# [DE] Federal Supreme Court decides on right to have originally admissible suspicion-based reporting corrected

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In a ruling of 18 November 2014 (case no. VI ZR 76/14), the Bundesgerichtshof (Federal Supreme Court - BGH) decided that a person about whom suspicion-based reports are published but who is later found innocent cannot demand that the original reports be corrected. However, he can ask the medium responsible to publish a subsequent report, explaining that the suspicions, which were lawfully published, later turned out to be false. Although the defendant in this case was a newspaper publisher, the ruling also applies to suspicion-based reporting in the audiovisual media sector.

The case concerned a report about the plaintiff who was the head lawyer of a bank at the time. In one of its magazines, the defendant published comments made by a former security adviser of the bank, connecting the plaintiff who was referred to by name, to a criminal procedure brought against the security adviser. It was suggested in the report that the plaintiff had asked the security adviser to spy on a former member of the bank's board of directors. The former security adviser subsequently withdrew his comments. The preliminary proceedings instigated against him and the plaintiff were later abandoned.

The former head lawyer then took legal action against the defendant publisher, demanding that it correct the report. Both the Landgericht Hamburg (Hamburg District Court - LG) in a ruling of 20 April 2012 (case no. 324 O 628/10) and the Hanseatische Oberlandesgericht (Hanseatic Court of Appeal - OLG) in a ruling of 28 January 2014 (case no. 7 U 44/12) found in the plaintiff's favour, ruling that the suspicion that the plaintiff had been involved in spying on the former board member was unfounded.

In the appeal procedure, the BGH quashed the disputed ruling and referred the case back to the OLG. It held that the news magazine concerned had demonstrated a sufficient level of factual evidence. The suspicion-based reporting had therefore been lawful at the time and its publication justified on the grounds that it covered a topic of general interest in the context of the economic crisis.

When weighing the plaintiff's privacy rights (Article 2(1) in conjunction with Article 1(1) of the Grundgesetz (Basic Law - GG) and Article 8(1) of the European

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Convention on Human Rights (ECHR)) against the right of the press to freedom of expression and media freedom (Article 5(1) GG, Article 10 ECHR), the BGH held "that the media company cannot be forced to admit wrongdoing after lawfully publishing a suspicion-based report".

Therefore, according to the BGH, if the suspicion turned out to be false, the plaintiff could not demand that the defendant publish a corrected version of the original report. He could only require it to announce that the original suspicion had been found to be false when the matter had been resolved and that the suspicion was therefore no longer held.

***BGH, Urteil des VI. Zivilsenats vom 18. November 2014 - VI ZR 76/14 -***

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2014&Sort=3&anz=179&pos=11&nr=69626&linked=urt&Blank=1&file=dokument.pdf

*Ruling of the Federal Supreme Court of 18 November 2014, VI ZR 76/14*

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