[DE] Decision on Injunction against Reporting that Identified Defendant

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On 11 January 2012, the Oberlandesgericht München (Munich Appeal Court - OLG), in a dispute over costs, ruled in summary proceedings on a temporary injunction against a publisher that had been issued by the Amtsgericht München (Munich Local Court) and later declared lifted by the parties in appeal proceedings. The injunction had prevented the publisher from reporting on the main proceedings in a manner that identified the defendant. The OLG had to consider under what circumstances an injunction could be enforced in order to provide temporary legal protection.

The case followed a series of programmes broadcast on German commercial television, documenting, among other things, how a female journalist had posed as a 13-year old girl in online chat forums in order to make contact with and meet men. At these meetings, which were secretly filmed by the TV broadcaster, the part of the alleged 13-year old was played by adult actresses. The programme-makers claimed that the aim of the series, which attracted huge public attention, was the conviction of male paedophiles.

Following these broadcasts, the Munich public prosecutor's office launched criminal proceedings against two of the men concerned for attempted sexual abuse of children. Both before and during the court proceedings against one of the two defendants, several newspapers and online media reported on the case, unlawfully identifying the accused by printing his first name and the initial of his surname, his place of residence and his occupation, as well as photographs of him, in which only his face was blanked out.

In order to prevent such reporting in his own case, the defendant in the second criminal procedure obtained a temporary injunction against the publisher of one of the newspapers, prohibiting it from reporting on the main proceedings in a way that identified him. The publisher appealed to the LG München I (Munich District Court I) against this injunction. Finally, after the publisher had submitted a declaration to cease and desist, the parties declared the matter closed, with the result that the LG only had to decide on the costs, which it charged to the publisher. The OLG upheld the LG's decision on costs after the publisher appealed against them. The costs had been attributed on the basis of what the court thought the outcome of the case would have been if the matter had not been

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settled.

Explaining its ruling, the OLG began by acknowledging that, in order to demonstrate a risk of first infringement sufficient to justify the granting of a temporary injunction against the publisher, strict requirements needed to be met. However, in the present case, the newspaper concerned had regularly reported on criminal proceedings that had attracted significant public interest. It had also reported on the first procedure relating to the aforementioned television programme in a way that had identified the defendant. There had therefore been a risk of first infringement. There had been reason to fear that the second defendant would also be the subject of such reporting. In order to prevent such a temporary injunction, the publisher would have had to dispel this fear, which it had failed to do. In the weighing up of conflicting interests that is necessary when deciding whether to grant a temporary injunction, the court concluded that the risk to the personality rights of the defendant and his family outweighed the publisher's reporting rights. It noted that particular consideration should be given to the fact that the public's right to information could be fulfilled through reporting in a way that protected the defendant's anonymity.

Beschluss des OLG München vom 11. Januar 2012 (Az. 18 W 1752/11)

http://www.afs-rechtsanwaelte.de/urteile/2012-01-11-olg-muenchen-18-W-1752-11.pdf

Ruling of the Munich Appeal Court of 11 January 2012 (case no. 18 W 1752/11)

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