[DE] Potsdam District Court says spying on neighbours using a drone is not an innocent leisure pursuit

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The Amtsgericht Potsdam (Potsdam District Court) has ruled in a recently published judgment of 16 April 2015 (Case 37 C 454/13) that flying a drone equipped with a camera over a neighbour's property violates the neighbour's privacy rights. This therefore justifies a claim for injunctive relief under Article 1004(1), 2nd sentence of the Bürgerliches Gesetzbuch (Civil Code -BGB) in conjunction with Article 823(1) BGB, and Article 1(1), 1st sentence, in conjunction with Article 2(1) of the Grundgesetz (Basic Law - GG).

The plaintiff is the sole owner of a property protected by high hedges, the main purpose being to prevent anyone from looking in from neighbouring properties. His partner was sunbathing in the garden on the morning of 9 July 2013 when the defendant flew a drone equipped with a camera over the property with the camera switched on. The plaintiff had sent the pilot and subsequent defendant a written warning and demanded a cease-and-desist declaration. When the pilot refused, the plaintiff filed an action with the Potsdam District Court. In the proceedings, the pilot denied having flown over the neighbouring property, but the Court, having listened to several witnesses when taking evidence and established that disputes had taken place between the two neighbours for some time, reached the conclusion that the defendant had flown over the property at a height of about seven metres, with its camera switched on, while the plaintiff's partner was sunbathing, scantily clad.

The Court accordingly allowed the plaintiff's request and issued an injunction against the defendant, awarding costs to the plaintiff. In the Court's opinion, although it was necessary in the instant case to take account of the defendant's right to the free development of his personality in the form of pursuing his hobby (flying the drone), that right had to be weighed against the plaintiff's right to the protection of his privacy. It was clear that the plaintiff wished to protect the privacy of his property, because the property was well-protected from being viewed from the outside. Circumventing that protection using a drone, which filmed the plaintiff's partner engaging in a private activity, thereby constituted a breach of the plaintiff's privacy and was not an innocent leisure pursuit. Against the background of the disputes between the two neighbours, the flight of the drone over the property was not accidental but deliberate, and could justifiably be regarded as harassment. The Court stated that the risk of repetition indicated by the infringement of rights had not been dispelled by the fact that the plaintiff and

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his partner no longer lived on the premises, because the plaintiff still owned the property. The judgment is final.

Urteil des AG Potsdam vom 16. April 2015 (Az.: 37 C 454/13)

http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/279b/bs/10/page/sammlung.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=JURE160000030&

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