to the content of his statement. The essential classification of a statement as a factual

claim is based on whether it can be checked for its correctness by means of proof. This is not possible with value judgments and opinions, because they are characterized by the element of opinion and belief and therefore cannot be proven to be true or false. If a statement in which facts and opinions are mixed is characterized by the elements of opinion, belief, or meaning, it is protected as an opinion by the basic right from Art. 5 Para. 1 S. 1 GG, Art. 10 ECHR. This is particularly the case when a separation of the evaluative and the factual contents would void or distort the sense of the statement. If in such a case the factual element is considered decisive, the constitutional protection of freedom of expression could be significantly curtailed. In case of doubt, it should be assumed in the interest of effective protection of basic rights that it is an expression of opinion (BVerfG, Granting Chamber Decision of November 9, 2022 – 1 BvR 523/21 –, no. 16, juris; BGH, judgment of January 26, 2021 – VI ZR 437/19 –, no. 22 - 24, juris; BGH, judgment of January 16, 2018 – VI ZR 498/16 –, no. 36, juris; BGH, judgment of March 11, 2008 – VI ZR 7/07 –, no. 10, juris).

The opinion that the plaintiff can be accused of "abuse of power" is also covered by sufficient factual bases in this case. Abuse of power is commonly understood [p. 16] as the dishonest and contrary use of a superior position for self-serving purposes. Such an approach by the plaintiff can be seen, on the one hand, in the report of the investigation commission of the University of Potsdam from 27.09.2022 (Exhibit K 32), which states, among other things, that many of those interviewed there had on record that the plaintiff had created a "climate of fear" that had a restrictive effect on the actions of students and employees. To avoid negative sanctions, they had to focus their attention excessively on meeting the implicit or explicit expectations of the plaintiff. The plaintiff had held a particularly large number of influential offices - outside the AGK as well - and had been involved in committee decisions that were crucial for the future life and career paths of those affected. This had rightly been perceived as threatening by those affected. In this context, fear of contradicting the plaintiff or otherwise arousing his displeasure had been depicted often and consistently. According to this, the plaintiff demanded loyalty, pressured people and threatened them with dismissal, made very short-term employment contracts, and their extension, as well as the support of

projects, made contingent on loyal behavior. Especially in light of the undisputedly prominent position of the plaintiff within liberal Judaism in Germany, such behavior can be regarded as an abuse of power. At the same time, the facts presented by the defendants and substantiated by third-party statements or existing chat histories justify the opinion that the plaintiff committed an abuse of power. Simply the fact that the plaintiff's partner could make clear sexual allusions and proposals to students and refer to the plaintiff ("Walter's insinuations", p. 22 vol. II) justifies the assumption that at least Hartmut Bomhoff exploited his life partner's position of power to impose himself on students. This is particularly evident in the chat between Hartmut Bomhoff and NZ, in which, despite the messages by the latter "I'm not really interested in pictures of genitalia [*Genhänge*]" (p. 27 vol. II), "I'm not so cock-obsessed." (p. 36 vol. II) and "I'm not much of a penis picture fan." (p. 29 vol. II), the former sent a picture of a male genital. That the plaintiff himself also made inappropriate advances to an employee of the AGK and thus a person dependent on him is also described by Hartmut Bomhoff in a chat with NZ, which reads: "But when I once thoughtlessly mentioned to Walter about Martin's [please do not quote] fat cock, Walter invited Martin for a talk and made it clear that as a lieutenant colonel, he shoots - and knows how to hit" (p. 34 vol. II). The fact that the commission which was supposed to investigate Hartmut Bomhoff's misconduct was staffed with two people who - undisputedly - depended on the income from their secondary employment at the AGK, [p. 17] also justifies the opinion that they might have been silently expected - due to the - undisputedly - significant influence of the plaintiff - to protect his partner from the unpleasant consequences of his actions and that the matter would not be made public to protect the reputation of the AGK, and thus also that of the plaintiff. This is in line with the further course of action, in which the affected student was only offered mediation between him and Hartmut Bomhoff - in the view of the court absolutely inappropriate for the situation - but no further measures were taken; and, in particular, that Hartmut Bomhoff continued to be employed, and neither the board nor any other committees were informed. Consultation by the defendants with the plaintiff was not necessary in this regard; the facts underlying the statements of opinion were established. Prof. Dr. Andreas Nachama also confirmed in his statement of 10.01.2022 that no further measures had been taken.

4.

Regarding the claims at 1a, 1e, 1f, 1g, 1i, 1o, 1q and 2e, it must be noted that, even in light of the context, the contested statements do not contain any tangible factual core. Instead, they are restricted to generally held assessments of the plaintiff's behavior, without occasioning in the reader a depiction of concrete events, and are thus protected expressions of opinion according to Art. 5 para. 1 sentence 1 of the German Basic Law (GG), Art. 10 of the European Convention on Human Rights (ECHR). The factual content of the statements remains so unsubstantial that it completely recedes behind the value judgement (cf. Federal Constitutional Court, decision of the chamber of 11 November 2021 - 1 BvR 11/20 -, margin no. 21, juris; Federal Court of Justice, judgement of 26 January 2021 - VI ZR 437/19 -, margin no. 13, juris; Federal Court of Justice, judgement of 27 September 2016 - VI ZR 250/13 -, margin no. 26, juris; Federal Court of Justice, judgement of 11 March 2008 - VI ZR 7/07 -, margin no. 27, juris).

The assertion that the plaintiff threatened "opponents with professional annihilation" (claim to 1a) also does not contain any concrete meaning according to the understanding of an unbiased and sensible audience, considering the overall context. Neither is it clear what is meant by "opponents," nor can the term "professional annihilation" be tangibly grasped. It is certainly not claimed that the plaintiff specifically threatened one or more persons inside or outside the AGK with "professional annihilation". The statement is rather speculative and does not contain any tangible information. The same applies to the statements "For this (abuse of power) is what the issue is, according to all experts on the problem who have spoken to WELT" (claim to 1e), "This, say all persons with whom we have spoken, is Homolka's method: [p. 18] one hand washes the other." (claim to 1f), "He is only interested in money and power." (claim to 1g), the "Homolka system" consists of a "network of material dependencies and moral intimidation" that made the plaintiff believe he could behave improperly towards students with impunity (claim to 1i), the plaintiff's project has been "unmasked as a Potemkin village" (claim to 1o), the "sexualization of the training" was "perhaps the most disgusting aspect of a system of power" referred to in Jewish circles as the

"Potsdam Empire" with the plaintiff at its center (claim to 1q), and "Whether Walter Homolka's conversion to Judaism and his appointment as a rabbi was lawful will be discussed objectively elsewhere." (claim to 2e). All statements have in common that they lose themselves in the undefined and contain only general and blanket evaluations under which the reader cannot imagine any specific events or circumstances. As a factual core, it can only be inferred from them that there were rumors and a vague unease about the plaintiff's position and demeanor, without specifying on what concrete facts these attitudes were based or what kind of "experts on the problem" or "personalities we have spoken to" should be.

Insofar as the statement that both Hartmut Bomhoff and the plaintiff behaved improperly towards students is a statement of opinion with a factual core, it is also covered by the perception of legitimate interests, because the chat between Hartmut Bomhoff and the student MK known to the defendant 2) contains the statement "Walter just reminded me that a notion of 16,5 implies excitement anyway" (p. 15 vol. II), which in the specific context is to be understood as a reference to the length of a male genital organ and in which improper behavior of the plaintiff towards a student is readily apparent.

5.

Contrary to the plaintiff's view, the chamber is unable to recognize any inadmissible defamation. The boundary of permissible expression of opinion is not where a polemical exaggeration is unnecessary for the expression of factual criticism or where reasons for the critical evaluation expressed are not given. Only when the focus of a statement no longer concerns the matter at hand, but the denigration of the person, does such a statement, as defamation in the constitutional sense, consistently have to take a back seat to the personality rights of the person concerned (BGH, judgment of September 28, 2022 - VIII ZR 319/20 - para. 40, juris [p. 19]; BVerfG, decision granting chamber resolution of November 9, 2022 - 1 BvR 523/21 - para. 25, juris; BVerfG, decision not to accept chamber resolution of May 19, 2020 - 1 BvR 2397/19 - para. 18, juris). The defendants' statements are all in the context of a factual dispute, namely with the inconsistencies at the AGK and between the plaintiff and the Central Council of Jews in

Germany. Therefore, defamation cannot be assumed from the outset (BVerfG, decision granting chamber resolution of February 19, 2019 - 1 BvR 1954/17 - para. 11, juris). All statements also concern the plaintiff in his social sphere. Although his sexual preferences are part of his private sphere, if he externalizes them and makes them a topic in connection with his position as rector, they become part of his professional sphere. This is not about denigrating the plaintiff; the events at the AGK are of considerable public interest, considering that Jewish life in Germany receives special attention, and the plaintiff has often appeared as a representative of German Jewry (cf. BGH, judgment of November 10, 1994 - I ZR 216/92 - para. 53, juris). A fortiori the statements are not homophobic or anti-Semitic.

III.

A claim for the payment of compensation requires a serious infringement and an impairment that cannot be satisfactorily compensated in any other way. In particular, the importance and scope of the infringement, i.e. the extent of the dissemination of the publication, the persistence and duration of the damage to the interests or reputation of the injured party, and the occasion and motive of the actor and degree of his culpability must be taken into account. In addition, the special function of compensation in the event of infringements of personality rights must be taken into account, which consists both in the satisfaction of the injured party for the infringement suffered and in the justification of the thought that the personality right would otherwise remain without sufficient protection against significant impairments. Compensation should also serve prevention. In the overall assessment required, a cease and desist order obtained must also be taken into account; the order and the enforcement possibilities associated with it can influence the compensation claim and even exclude it in case of doubt. The granting of compensation therefore depends not only on the severity of the intervention, but rather on the overall circumstances of the individual case, according to which it must be judged whether there is a lack of other satisfactory compensation for the infringement of personality rights (BGH, judgment of February 22, 2022 - VI ZR 1175/20

- para. 44, juris; BGH, judgment of April 21, 2015 - VI ZR 245/14 - para. 33, juris; BGH, judgment of November 24, 2009 - VI ZR 219/08 - para. 11). [p. 20] Therefore, the plaintiff is not entitled to compensation for the statements that at least two students had sex with the plaintiff and Hartmut Bomhoff and that at least six more were propositioned sexually, that Hartmut Bomhoff was supposed to find students with whom he and the plaintiff could have sex, and that 21 students had demanded in an open letter to replace the entire leadership. The infringement of the general personality rights of the plaintiff is not so serious that it can only be satisfactorily compensated by the payment of damages. The plaintiff is not the only one affected by the allegations, as they are also directed against Hartmut Bomhoff, without it being clear who is actually meant. The defendants' culpability is not serious; given the overall circumstances, particularly the chat messages from Hartmut Bomhoff to various people, it was not far-fetched that there was indeed sexual solicitation or sex between Hartmut Bomhoff and the plaintiff with students. A homophobic attitude of the defendants is not apparent. Likewise, there is no evidence that the defendants intended to disparage and harm the plaintiff without cause.

IV. The plaintiff has made no submissions whatsoever about the attorney's fees incurred prior to the court proceedings, in particular through the letters dated May 13, 2022 (Anl. K 14, K 15).

V. The ancillary decisions on procedure are based on Sections 92 (1) sentence 1, 100 (2), 709 ZPO (German Code of Civil Procedure).

Dr. Wimmer-Soest

Dr. Eissing

Riesenhuber

Judge

Judge

Judge

at the Regional Court

at the Regional Court

at the Regional Court

Delivered on 01.06.2023

Lefild, JBesch

as clerk of the court registry

27 O 298/22

[p. 21]

For the correctness of the transcript Berlin, 02.06.2023

Lefild, JBesch

Clerk of the Court