[DE] Court Rules on Protection of Personality Rights in Connection with Hidden Camera Use

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According to media reports, on 9 February 2012 the Amtsgericht Eschweiler (Eschweiler district court - AG) acquitted two Dutch journalists of breaching domestic peace (Art. 123 of the Strafgesetzbuch (Criminal Code - StGB)) and violating the confidentiality of the spoken word (Art. 201 StGB).

The two defendants interviewed the joint plaintiff in 2009. The latter, as a member of the SS, had shot dead three civilians in the Netherlands in 1944. The death penalty that was originally ordered for these crimes was subsequently mitigated to life imprisonment, a sentence that he never began because he fled to Germany. In Germany, he was not sentenced to life imprisonment until 2010. The Dutch journalists found him in an old people's home in Germany and interviewed him there. They filmed the interview by means of a hidden camera. The footage was later broadcast in a 10-minute report on Dutch television. The interviewee claimed that the journalists' conduct had infringed his rights and instituted legal proceedings against them.

The AG cleared both defendants of the alleged offences. Although secret recording of the spoken word and its subsequent use were prohibited in Germany, the journalists had been in a situation of "necessity as justification". The interest of the public and of the victims' families, and the journalistic interest in the reappraisal of the case had been substantial, especially in the Netherlands. Furthermore, the journalists had previously requested an official television interview via the joint plaintiff's lawyer, but this had been refused. The interviewee's personality rights were of secondary importance. He was a "person of contemporary history" and the secret recordings were therefore "historical documents", which meant that he was obliged to tolerate this reporting. The court also recognised, in the defendants' favour, that they had been unaware that their conduct was punishable in Germany.

Pressemitteilung des Deutschen Journalisten-Verbands, 9. Februar 2012

http://www.djv.de/SingleNews.20+M586d7f1ce67.0.html

Press release of the German Journalists' Association, 9 February 2012

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