[DE] The “right to be forgotten” can be asserted vis-à-vis the operator on an online archive

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In a judgment of 7 July 2015, the *Oberlandesgericht Hamburg* (Hamburg Court of Appeal) decided that the “right to be forgotten” can also be asserted vis-à-vis the operator on an online archive (Case 7 U 29/12).

The plaintiff sought injunctive relief against the publisher of a national daily newspaper and operator of its internet site, where, in addition to news items, older reports were made available in an online archive. The reports included the institution, progress and discontinuance of investigation proceedings brought against the plaintiff by the public prosecutor’s office and on third parties’ reactions dating from 2010 and 2011. The subject matter of the proceedings was a criminal complaint brought against the plaintiff alleging he had anonymously faxed insulting and defamatory letters to a politician. After the proceedings had been discontinued against payment of EUR 40,000, the circumstances of the case were criticised and commented on in the daily press. The plaintiff complained that the defendant was continuing to keep the reporting on the circumstances of the case publicly accessible. The undated articles on the defendant’s website could still be found among the top three search results on google.de after 2012 by entering the plaintiff’s name. The plaintiff called for the reporting on the investigation proceedings mentioning either his name or other details revealing his identity to be discontinued. The *Landgericht Hamburg* (Hamburg District Court) dismissed the complaint in its judgment of 30 March 2012 (Case 324 O 9/12), stating that the plaintiff was not entitled to injunctive relief because ordering the defendant to delete or amend the articles that had initially been lawfully disseminated constituted a serious violation of press freedom that was not justified by the infringement of the plaintiff's general personality rights. The reporting was on a subject of considerable public interest at the time of the publication, concerned a mere suspicion and did not portray the plaintiff as a convicted offender.

In response to the plaintiff’s appeal, the Hamburg Court of Appeal set aside the lower court’s decision and partially allowed the complaint, stating that, although the plaintiff had no right to call for the defendant to cease the future dissemination of the articles in its online archive, the appeal was well-founded insofar as he called for the defendant to modify the articles in question in such a way that they did not appear in lists of search results when his name was entered

into internet search engines. This, the court said, followed mutatis mutandis from section 1004(1), first sentence of the *Bürgerliches Gesetzbuch* (Civil Code - BGB) in conjunction with general personality law. The fact that the reports on the investigation proceedings against the plaintiff could easily be located on the Internet and retrieved by any user by simply entering his name was a significant breach of his personality rights, because the dissemination of information likely to have a lasting adverse effect on his public reputation, would thus be perpetuated. That adverse effect was all the more serious as the originally sufficient public interest in the case no longer existed.

The court went on to state that if according to the judgment of the CJEU of 13 May 2014 (Case C 131/12, see IRIS 2014-6/3) such a right could be claimed against the operators of Internet search engines, then it could be asserted all the more against the authors of the relevant articles.

Urteil des Oberlandesgerichts Hamburg vom 7 Juli 2015 (Az. 7 U 29/12)

https://openjur.de/u/838786.html