[DE] OLG Frankfurt Rules on Cinema Film Ban

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In a ruling of 3 March 2006, the *Oberlandesgericht Frankfurt* (Frankfurt Court of Appeal) banned the screening of the cinema film with the German title "Rohtenburg" following an appeal for a temporary injunction. The film had been due to be premiered on 9 March 2006.

The film "Rohtenburg" (English title: "Butterfly - a Grimm Love Story"), which was described by its distributors as "a real-life horror film that could hardly be more intense and gets under your skin in the truest sense of the word", tells the story of a psychology student who writes a thesis on a homosexual cannibal and researches his life and childhood in order to find out what caused him to carry out his deeds.

The plaintiff, who has repeatedly been called the "Cannibal of Rotenburg" in the media and at the time of the judgment was in prison awaiting trial on suspicion of murder, claimed that the film portrayed his life and actions in a sensational, distorted and accusatory way, constituting an illegal breach of his personality rights.

The *Oberlandesgericht* , taking into account the artistic freedom and freedom to film of the film production company and the plaintiff's personality rights, decided that the depiction of a crime and of the psychological profile of the perpetrator in a horror film constituted a serious breach of personality rights.

The court ruled that, in this case, artistic freedom was less important than the plaintiff's personality rights, since the film did not create an independent fictional character. Instead, the plaintiff's crime and life situation were portrayed in detail without any attempt to hide his identity. Any claim that the work was fictional was therefore unfounded. For example, the film was named after the town in which the plaintiff lived and carried out his crimes, with only a small phonetic difference. Furthermore, the film was expressly advertised as a "real-life horror film" inspired by true events.

The protection of the plaintiff's personality rights was also deemed more important than the freedom of reporting by means of the press, broadcasts and films enshrined in Art. 5.1.1 of the Basic Law. It was true that anyone who broke the law should, in principle, also expect that the public's right to information about his crime in a society that respected the principle of free communication

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should be met via the usual channels. However, this did not mean that he should be the subject of a film advertised as a "real-life horror film". The film in question did not endeavour to present factual information or a balanced portrayal of events and the plaintiff's personality, but was meant purely to provide entertainment as a horror film. Therefore, the personality rights breach could not be justified by the freedom of reporting by means of films enshrined in Art 5.1.2 GG.

The California-based film production company was therefore forbidden from copying, screening or advertising the film, or putting it into circulation in any other way.

If this injunction is breached, a fine of EUR 250,000 or a prison sentence of up to six months may be imposed.

Urteil des Oberlandesgerichts Frankfurt vom 3. März 2006 (Az. 14 W 10/06)

http://www.olg-frankfurt.justiz.hessen.de/

Ruling of the Frankfurt Court of Appeal, 3 March 2006 (case no. 14 W 10/06)

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