[DE] Federal Supreme Court rules that privacy breach compensation is not heritable

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In a ruling of 29 April 2014 (case no. VI ZR 246/12), the Bundesgerichtshof (Federal Supreme Court - BGH) rejected an appeal by a plaintiff who, as the heir of a famous entertainer, had wanted to pursue a claim for financial compensation for an infringement of the late entertainer's right to privacy.

The entertainer had argued that articles published in the defendant's magazines had infringed his right to privacy and claimed financial compensation from the defendant. His complaint had been faxed to the court the day before he died, but had not been sent to the defendant until a few weeks later.

In its decision, the BGH confirmed the lower-instance rulings of the Landgericht Berlin (Berlin District Court) of 21 June 2011 (case no. 27 O 145/11) and the Kammergericht Berlin (Berlin Supreme Court) of 3 May 2012 (case no. 10 U 99/11) on the grounds that the claim for financial compensation for breach of privacy was not heritable.

However, this outcome was not based on the recognition that the intangible elements of the right to privacy were irreparably tied to the individual rightsholder and, as personal rights, were inalienable and indispensable, i.e. non-transferable and non-heritable. Indeed, the claim to financial compensation was not itself an element of the general right to privacy. Rather, the claim was not heritable because of its very nature and purpose.

The legislature had never previously examined the heritability of a claim to financial compensation. Neither had it stated indirectly that such a right could be inherited. In particular, the deletion and rescinding of Articles 847(1)(2) and 1300(2) of the old version of the Bürgerliches Gesetzbuch (Civil Code - BGB), which had governed the non-heritability of the right to non-material damages and "Kranzgeld" (compensation due for breach of a promise to marry) respectively, could not be interpreted as such an indirect statement.

The function of a claim to financial compensation proved decisively that it could not be inherited. The awarding of financial compensation to a victim of serious breaches of privacy was based primarily on the idea of making amends, which was the main purpose of the right to such compensation. Financial compensation could not be considered for breaches of privacy rights committed after a person's

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death because a deceased person could no longer be satisfied in this way. The same applied in the current situation, in which, although his privacy had been breached while he was still alive, the victim had died before the claim to financial compensation had been met. Here also, as in the case of postmortem breaches of privacy, amends could no longer be made. Generally speaking, there were (in principle) no grounds for extending a compensation claim beyond the victim's death.

The preventive effect sought through or resulting from the payment of financial compensation did not justify any other outcome, since it was not, on its own, a sufficient reason to award such compensation. The heritability of the right to damages and other intangible rights on the one hand, and the non-heritability of claims to financial compensation on the other, did not represent unjustified discrimination under Article 3(1) of the Grundgesetz (Basic Law - GG). Indeed, there were material grounds for such discrimination because the notion of making amends was more prominent in a claim for financial compensation than in a claim for damages and other claims for reimbursement for non-material losses.

The fact that the claim for financial compensation was faxed to the court while the deceased was still alive did not alter the fact that the purpose of the compensation, i.e. to make amends, could no longer be met after he had died.

Whether the right to financial compensation would have been heritable if the claim had been delivered to the defendant while the victim was still alive could remain an open question. In this case, the retroactive effect provided for in Article 167 of the Zivilprozessordnung (Code of Civil Procedure - ZPO) did not apply, i.e. the time at which the action was submitted to the defendant was not fictitiously moved forward to the time when it was submitted to the court. Article 167 ZPO only applied to cases in which the document was submitted in order to comply with a deadline, to have the period of limitations begin anew or to have it extended.

Urteil des BGH vom 29. April 2014 (Az.: VI ZR 246/12)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=67788&pos=0&anz=1

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