[AT] TV Reporting Consent Considered Given Unless Opposition Expressed

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In a previously unpublished decision taken in summer 2009, the Oberlandesgericht Wien (Vienna Appeal Court - OLG Wien) set out the conditions under which a person can be considered to have consented to television reporting about him/herself. An Austrian television company had produced a documentary on the work of the motorway police. The plaintiff was filmed by a camera crew employed by the broadcaster while a police officer carried out his official duties in a service station car park. The footage was broadcast several times in early 2009. It showed defects in the plaintiff's car and the conversation between him and the police officer concerning the state of the vehicle. The plaintiff disputed the existence and visibility of some of the defects. He was clearly recognisable because his face had not been obscured.

The plaintiff claimed that the programme breached his rights in his own image and requested an injunction against further broadcasts of the programme, as well as a temporary order banning the broadcast. He argued that he had been made a laughing stock and been denounced as an alleged serious traffic offender. He had not given his consent for his image to be broadcast in such a disparaging report.

The Handelsgericht Wien (Vienna Commercial Court) rejected the application for a temporary order and the OLG Wien upheld its decision. The courts held that the plaintiff's rights to his own image had not been infringed because they considered that he had consented to comprehensive use of his image. Such consent was considered given if the conduct of the person concerned left no doubt that he had agreed to the public use of his image. However, protection of these rights was only waived to the extent covered by the person's consent. It was therefore necessary to take into account for what purpose and in what context this consent had been given. In this particular case, the plaintiff had not only played a part in the police officer's official duties, but had "turned directly to the camera and responded to the accusations made against him, as if in an interview. Not only was the filming obvious to him, but he had even contributed to and supported it. […] In this situation, he should have objected to the filming expressly or through clear gestures, or refused to allow his image to be shown in a recognisable form." From this, the OLG Wien concluded that consent had been given for the use of the images. Since the police officer's actions had been accurately portrayed, the plaintiff's consent had covered the full use of the images. The courts did not

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examine whether the report had been disparaging.

The OLG Wien's decision is final. The main injunction proceedings are still pending.

Oberlandesgericht Wien 27. Mai 2009, 15 R 89/09g

Vienna Appeal Court, 27 May 2009, 15 R 89/09g

Handelsgericht Wien 11. März 2009, 17 Cg 10/09s

Vienna Commercial Court, 11 March 2009, 17 Cg 10/09s

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