[DE] Federal Supreme Court on the Publication of Pictures of Public Figures

IRIS 2007-5:1/7

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With its rulings of 6 May 2007, the Federal Supreme Court (BGH) once again took a position on the relationship between the privacy of public figures and the freedom of the press. The basis of these rulings arose from several complaints lodged by Princess (Caroline) of Hanover and her husband against several press publishing houses. The defendants had published articles in several of the magazines that they produce, which were illustrated with photographs of the plaintiff. With their complaint the well-known couple sought an injunction on the re-publication of these photos, which had all clearly, without exception, been taken while the couple were in various holiday locations. The injunction on publishing was in fact in the first instance permitted by the District Court, however the defendant was successful in appealing to the Hamburg Court of Appeal, and as a result the BGH had to deal with the appeal on points of law with the plaintiff.

The judges first argued that a permanent source of tension existed between the basic right of the individual to privacy under Articles 1 and 2 of the Basic Law (GG), and the freedom of the press under Article 55 (GG), as a result of which the public had a right to be informed of current events and accordingly of all issues of general public interest. The press is not subject to any censorship in its reporting and may itself decide, according to editorial criteria, what it considers of value to the public interest. In so doing, the press is, on the other hand, also obliged to respect the privacy of the person about whom it wishes to report, so that an ongoing balancing of interest is required. With reference to the ruling of the European Court for Human Rights (ECHR) of 24th June 2004 (“Caroline ruling”, see IRIS 2004-8: 2) which, contrary to the rulings at that time of both the BGH and the Constitutional Court (BverfG), had declared the photos of Caroline in public as inadmissible as the corresponding article made no contribution to a debate of public interest, the Constitutional Courts then established that the informational value of the report, as part of such a balancing of interests, also had to be evaluated with regard to what were referred to as “absolute persons of contemporary history”.

By the legal entity of “the absolute person of contemporary history”, established German case law has hitherto meant a person, who alone on account of his status and his general public reputation attracts attention and thus for no specific reason

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must generally put up with press attention and coverage. In contrast to this, a “relative person of contemporary history” describes a person, about whom articles may be written in connection with a specific event. The BGH was of the opinion, that also regarding public figures one could basically work on the assumption, that the privacy of an individual should have a greater weight where the general news offers less informational value to the general public. The article illustrated with the photo of a public figure must serve an informational need that “goes beyond satisfying mere curiosity”, according to further explanation from the judges. This does not however rule out the fact that the celebrity of the party concerned can be of importance for an news article. Furthermore, in assessing informational value, a wide-ranging interpretation is required, so that the press can properly carry out its important role in the formation of opinion.

With the cases in this instance, the assessment of the BGH was that only those photos that were published in connection with reports on the illness of the then reigning Prince of Monaco were to be regarded as admissible. The illness was an event of contemporary history, on which the press could report, where the editorial content and the way the article was structured was not an issue. The guarantee of press freedom did not demand that the encroachment on this fundamental right was dependent on the quality of the article. That applied also, insofar as the article concerned the behaviour of family members during the illness of the prince. The other photos in the suit were regarded as being inadmissible, since the corresponding articles made no contribution to a subject of public interest.

Bundesgerichtshof, Urteile des VI. Zivilsenats vom 6. März 2007 VI ZR 51/06, VI ZR 50/06, VI ZR 13/06, VI ZR 52/06 und VI ZR 14/06

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2007&Sort=3&nr=39089&pos=13&anz=47

Federal Supreme Court, Rulings of the VI. Civil Division of 6 March 2007 VI ZR 51/06, VI ZR 50/06, VI ZR 13/06, VI ZR 52/06 and VI ZR 14/06

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