[DE] Berlin Supreme Court Considers Documentary Footage Non-Copyrightable

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On 28 March 2012, the Kammergericht Berlin (Berlin Supreme Court - KG), in a recently published judgment, confirmed the lower-instance decision of the Landgericht Berlin (Berlin District Court - LG) of 20 May 2011 and ruled that film footage showing the removal of a GDR citizen shot dead at the Berlin Wall was not protected by copyright. The plaintiffs had claimed copyright over the footage and demanded that the defendant be prohibited from reproducing it, making it publicly accessible or broadcasting it on television.

The KG Berlin ruled out such a claim under the Urheberrechtsgesetz (Copyright Act - UrhG). The footage was not a cinematographic work in the sense of Article 2(1)(6) and 2(2) UrhG, since it did not display the necessary level of creativity. There was no obvious creative process that could justify a claim that the cameraman concerned had even produced a simple intellectual creation (known as a “kleine Münze”) that would be protected by copyright. The footage was merely a recording of an unforeseen event which, in the circumstances, must have been filmed without any preparation. The scenes filmed were not the result of any dramatic creative process. It was also hard to see what creative intellectual activity the cameraman had carried out, other than the purely technical process of filming the recorded images concerned. Rather, the images amounted to nothing more than the stringing together of a series of photographs.

The court also dismissed the plaintiffs’ claim that individual still images from the footage used by the defendant were photographic works in the sense of Article 2(1)(5) and 2(2) UrhG. In the court’s opinion, photographic works were generally characterised by the fact that, beyond the actual scene in the photograph, they captured an atmosphere particularly well, vividly portrayed a particular issue or caused the observer to think. This could be achieved, for example, through the choice of subject, detail or perspective, the distribution of light and shadow, use of contrast, definition or selection of the right moment to take the photograph. It was not impossible for individual still images from filmed footage to enjoy copyright protection as photographic works, as long as they had been produced using artistic methods, as was also the case with photographs. However, in the present case - as with regard to whether the footage constituted a cinematographic work - it was not apparent that the individual still images had been created using such artistic methods.

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Urteil des KG Berlin vom 28. März 2012 (Az. 24 U 81/11)

http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/sa5/bs/10/page/sammlung.psml;jsessionid=5176FC50E22B6A72806B5D60EF1F0844.jp45?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=

KG Berlin ruling of 28 March 2012 (case no. 24 U 81/11)

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