[DE] ECJ Asked for Preliminary Ruling on Responsibility for Internet Publications

IRIS 2010-1:1/12

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In a decision of 10 November 2009 (case no. VI ZR 217/08), the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) suspended a pending procedure in order to ask the European Court of Justice (ECJ) for a preliminary ruling under Art. 234 of the EC Treaty.

The question that needs clarification concerns the international responsibility of courts to rule on injunction suits against Internet publications by companies that are based in another EU Member State. The ECJ has also been asked to determine whether the claim under the country of origin principle enshrined in Directive 2000/31/EC should be assessed - in the present case - in accordance with Austrian law or whether German law applies.

The case on which the proceedings are based concerns an action brought by a man who was found guilty of murder in Germany and who has since been released from prison on parole. The plaintiff is demanding that an Austrian-based media company cease publishing reports on the crime he committed, in which his full name is mentioned.

Up to June 2007, the company had made available on its Internet site an article written in 1999 concerning a complaint made by the plaintiff and his brother, who was also found guilty, about an infringement of the Constitution. The first names and surnames of the plaintiff and his brother appeared in full in that article.

The plaintiff is demanding that the report containing his full name should be withdrawn. He claims that the company's activities significantly impede the social rehabilitation of criminals who have served their sentence and infringe his personality rights. The lower instance courts had ruled in the plaintiff's favour.

Pressemitteilung des BGH Nr. 227/09 vom 10. November 2009

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2009&nr=49811&pos=10&anz=237

Press release of the Federal Supreme Court No. 227/09 of 10 November 2009

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