[DE] Federal Supreme Court considers victims' ability to recognise themselves as sufficient

IRIS 2015-5:1/9

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In its judgment of 26 February 2015 (case no. 4 StR 328/14), the Bundesgerichtshof (Federal Supreme Court - BGH) decided that video footage in which victims of crime can recognise themselves on the basis of identifiable personal features is covered by the criminal law provision enshrined in Article 201a(1) of the old version of the Strafgesetzbuch (Criminal Code - StGB) (Article 201a(1)(1) of the 49th Act amending the Criminal Code). This provision is designed to protect the intimate privacy of individuals from intrusion through the taking of video and photographs.

In the case concerned, a gynaecologist from Rhineland-Palatinate was sentenced to three and a half years' imprisonment by the LG Frankenthal (Frankenthal District Court) on 11 November 2013 (case no. 5221 Js 25913/11.6 KLs). The LG Frankenthal considered the fact that the gynaecologist had secretly filmed his patients during gynaecological examinations over 1,400 times between 2008 and 2011 as proof. In three further cases, the gynaecologist was also found guilty of committing sexual abuse by exploiting the doctor/patient relationship of care. Both the defendant and two of his former patients, as joint plaintiffs, appealed against this ruling.

With regard to the sentencing under Article 201a(1) StGB (old version), the court explained that the rule protected individuals from intrusions of their privacy through the secret taking of video and photographs. It covered video footage in which victims of crime could recognise themselves on the basis of identifiable personal features. However, the victims did not need to be recognisable by others. The offence did not depend on whether the person depicted could be identified by third parties. The BGH did not take a decision on whether the same offence is committed if the person depicted cannot be identified from the images alone.

Beschluss des Bundesgerichtshofs (4. Strafsenat) vom 26. Februar 2015 - 4 StR 328/14 -

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&nr=70500&pos=10&anz=528

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Decision of the 4th criminal chamber of the Federal Supreme Court of 26 February 2015 - case no. 4 StR 328/14 -

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