# [DE] TV documentary on politician Uwe Barschel's death: those accused in suspicion-based reporting must be invited to comment

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On 20 March 2025, the *Oberlandesgericht Frankfurt am Main* (Frankfurt am Main Higher Regional Court – OLG) ruled in summary proceedings (case no. 16 U 42/24) that suspicion-based reporting is inadmissible unless the person accused of a criminal offence is given an opportunity to comment on the basis and context of the intended report.

Suspicion-based reporting is a form of journalistic reporting in which a possible criminal offence is reported on and the name of the alleged offender is mentioned. Although the scope and limitations of such reporting are not clearly defined, the courts have repeatedly taken a position on this and specific conditions under which it is permissible have been developed. Firstly, there needs to be evidence that the information is correct and high standards of journalistic due diligence must be met. The reporting must not contain any prejudgement or one-sided or distorted representation, and it must either be in the public interest or concern an incident of substantial importance. The final requirement is that the person concerned must be given the opportunity to comment on the facts of the case, unless this is impossible. In addition, it is essential to find an appropriate balance between the conflicting interests involved, i.e. the general public's interest in information, the media's freedom of expression and the interests of the alleged offender (Article 5(1) of the *Grundgesetz* (Basic Law – GG), Article 10 of the European Convention on Human Rights (ECHR)), in particular their general right to privacy (Article 2(1) in conjunction with Article 1(1) GG, Article 8(1) ECHR), the presumption of innocence (Article 6(2) ECHR) and the right to a fair trial (Article 2(1) GG in conjunction with Article 20(3) GG, Article 6(1) ECHR).

The Frankfurt OLG's decision was based on the following facts. In a series of documentaries, the defendants had analysed various theories and circumstantial evidence surrounding the death of Uwe Barschel, CDU politician and former Minister-President of Schleswig-Holstein, in 1987. The overall context gave the impression that the plaintiff, a former secret agent for German and foreign security authorities, had been involved in Barschel's death. The OLG confirmed the decision of the *Landgericht Frankfurt am Main* (Frankfurt am Main Regional Court – LG) of 23 February 2024 (case no. 2-03 O 654/23), which had previously granted the plaintiff's request that, among other things, certain statements

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should not be made. The court found that the plaintiff had not been given sufficient opportunity to comment. Even though the plaintiff had refused to give an interview or “any statement” during the design stage of the film, the defendants could not conclude from this that the plaintiff had also refrained from commenting on content of which he had not even been aware at a time when the film had not yet been finalised. It was irrelevant in this context that the plaintiff had not taken action against a Wikipedia article on “Uwe Barschel” in which his role had also been mentioned. Rather, the court pointed out that the publicly accessible report of the Lübeck public prosecutor’s office concerning the investigation against unknown persons into Barschel’s murder differed significantly from the report at issue.

The decision once again makes it clear that someone is only deemed to have been given an opportunity to comment if they have been sufficiently informed about the facts giving rise to suspicion and are therefore aware of the grounds on which they have been linked to a criminal offence. The simple offer of an interview during the design stage does not constitute an opportunity to comment if it is not yet clear at that time how the facts will be reported.

The decision cannot be contested.

***Pressemitteilung zur Entscheidung des OLG Frankfurt am Main, Az. 16 U 42/24:***

https://ordentliche-gerichtsbarkeit.hessen.de/presse/konkrete-anhoerung-ist-voraussetzung

*Press release on the decision of the Frankfurt am Main Higher Regional Court, ref. 16 U 42/24*

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