[DE] Admissibility of a Movie Made on Foreign Land

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On 25 October 2012, a German Civil Court, the Kammergericht (KG) Berlin, decided (file number of the judgment: 10 U 136/12) that the publication of a documentary containing unauthorized recorded images of a third-party about facilities on a foreign land is allowed.

The applicant is a public institution operating the public transport system with busses and subways in the city of Berlin. The defendant is a producer and director of a film, which documents the graffiti art scene in Berlin. The disputed film published by the defendant includes unapproved recorded images about facilities and trains of the applicant, which were painted with graffiti. These pictures were not manufactured by the defendant. The images were produced by third parties and given to the defendant anonymous. These third parties entered the land of the applicant unjustified and painted the subways and facilities with graffiti. By its action, the applicant seeks to forbid the defendant the reproduction and distribution of pictures in the film, showing their painted transport systems and facilities.

On 10 May 2012, the lower court, the Landgericht (LG) Berlin, ruled in favour of the applicant (file number of the judgment: 16 O 199/11). The Court of Appeals, the KG Berlin, reversed the judgment of the LG Berlin and dismissed the action brought by the applicant.

In his judgment, the KG pointed out that the release of the pictures in the film showing painted trains and facilities of the applicant does not violate the property rights of the applicant. In the opinion of the KG, the property rights of the applicant are not violated, because the purpose of the recorded pictures in the film is not to present the trains and facilities of the applicant. The purpose of the images is rather to show the people, who unlawfully enter and damage the property of the applicant. The applicant does not intend to make money with the disputed recordings of her property. With regard to the publication of the film by the defendant the applicant therefore is not prevented from the use or commercial exploitation of her property.

The use of the pictures in the film, which were created illegally by third parties, constitutes an indirect intervention in the house rules of the plaintiff by the defendant. But with regard to the necessary balancing of the fundamental rights

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of both sides the applicant has to tolerate this interference of her rights. The fundamental rights of the applicant to protect her property (Article 14 of the German Constitution) and her business premises (Article 13 of the German Constitution) are faced with the fundamental rights of the defendant, which guaranteed him the freedom of expression (Article 5 section 1 sentence 1 of the German Constitution), the freedom of designing a film (article 5 section 1 sentence 2 of the German Constitution) and the freedom of the artistic creation process (article 5 section 3 of the German Constitution). In the context of the balancing of the fundamental rights, the KG Berlin concluded that the publication of informations unlawfully obtained is admissible in the concrete case. In the opinion of the KG Berlin, the defendant's interest in the publication of the film outweighs the applicant's interest in a ban of the film. The reason for this result lies in the fact that the film deals with a topic of great public interest. The purpose of the film was not to present the acting people in a positive way or to tolerate their criminal behavior. On the contrary, the film aims to raise attention to grievances in the form of crime against the applicant, her customers and the general public. In favor of the defendant it must also be noted that third parties (and not the defendant) have produced the pictures by means of committing crimes. The disputed pictures do not relate to trade secrets of the plaintiff and do not damage her reputation. In the film, the applicant is clearly portrayed as a victim of crimes without being confronted with incriminate things. With his film the defendant tried to penetrate the closed society of the graffiti scene and to uncover the motives of the acting people. Because of this objective, the film does not only satisfy the pure curiosity and sensationalism of the audience. Rather, the film provides the viewer with a gain in knowledge and points out that the acting persons are criminals, which one should not imitate.

Overall, the KG Berlin found that the benefits of the film outweigh the disadvantages, which are caused by the publication of the illegal pictures within the film. Consequently, the KG Berlin denied a claim by the plaintiff against the defendant.

Urteil des KG Berlin vom 25. Oktober 2012 (Aktenzeichen: 10 U 136/12)

http://www.telemedicus.info/urteile/Kunstfreiheit/1394-KG-Berlin-Az-10-U-13612-Abwaegung-Kunstfreiheit-bei-Doku-ueber-Sprayer-Szene.html

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