[DE] No Unlimited Media Reporting on Public Court Hearing

IRIS 2012-4:1/17

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The criminal procedure against a famous TV weather presenter accused of rape, which has attracted huge media interest, has also repeatedly occupied Cologne's civil courts in recent months. The journalist, who has since been acquitted, launched numerous lawsuits - some of which were successful - following media reporting of the case which he believed had infringed his personality rights (see IRIS 2012-3/16 and IRIS 2012-1/19).

In three judgments issued on 14 February 2012, the *Oberlandesgericht Köln* (Cologne Appeal Court - OLG) considered the extent to which questioning of the accused about his sexual preferences, held during the main hearing, could be reported.

The defendants, a media publisher and a website operator, had reported extensively on the usual consensual sexual practices that formed part of the relationship between the accused and his alleged victim, basing their story on interview transcripts that had been read out during the public hearing.

The OLG confirmed the first-instance rulings of the *Landgericht Köln* (Cologne District Court - LG) of 22 June 2011, in so far as the presenter had been granted injunctions against the publisher and the website operator. The OLG also essentially agreed with the grounds given by the LG: in the weighing up process, the plaintiff's personality rights were, in this particular case, more important than the freedom of the press and the public's right to information. In some of the disputed articles, the detailed descriptions were totally unrelated to the alleged crime. In addition, the presumption of innocence that applied when an investigation was pending meant that reporting should be restrained and balanced. The comments taken from the judicial questioning had been largely irrelevant to the decision on whether the defendant was guilty because the criminal procedure had concerned the accusation that he had forced his accuser to have sexual intercourse by issuing threats. Their usual consensual sexual practices were irrelevant to this.

However, the public revelation of his sexual preferences, which readers would remember in spite of his subsequent acquittal, represented a serious violation of the plaintiff's personality rights. It did not matter whether these preferences were

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socially acceptable or not. The court thought that there was a danger that this characterisation of the plaintiff would have a pillorying effect which would not be eliminated even if he was acquitted, since the criminal judgment did not cover the normally consensual nature of the sexual relationship.

The OLG also stressed that previous revelations in other media had been judged differently because the reporting had been less detailed and much more restrained and balanced. The plaintiff himself had never discussed his sex life in the media. Finally, the fact that the interview transcript had been read out in the public main hearing did not justify the reporting, since the public nature of the courtroom, which contained a limited number of people, could not be equated with the public nature of the media. The principle of public court proceedings did not give the press the right to report on everything that was said in court.

However, in another case (no. 15 U 157/11), the *OLG Köln* ruled that the publication of quotes from the case file concerning the weather presenter's sex life were admissible. According to the judge, the quotes had not been published in the daily newspaper concerned primarily for the purposes of sensationalist reporting, but on the contrary as part of a critical analysis of a tabloid newspaper article that also contained the quotes.

Urteil des OLG Köln (Az. 15 U 123/11) vom 14. Februar 2012

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2012/15_U_123_11_Urteil_20120214.html

OLG Köln ruling (case no. 15 U 123/11) of 14 February 2012

Urteil des OLG Köln (Az. 15 U 125/11) vom 14. Februar 2012

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2012/15_U_125_11_Urteil_20120214.html

OLG Köln ruling (case no. 15 U 125/11) of 14 February 2012

Urteil des OLG Köln (Az. 15 U 126/11) vom 14. Februar 2012

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2012/15_U_126_11_Urteil_20120214.html

OLG Köln ruling (case no. 15 U 126/11) of 14 February 2012

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