[DE] Artistic Freedom versus Personality Rights

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Following its decision on principle of 13 June 2007 in the case of the novel “Esra” (see IRIS 2007-10: 8), the Federal Constitutional Court again expressed an opinion on 12 December 2008 on the relationship between personality rights and artistic freedom, but this time ruled that personality rights had not been violated in either of the cases concerned.

In one case, the complainant had filed a complaint against the performance of the play “Ehrensache” (“A Matter of Honour”, the plot of which is based on the events surrounding the killing of the complainant’s 14-year-old daughter) known as the “Hagen girl murder case”. The complainant complained about a violation of her daughter’s so-called “post-mortal personality right”. In the other case, the constitutional complaint was directed against the publication of the autobiographical novel “Pestalozzis Erben” (“Pestalozzi’s Heirs”). The complainants, both teachers, considered that their honour had been offended due to the portrayal in the novel of certain teachers who were in some ways similar to them.

The Federal Constitutional Court refused to admit the complaints.

According to the “Esra” decision, in order to be able to assess the seriousness of a personality right infringement the real-world reference suggested in a specific plot by a work (a play or novel) to the viewer or reader must be examined from the point of view of art. A work must primarily be regarded as fiction if it lays no claim to be based on facts. In the cases concerned, the court did not consider this assumption to have been refuted. Even if the complainants had clearly served as models for the figures portrayed, that did not mean that the works suggested that the viewer or reader should ascribe all the actions and characteristics of these figures to the actual persons concerned. A literary work based on actual events typically blended together real and fictitious representations. Moreover, in the “Ehrensache” case, the court did not consider that the daughter’s privacy had been invaded as a result of the portrayal of actions of a sexual nature. When assessed against the criteria of the “Esra” decision, it would only be possible to affirm that a violation had taken place if the obvious question arose as to whether the actions described should be understood as reports on actual events. That was, for example, the case when an author gave a realistic and detailed account of his own experiences.

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In this case, the Federal Constitutional Court ruled that the daughter's personality rights should not be subject to the special protection given to young people since the reason for the increased protection was to guarantee the continued development of the personality of minors, and that notion could not be transferred to people who have died.

Beschluss des BVerfG vom 12. Dezember 2007 (1 BvR 1533/07)

http://www.bundesverfassungsgericht.de/entscheidungen/rk20071219_1bvr153307.html

Decision of the Federal Constitutional Court of 12 December 2007 (1 BvR 1533/07)

Beschluss des BVerfG vom 12. Dezember 2007 (1 BvR 350/02, 1 BvR 402/02)

http://www.bundesverfassungsgericht.de/entscheidungen/rk20071212_1bvr035002.html

Decision of the Federal Constitutional Court of 12 December 2007 (1 BvR 350/02, 1 BvR 402/02)

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