[DE] BGH declares retention of reports on suspected offenders in online archives lawful

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In a judgment of 30 October 2012 (Case VI ZR 4/12) the Bundesgerichtshof (Federal Court of Justice - BGH) ruled that the retention of reports on suspected offenders in online archives is lawful.

The plaintiff worked as a “special operations officer” for the Ministry of State Security in the German Democratic Republic (GDR). However, in civil proceedings he made a statutory declaration that he had never worked for that ministry. As a result of this false testimony, the public prosecutor’s office instituted criminal investigation proceedings against him, which were subsequently discontinued against payment of a sum of money.

A daily newspaper reported on the investigation proceedings, mentioning the plaintiff’s name, and later placed the article in its online archive, which is freely accessible via the newspaper’s website. After the proceedings had been discontinued, the newspaper wrote a postscript to the article on the discontinuation of the investigation proceedings against payment of a sum of money.

The plaintiff considered that keeping the article available in the newspaper’s online archive violated his general personality rights and brought a cease-and-desist action against the newspaper. Having lost on appeal, the defendant filed an appeal on points of law with the BGH, which dismissed the action, stating that the interference with the plaintiff’s general personality rights by retaining the article in the newspaper’s online archive was not unlawful as the plaintiff’s interest in his own protection had to take second place to the public interest in information and the defendant’s right to freedom of expression. The court pointed out that the original publication in 2008 had been lawful as there had been a significant public interest in the circumstances of the criminal offence of which the plaintiff had been accused. The subsequent discontinuation of the investigation proceedings had changed nothing in that regard and, according to the BGH, the comparatively insignificant harm done to the plaintiff’s general personality rights had to be a secondary consideration.

Das Urteil des Bundesgerichtshofs vom 30 Oktober 2012 (Az.: VI ZR 4/12)

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http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=62331&pos=0&anz=1

Judgment of the Federal Court of Justice of 30 October 2012 (Case VI ZR 4/12)

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