[DE] OLG Hamm Rules that YouTube Fatal Accident Video Does not Need to be Deleted

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In its decisions of 7 August 2013 and 23 September 2013, the Oberlandesgericht Hamm (Hamm Appeal Court - OLG) ruled that the YouTube video platform is not obliged to delete videos concerning a fatal traffic accident that name the person responsible.

The plaintiff in the proceedings had caused a traffic accident in 2008, in which two people were killed. In 2009, he received a suspended one-year prison sentence, a EUR 5,000 fine and a one-month driving ban.

The accident was the subject of numerous media reports. Unknown users collected these reports and created a number of videos about the accident. These videos, which were published on YouTube, mention the plaintiff's name and address at the time, and show his face. The plaintiff therefore took court action against YouTube, requesting the deletion of the videos.

The OLG Hamm rejected this request on the grounds that, in the necessary weighing up of the fundamental rights of the respective parties, the right to freedom of expression and the public right to information took precedence over the plaintiff's general rights to privacy and rehabilitation. Although it was true that the probationary period had expired more than two years previously, there were several reasons why the request for the videos to be deleted could not be accepted.

Firstly, as the offender, the plaintiff should expect the public to show an interest in his crime. In view of the disastrous consequences of the accident, the prominent position of the plaintiff and the link with a foreign country, there was particular public interest in the case. The plaintiff was a German diplomat in Russia, where the accident happened. It had therefore been a newsworthy event. When the material had been uploaded in 2010, it had been a topical news report, which had helped to serve the public's basic, pre-eminent right to information.

The suggestion in the video that the plaintiff had been drunk when the accident occurred also could not justify a claim for it to be deleted. Firstly, the allegation had not been proven false, and secondly the "layman's principle" applied, under which a claim should not be presumed to be true if it was made in a report by a layman rather than by professional media. Incidentally, due diligence had been

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exercised in so far as the video mentioned exactly the same reasons for suspicion as the media, and the plaintiff had not denied them.

Although it was no longer a topical news report, the video should continue to be available for download. Here, the OLG applied the principle that it should be possible to store reports that were lawful when they were published in archives from which they could be downloaded, provided there were no particular circumstances in the individual case that meant they should be deleted. There were no such circumstances in this case. It was clear, even to a layman, that the report was old. It was also significant that the plaintiff had since changed his name and address.

Beschluss des OLG Hamm vom 23. September 2013 (Az. 3 U 71/13)

http://www.justiz.nrw.de/nrwe/olgs/hamm/j2013/3_U_71_13_Beschluss_20130923.html

Decision of the Hamm Appeal Court, 23 September 2013 (case no. 3 U 71/13)

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