

TRANSLATION.

No. 2 U 321/35.

In the Name of the Federal State of Austria!

Concerning the charge brought by the Public Prosecutor ././ as private plaintiff against László Benes, born in Sopron on February 22, 1903, and there domiciled, Protestant, married, address Vienna VIII, Albertgasse 21, on the grounds of disseminating false and disturbing rumors or predictions, the District Criminal Court, Vienna I, on conclusion of the proceedings held on October 19, 1935, in the presence of the Public Prosecutor, Dr. Eipelbauer, of the defendant, László Benes, and of the attorney for the defense, Dr. Friedrich Schoen, rendered the following judgment on October 19, 1935:

By virtue of the fact that on October 8, 1935, he communicated to four or five correspondents of foreign newspapers in Vienna the following story:

"A search had been carried out in the Heimatschutz barracks in the Teinfaltstrasse, in the course of which it had been ascertained that twenty machine-guns had been sold to National Socialists and Communists. Sixty Heimatschutz men had been arrested in this connection. The Government had decided to increase the Federal Army by 40,000 men and to cover the costs by decreasing the Vienna Schutzcorps by 1000 men, by depriving the employees of the Post and Telegraph Administration of their pay increases, and by taking 40 million schillings in each case from the Winter Aid Fund and the Children's Aid Fund",

the accused is guilty of having disseminated, through the act of publication, a false rumor, disturbing to public security, without having adequate grounds for considering it to be true.

He hereby violated Paragraph 308 of the Criminal Code, concerning the dissemination of false and disturbing rumors and is condemned on this charge, in accordance with Paragraph 226 of the Criminal Code, to punishment by rigorous confinement for the period of five days, and, in accordance with Paragraph 289 of the Criminal Code of Procedure, to make good the costs of the criminal proceedings.

In accordance with Paragraph 266A of the Criminal Code, the period of arrest while awaiting trial from October 16, 1935, 2 p.m., to October 19, 1935, 2.10 p.m. will be reckoned as part of the confinement.

Reasons.

The facts of the case, on which the judgment was based, were the following:

According to the results of police investigations, the defendant is said to have disseminated on October 8, 1935, to numerous correspondents of foreign newspapers in Vienna the following report:

A search had been carried out in the Heimatschutz barracks in the Feinfaltstrasse, in the course of which it had been ascertained that twenty machine-guns had been sold to National Socialists and Communists. Sixty Heimatschutz men had been arrested in this connection. On January 1, 1936, the Heimatschutz would carry out a putsch for the purpose of seizing complete power, but previously Minister Kautzschke-Stürmer would overthrow the Chancellor. The Government had decided to increase the Federal Army by 40,000 men and to cover the costs by decreasing the Vienna Schutzcorps by 1000 men, by depriving the employees of the Post and Telegraph Administration of their pay increases, and by taking 40 million schillings in each case from the Winter Aid Fund and the Children's Aid Fund.

The defendant admits having communicated to four or five correspondents of foreign newspapers the report as cited in the text of the judgment. The report about the putsch of the Heimatschutz or the overthrow of the Chancellor by Minister Kautzschke-Stürmer, respectively, the defendant denies having communicated.

Since proof was not available to refute the responsibility of the defendant for these acts, the judgment had to be based on the text of the communications as admitted by the defendant.

He defends himself by stating that he merely transmitted these communications as rumors to persons whom he knew to be correspondents of foreign newspapers, and with whom he had worked for a long time as owner of the agency "American European Press Service" (Aepress). He himself recognized that the reports he had passed on were rumors and false rumors, or in any case constituted a story which was completely unconfirmable, and therefore transmitted them only as a rumor, which description usually results in the foreign newspapers not publishing the story as long as a confirmation has not been received. The defendant defends his action in having passed this rumor on at all by saying that he did not want to subject himself to the reproach

that he, as the owner of a press bureau, did not know this rumor, which was stated to have been going the rounds, and furthermore that he wanted to inform his correspondents that these stories were only to be accepted as a rumor, and therefore were not to be published, and thus to avoid that this rumor might be transmitted to these correspondents, from other and less reliable sources, as a fact, in which case it would be printed in the foreign press.

Thus he defended himself by saying that by calling this story a rumor, its publication in foreign newspapers was in all probability prevented.

The following must be stated from the legal point of view:

The defendant himself admits that the reports transmitted by the defendant were a rumor. He further stated that he had no grounds to consider this rumor to be true. That a disturbance was thereby created is likewise established in the view of the court; there is no doubt that the statements of the defendant cited in the text of the judgment were of such a nature that they could create a feeling of insecurity and disturbance, at a time when rumors of every sort are readily listened to*.

Finally, public dissemination must be proved in order to establish a violation of Paragraph 308 of the Criminal Code.

It must be noted here that the possibilities of dissemination mentioned in the law are not exhaustively enumerated, and furthermore that according to a decision of the Supreme Court of January 26, 1915, §1g. 4176, violation of Paragraph 308 of the Criminal Code can be established not only doles but also culpos.

It has also been proved by the police investigations and by the confession of the defendant that the reports which he has confessed to having made, and which were mentioned in the text of the judgment, were passed on to persons whose professional duty consists in transmitting reports from Austria to the various great agencies abroad; these agencies then deliver their stories to a greater or lesser number of foreign newspapers; they are thus persons whose profession it is to carry out the further dissemination of such rumors. The dissemination thus corresponds entirely to the form of publication envisaged by the law.

The defendant, to be sure, stated in his defense that he was entitled to assume that the reports which he had specifically designated as rumors and had transmitted to the correspondents, would not be passed on any further by the latter, or at any rate would not be published by the foreign newspapers in question.

*) Translator's note: This passage was ungrammatical and unclear in the German text.

He himself designates this assumption as one which was 90 per cent sure, which means that he could ~~only~~ only presume with great probability that they would not be published, but he did not have full assurance, once they had left his hands, that they would not be disseminated; he had no influence of any sort in this respect and would never have been able to prevent the rumors being utilized.

In conjunction with the statements of the witness Haerdtl, who emphasized, in summary, that no agent had any complete guarantee that a rumor put out by him would remain even in the closest circle of his colleagues, or that it would not after all be published, or at least become known to a larger circle of persons, not serious agents - it can be clearly and definitely recognized from these statements of the defendant that the defendant passed on the rumors mentioned in the text of the judgment at least in a negligent way.

Thus, even if the defendant might possibly have had the assurance, in the case of the two correspondents whose testimony has been heard, that these witnesses would not publish the rumor, he nevertheless had no guarantee that these disturbing rumors would not become known to a wider circle of persons.

The law does not recognize any obligation on the part of the defendant, as owner of a press bureau, to disseminate disturbing rumors, when there is no adequate grounds to consider them true.

Therefore, the defendant was found guilty, in which connection his former clean record and his confession of the facts were given consideration as alleviating circumstances.

There were no aggravating circumstances.

The other decisions are based on the legal provisions cited.

Vienna, October 19, 1935.

The Judge:
Dr. Rudolf Kunze

The Clerk of the Court:
Dr. Schneider a.p.