

[DE] Personality Rights and Crime on TV - Two Courts, Two Decisions

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The Saarbrücken Appeal Court (Oberlandesgericht - OLG - Saarbrücken) and the Mainz Regional Court (Landesgericht - LG - Mainz) recently came to different conclusions when required to decide, in the case of a television film. The question was which was more important: the freedom to report which broadcasting bodies enjoy under Article 5, para. 1, sentence 2 of the Basic Law (the Grundgesetz), or the protection of personality rights guaranteed by Article 2, para. 2 in conjunction with Article 1, para. 1 of the Basic Law. Both proceedings were concerned with a film in the "Crimes which made History" series, dealing with the murder of several soldiers in Lebach. In January 1969, the two main offenders had attacked a munitions depot with the help of an accomplice and killed four sleeping guards, seriously injuring another.

A dramatised documentary dealing with the same events had already been the subject of proceedings before the Federal Constitutional Court (Bundesverfassungsgericht) in 1973. In a judgment given on 5 June 1973 (File No. 1 BvR 536/72), the Court decided on a constitutional complaint by the third man, who protested at the showing of a documentary, in which he and the two main offenders were named, shown in photographs and then played by actors. In considering the case, the Court assumed that, when crimes were reported in ordinary news programmes, the public's interest in information generally outweighed the offender's interest in protection of his personality rights. It decided, however, that the right to protection of personality made it necessary to impose time limits on reports of this kind. In reaching this conclusion, it saw the offender's interest in social reintegration as a relevant factor. It ultimately prohibited showing of the film on the ground that this process would be jeopardised. Unlike the earlier documentary, the film considered by the courts in Saarbrücken and Mainz contained no pictures of the offenders, and did not name them - which meant that they could not be identified. The Mainz Regional Court nonetheless decided, in its judgment of 23 December 1997, that the disputed film might well make it harder for the applicant, one of the main offenders and due shortly for release, to reintegrate in the community, since those at least to whom his identity was known would be vividly reminded of the crime's full brutality. In its judgment of 14 January 1998, the Appeal Court in Saarbrücken ruled, however, that the applicant's right to protection of his personality rights had not been violated, since he could not be identified, the "crime film" style adopted had a more distancing effect than a dramatised documentary, and so much time had

passed since the crime that viewers would feel no further interest in identifying the criminal.

