[DE] Right to Privacy in Relation to Portrayals of Parents with their Children

IRIS 2000-2:1/26

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The Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) in its judgment of 15 December 1999 has reinforced the protection afforded parents under the general right to privacy enshrined in Art 6 paras. 1 and 2 of the Grundgesetz (Basic Law - GG) with regard to the publication of portrayals of parents bestowing their attentions on their children.

The complaint lodged by Caroline of Monaco concerned a ruling of the Bundesgerichtshof (Federal Supreme Court) of 19 December 1995 (file No. VI ZR 15/95). In proceedings before the latter against a newspaper publisher, the plaintiff and appellant sought an injunction to stop publication of photographs of her private life. Three out of a total of eight photographs showed her during leisure-time activities with her children, while the other five featured the appellant alone or with other adults in her everyday private life (see IRIS 1999-10: 7).

The BVerfG dismissed the appeal. The BVerfG declared the appeal admissible and found in favour of the plaintiff in respect of the photographs in which she was featured together with her children. The BverfG held that private life, as protected by the general right to privacy in accordance with Art 2 para. 1 together with Art 1 para. 1 GG, could not be restricted to the domestic sphere. Individuals needed areas to which they could retreat and in which they could move freely out of the public eye. Where children were concerned, the areas in which they could move freely out of the public eye needed greater protection than that required by adults. Children needed special protection as they could not yet be expected to assume responsibility in their own right. As it is parents who are primarily responsible for the child's personal development, the specific parentchild relationship in principle also came under the protective provisions of the law.

The substance of the general right to privacy was reinforced in such circumstances by Art 6 paras. 1 and 2 GG, in which the state is obliged to ensure the conditions required for the healthy development of children. Such an obligation would in principle also apply when circumstances did not permit physical seclusion.

The BVerfG further held that the press freedom enshrined in Art 5 para. 1 second indent GG in principle also included publications and supplements as well as their illustrations. This also applied to the publication of photographs featuring public

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figures in everyday or private contexts. Only in respect of the greater degree of protection necessitated by the parent-child relationship was there a need to derogate from the usual principles.

Urteil des Bundesverfassungsgerichts vom 15. Dezember 1999, Az. 1 BvR 653/96.

Judgment of the Federal Constitutional Court of 15 December 1999; file No. 1 BvR 653/96.

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