[DE] Extent of obligation to delete illegal comments by journalists

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According to media reports, the OLG Hamburg (Hamburg appeal court - OLG) ruled on 18 February 2015 (case no. 7 W 24/15) that daily newspaper journalists are not obliged to take legal action against third parties who publish an article that the journalists themselves have been prohibited from distributing. The court decided that an injunction obtained against the journalists did not apply to the publication of the article in other media, since once the journalists had completed the article and submitted it to their employer they no longer had any control over the article. The publication of the article on another newspaper's website therefore lay outside the journalists' sphere of influence. According to the OLG, it did not matter whether the article had been published with or without the consent of the journalists' employer. Although the current judgment concerns a newspaper article, it applies equally to the distribution of audiovisual content.

In the case at hand, two permanently employed journalists had written an article that was published on their newspaper's website. A temporary injunction had been granted, preventing them from distributing comments made in this article. However, the article was later published on another newspaper's website.

In the first instance, the LG Hamburg (Hamburg district court) had rejected an application for sanctions to be imposed against the journalists (judgment of 15 December 2014, case no. 324 O 380/14). The OLG judges considered the appeal against this decision unfounded. The journalists had not distributed the illegal comments after the injunction had been issued. Their obligations under the injunction only applied within their own sphere of influence. It was true that, under the terms of the injunction, someone who published a comment covered by the injunction on the Internet was obliged to do everything possible to remove the comment concerned from the Internet (see, most recently, Federal Supreme Court case no. I ZR 76/13, judgment of 18 September 2014). For that reason, journalists could be obliged to ask their employer to delete the article from the website concerned. In the present case, however, the complainant had failed to demonstrate that the journalists could have prevented the alleged infringement. The OLG judges held that, if third parties published the article after it had been submitted to the journalists' employer, this was no longer within the journalists' sphere of influence. Third-party publication was therefore outside the scope of the journalists' obligations under the injunction.

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Oberlandesgericht Hamburg, Beschluss vom 18. Februar 2015 (Az.: 7 W 24/15)

http://www.online-und-recht.de/urteile/Umfang-der-Loeschungspflichten-bei-rechtswidrigen-Internet-Auesserungen-Oberlandesgericht-Hamburg-20150218

Hamburg appeal court, judgment of 18 February 2015 (case no. 7 W 24/15)

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