[DE] Personality Rights Endangered by Film - Koblenz Appeal Court Decides

IRIS 1998-5:1/8

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On 24 March 1998, the Appeal Court (Oberlandesgericht - OLG) in Koblenz rejected an appeal against a judgment given by the Mainz Regional Court (Landesgericht - LG) on 23 December 1997. The proceedings concerned a film dealing with the murder of several soldiers in Lebach in 1969 (see IRIS 1998-3: 8). The plaintiff, one of the main offenders responsible for the murders, thus succeeded in his application to stop the film's being shown. The court decided that he was entitled to an injunction against showing of the film under Article 1004 of the Civil Code (Bürgerliches Gesetzbuch - BGB), in conjunction with Sections 22 and 23 of the Artistic Copyright Act (Kunsturhebergesetz - KUG), because of the imminent threat to his general personality rights. It held that the difference between this film and a documentary on the same subject, showing of which was prohibited by the Federal Constitutional Court (Bundesverfassungsgericht) on 5 June 1973, was a difference of degree only. The fact that the applicant was not named or his picture shown was irrelevant. The decisive factor was that he could be identified, at least by acquaintances. In its decision, the court treats broadcasting freedom, which is guaranteed by Article 5, par. 1, sentence 2 of the Basic Law (Grundgesetz - GG), as less important than protection of the offender's personality rights, and specifically his justified interest, within the meaning of Section 23 (2) of the Artistic Copyright Act, in social reintegration. The Saarbrücken Appeal Court had come to the opposite conclusion in its decision of 14 January 1998, when it ruled that showing of the film did not violate general personality rights (see IRIS 1998-3: 8).

Urteil des OLG Koblenz vom 24. März 1998, Az. 4 U 1922/97

Judgment of the Koblenz Court of Appeal of 24 March 1998, Az. 4 U 1922/97

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