# [DE] Karlsruhe Appeal Court rules on infringement of own image rights

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On 14 May 2014, the Oberlandesgericht Karlsruhe (Karlsruhe Appeal Court - OLG) ruled, in a decision yet to be published in full, that the Bild newspaper, by publishing a photograph of a famous footballer in which a woman appeared by chance in the background, infringed the woman's own image rights under Article 22 of the Kunsturhebergesetz (Art Copyright Act - KUG) and, at the same time, breached her general right to privacy under Article 823(1) of the Bürgerliches Gesetzbuch (Civil Code - BGB).

The disputed photograph was published in 2012 in an article about a robbery committed against the footballer during his holiday. The text "Sonne, Strand, Strauchdiebe. Gestern sahen wir ... Star A. in pikanter Frauen-Begleitung am Ballermann... Jetzt wurde er Opfer einer Straftat..." ("Sun, beach, thief. Yesterday we saw ... star A. with a tasty female companion on the Ballermann... Now he has become a victim of crime...") was printed under the headline "A. am Ballermann ausgeraubt" ("A. robbed on the Ballermann"). The image showed the famous footballer on a public beach. The plaintiff could be identified in the background on the right-hand edge of the picture, wearing a bikini and lying on a sunlounger. She had asked the Landgericht Karlsruhe (Karlsruhe District Court - LG) for an injunction preventing the re-publication of the photograph and for appropriate financial compensation. The LG rejected her claim on the grounds that images in which people appear only as an accessory alongside a landscape or other members of the public may be distributed and publicly displayed in accordance with Article 23(1)(2) KUG. The plaintiff appealed to the OLG Karlsruhe against this decision.

The OLG argued that, contrary to the LG's assumption, the content of the image in this case was characterised by its location. The exception provided for in Article 23(1)(2) KUG did not apply because, otherwise, someone pictured with a famous person purely by chance would be treated less favourably than a famous person's companion in an everyday situation that did not, in itself, justify the publication of a photograph of them. The OLG also thought that no exception to the requirement for consent under Article 22 KUG applied in this case. The fact that it was acceptable to publish an image of the footballer in the context of the report did not mean that the plaintiff could also be pictured. Since she had no connection whatsoever with the footballer, there was no public interest for her to be included

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in the picture. The photograph showed the plaintiff on holiday, a situation in which even the privacy of famous people was usually closely protected. The plaintiff could have been made unrecognisable if her face had been pixelated or her eyes blanked out. It was significant that the plaintiff, because she had been wearing a bathing costume, would have been exposed to more intensive scrutiny by millions of people than would otherwise have been the case. Readers could also have been led to speculate over whether she was the “tasty female companion” referred to in the article.

Following the plaintiff’s appeal, the OLG ordered the newspaper not to publish the image again. However, it did not consider that the infringement justified payment of financial compensation because it did not constitute a serious invasion of the victim’s privacy.

The OLG’s decision is open to appeal.

***Pressemitteilung des OLG Karlsruhe vom 20. Mai 2014***

http://www.beckmannundnorda.de/serendipity/index.php?/archives/1750-OLG-Karlsruhe-Zur-Zulaessigkeit-der-Presseveroeffentlichung-eines-Fotos,-welches-zufaellig-eine-mit-Bikini-bekleidete-Frauneben-einem-Prominenten-zeigt.html

*Karlsruhe Appeal Court press release of 20 May 2014*

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