[DE] Photographed Can Photograph Photographer

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According to a decision issued by the Landgericht Köln (Cologne District Court - LG) on 9 November 2011, whereas photographs taken by a press photographer showing a well-known weather presenter held in a detention centre awaiting trial may not be distributed, photographs taken by the presenter showing the photographer at work can.

The TV weather presenter had been under investigation in 2010 following a serious rape allegation. He was acquitted on 31 May 2011 by the LG Mannheim (Mannheim District Court). The proceedings attracted a high level of media interest from the outset. The accused won several legal claims against journalists responsible for highly detailed written reports and photographs.

The complaint heard by the LG Köln concerned pictures taken by a press photographer showing the weather presenter in the yard of the detention centre where he was held. The court ruled that the publication of the photographs breached the general personality and image rights of the man awaiting trial. Weighing his personality rights against the freedom of the press and freedom of expression, the court found in the weather presenter’s favour because he was entitled to protection of his privacy, even while in custody awaiting trial. The detention centre yard should be treated as a private area, in which the plaintiff should not expect to be photographed. The news value of the images was “less important”. The photographer was liable for their distribution because he had been following instructions to take the photographs in order to illustrate the current press reports. It had therefore been possible and reasonable for him to refrain from violating the plaintiff’s rights.

However, the court rejected the press photographer’s counterclaim: he had defended himself by claiming that he had been photographed by the weather presenter outside the presenter’s home, while he had been sitting in his car reading a newspaper, waiting for an opportunity to take pictures of the weather presenter. The presenter had published this photograph on his Twitter page along with the text: “The brave weekend paparazzo ... prefers the serious press if he spends all day waiting for the famous person.” He had wanted to show an example of how he was being followed by the press in connection with the criminal procedure.

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The LG Köln thought that this image documented a current event. Referring to established case law of the Bundesgerichtshof (Federal Supreme Court), it ruled that freedom of the press and freedom of expression included sufficient scope for the press to determine, according to journalistic criteria, what lay in the public interest. It should be emphasised that, in its comments on the public's right to information, the formation of public opinion and the boundaries of the freedom of the press and freedom of expression, the court considered Twitter to be part of the press or a similar service.

The decisive factor was the news value of the publication, which could be derived from the context of the written report. The media's treatment of famous people in their reporting was, in principle, a matter of public interest. This was compounded by the particular importance of the reporting of the specific case involving the defendant in 2010 and 2011, which had "violated personality rights in many respects", and which had been a matter of wide public debate. The interest in public reporting of this issue outweighed the personality rights of the photographer. In addition, the photograph merely showed the photographer carrying out his profession, and therefore in his "social environment". If he was photographed by the plaintiff while preparing to carry out journalistic activities relating to the plaintiff, this did not constitute a significant violation of his interests.

Urteil des LG Köln vom 9. November 2011 (Az. 28 O 225/11)

http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2011/28_O_225_11_Urteil_20111109.html

Ruling of the LG Köln (Cologne District Court) of 9 November 2011 (case no. 28 O 225/11)

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