[DE] BGH permits use of illegally obtained e-mails for reporting purposes

IRIS 2014-10:1/7

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In a ruling of 30 September 2014, which has not yet been published in full (case no. VI ZR 490/12), the Bundesgerichtshof (Federal Supreme Court - BGH) decided that the public's right to information should take precedence over a politician's general privacy rights. Although the judgment concerns print media, it is also relevant to reporting in the audiovisual media sector.

The plaintiff held various political posts between 1994 and 2010, including that of Finance Minister, Home Affairs Minister, and Head of the State Chancellery of a German Bundesland. In 1997, he had a daughter from an extra-marital relationship with a colleague. The girl's mother, who brought the child up alone, applied for maintenance payments and received money for her daughter in accordance with the Unterhaltsvorschussgesetz (Child Support Act) until October 2003.

When the plaintiff lost his laptop in 2009, four e-mails that he had received from the child's mother were sent to the defendants' editorial offices. In these e-mails, the politician was accused of failing to make regular maintenance payments for his daughter and committing social insurance fraud. The defendants published the content of the e-mails in the print media and the plaintiff resigned as Minister. He then applied for an injunction against the reporting of the private e-mails in either direct or indirect speech.

In accordance with the general right to privacy, the lower instance courts granted the plaintiff's application (Landgericht Berlin, case no. 27 O 719/10 - ruling of 28 June 2011 and Kammergericht Berlin, case no. 10 U 118/11 - ruling of 5 November 2012).

The BGH, however, overturned these rulings and rejected the application.

The BGH found, firstly, that the reports published by the defendants intruded on the plaintiff's privacy and right to informational self-determination. However, the intrusion was not unlawful. Even though the information (the truth of which was not questioned by the plaintiff) had been obtained unlawfully by a third party, the public's right to information outweighed the plaintiff's right to privacy. The plaintiff was a well-known political figure whose conduct was in the public eye. The press had used the e-mails to prove that the politician was aware that the

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child’s mother was receiving payments for their daughter under the Child Support Act, even though the requirements for such payments had not been met because he himself was obliged to pay them.

When weighing reporting freedom against the protection of privacy, the BGH considered that this information had a high level of “public value”. The BGH therefore found the publication of the various e-mails in direct or indirect speech to be lawful.

BGH, Pressemitteilung Nr. 137/14 vom 30. September 2014

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2014&Sort=3&nr=68956&pos=1&anz=138

Federal Supreme Court, press release no. 137/14 of 30 September 2014

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