[DE] Federal Supreme Court on Admissibility of Retention of Certain Information in Online Archives

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In a ruling of 15 December 2009, the *Bundesgerichtshof* (Federal Supreme Court - BGH) rejected the plaintiffs' demand that certain old reports should be removed from the online archive of a radio broadcaster.

Both plaintiffs were sentenced to life imprisonment in 1993 for the murder of a well-known German actor and have since been released on parole. Until 2007, the defendant made available, in its publicly accessible online archive, an article from the year 2000, in which - on the occasion of the 10th anniversary of the actor's murder - the crime was reported, revealing the full identities of the murderers. The plaintiffs claimed that this infringed their general personality rights, particularly their right to social rehabilitation, and applied for an injunction against publication of the report about them in connection with the crime, which revealed their full identities. These claims had been upheld by the lower instance courts.

The BGH overturned the lower instance decisions and rejected the claims. It did not consider the intrusion into the plaintiffs' general personality rights to be unlawful. The defendant had been acting to protect the public's right to information and freedom of expression, which was particularly relevant in light of the details of the case, i.e., the victim's popularity, the considerable public attention generated at the time of the event, and the plaintiffs' persistent denial of the crime over many years. Incidentally, the information contained in the report was true and the archive entry itself, which could only be found via a deliberate search, did not have a particularly widespread impact.

According to this weighing up of interests, the plaintiffs' personality rights in this case were judged to be less important than the need to protect the rights of freedom of expression and of the media.

In another pending procedure brought before it by the same plaintiffs against the Internet publications of an Austrian-based company, the BGH has suspended proceedings and asked the ECJ for a preliminary ruling on the international responsibility of courts (see IRIS 2010-1:1/12).

Pressemitteilung des BGH zum Urteil vom 15. Dezember 2009 (Az. VI ZR 227/08 und VI ZR 228/08)

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http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&pm_nummer=0255/09

BGH press release on the ruling of 15 December 2009 (case no. VI ZR 227/08 and VI ZR 228/08)

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