[US] Life story of an Iraq war veteran may be filmed without his consent

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On 17 February 2016, the 9th Circuit US Court of Appeals ruled that the First Amendment to the US Constitution, which, inter alia, governs freedom of speech, protects the filming of the life story of even an unknown person.

The appellant was an Iraq war veteran. The case concerned the film "The Hurt Locker", which is a war movie that shows the work of a bomb disposal squad in the Iraq war. The appellant claimed that the film's main protagonist was based on him and sued its director and screenwriter, stating that the film was defamatory and breached his personality rights ("right of publicity"), i.e. his right to determine the use of identifying aspects of his person. The lower court dismissed his action and the appeal court has now confirmed that decision.

The Court had to strike a balance between the appellant's right to privacy and the defendant's right to freedom of speech. The law of the state of California, which was applicable in this case, contains both a statute on the protection of privacy and another aimed at the prevention of lawsuits that impede the exercise of freedom of speech (and other rights protected by the First Amendment) if the exercise of these rights is in the public interest. The appeal court first of all established that a film on the work of a bomb disposal squad in the Iraq war dealt with a subject of public interest and that the law on preventing lawsuits that impede the exercise of freedom of speech was applicable. The Court also established that the First Amendment protects artists who make a film based, for example, on real stories from the lives of ordinary or extraordinary people. In the Court's opinion, a limit to this protection based on the appellant's right of publicity was a content-based and therefore unconstitutional restriction of freedom of speech. Furthermore, the Court pointed out that the film did not defame the appellant but rather portrayed him as a hero, and dismissed the appeal.

Judgment of the US Court of Appeals of 17 February 2016

http://cdn.ca9.uscourts.gov/datastore/opinions/2016/02/17/11-56986.pdf

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