[DE] Supreme Court Protects Images of Partners of Famous People

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In a case involving the publication of photographs in the media, the *Bundesgerichtshof* (Federal Supreme Court - BGH) has again given personality rights priority over the freedom of the press. In a ruling of 19 June 2007, the BGH upheld a complaint by the partner of pop singer Herbert Grönemeyer by dismissing an appeal made against the earlier rulings of lower instance courts.

In May 2004, the defendant, a newspaper, had published two pictures of Grönemeyer and his partner. In one picture, Grönemeyer's partner is looking at Grönemeyer in a café. The words "The look of love ... Grönemeyer and his girlfriend S. appear in public in a Rome café" were published below the picture. The second image showed them both strolling through a pedestrian zone. The text underneath the photo referred to Grönemeyer's artistic works. Alongside the caption "Grönemeyer - men need a lot of affection - even him", while the text referred to previous statements made by the pop star in interviews in which he discussed dealing with the deaths of his wife and brother, as well as his song lyrics.

Grönemeyer's partner - the complainant - demanded that the newspaper should not publish the pictures again on the grounds that they breached her general right of privacy. All the lower instance courts had upheld her complaint. The BGH also, in line with its previous interpretation of Art. 22 and 23 of the *Kunsturhebergesetz* (Artistic Copyright Act - KUG), decided that the complainant's personality rights should take priority over the freedom of the press. The relevant provisions are contained in Articles 22 and 23 KUG. Under Art. 22 KUG, images may, in principle, only be distributed with the consent of the person portrayed. There may be an exception to this rule under Art. 23 KUG where "images of contemporary history" are concerned (Art. 23 (1) (1) KUG). Deriving from this rule, the case law of the Federal Constitutional Court and Federal Supreme Court has developed the concept of "absolute/relative contemporary public figures", according to which permission to publish pictures of such people depends on their status as contemporary public figures (known as the multi-level protection concept). However, in its 2004 "Caroline ruling", the European Court of Human Rights (ECHR) had declared the criteria developed in Germany for the publication of images of famous people to be inadequate, at least where "absolute contemporary public figures" were concerned (see IRIS 2004-8: 2).

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In the current case, the BGH primarily took into account the fact that the pictures of Grönemeyer's partner showed her in a clearly private situation totally unconnected with any event of contemporary history. It held that the interests of the complainant were paramount because the images and the associated text neither contributed to a discussion of general public interest nor represented information about an event of contemporary history.

Finally, in its ruling of 3 July 2007 (case no. VI ZR 164/06), the BGH also took into account the line taken by the ECHR concerning the protection of the privacy of famous people (in this case Oliver Kahn).

Bundesgerichtshof, Urteil vom 19. Juni 2007 - VI ZR 12/06 -

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2007&Sort=3&Seite=1&nr=40475&linked=urt&Blank=1&file=dokument.pdf

Bundesgerichtshof (Federal Supreme Court), ruling of 19 June 2007 - VI ZR 12/06 -

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