[DE] Hamburg District Court issues cease-and-desist order against broadcasting of a TV programme

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In a decision of 12 April 2016 (Case 324 O 96/16), the Landgericht Hamburg (Hamburg District Court) issued a temporary injunction prohibiting the broadcasting of a television programme produced by a team of reporters that had set itself the task of revealing serious shortcomings in companies.

In this particular case, the programme “Team Wallraff - Reporter undercover” of the broadcaster RTL wanted to show sloppy working practices in a hospital caused by pressure to keep costs down. In order to do this, a female reporter infiltrated the hospital disguised as a trainee and produced footage broadcast on 11 January 2016 in an episode entitled “Katastrophale Missstände in deutschen Krankenhäusern!” (“Appalling conditions in German hospitals!”). In addition to the images shot surreptitiously, a female member of the hospital staff was quoted as referring to “dangers of burnout” due to staff shortages.

After the programme in question had been broadcast, the hospital operator complained it had not shown any specific shortcomings but only an ordinary hospital day and claimed that the material produced was sensationalist and conveyed an overall picture that could only be described as misleading. Furthermore, the breach of the personality rights of patients and staff shown, in some cases in very private situations, could not be regarded as justified.

The broadcaster itself stressed that the research on the programme at issue had been conducted over a period of 14 months in full compliance with the law and the rules of good journalism and that an injunction, being an interim measure, did not constitute confirmation of incorrect or unlawful reporting. In this connection, it referred to the so-called “Wallraff judgment” of the Bundesverfassungsgericht (Federal Constitutional Court - BverfG) of 25 January 1984 (Case 1 BvR 272/81) and to the case law of the European Court of Human Rights, pointing out that both courts regarded the publication of secretly filmed footage as lawful provided that an unacceptable situation of social relevance is uncovered. The Federal Constitutional Court made it clear that in cases in which an individual has obtained information unlawfully through deception with the intention of using it against the person deceived that information may in principle not be published. An exception to this rule is when the importance of the information for enlightening the public and shaping public opinion outweighs the disadvantages

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brought about by the breach of the law for the person affected and for the legal system. The publication of unlawfully obtained information is, the judges said, also covered by the protection of freedom of speech enshrined in Article 5(1) of the Grundgesetz (Basic Law).

After due consideration, the Hamburg District Court ruled that the personality rights of the patients and members of staff shown in the film should be granted interim legal protection. Under the temporary injunction issued, RTL is now prohibited from publishing and disseminating the footage concerned.

Weitere Informationen zum Beschluss des LG Hamburg vom 12. April 2016 (324 O 96/16)

https://www.wbs-law.de/personlichkeitsrecht/gericht-verbietet-team-wallraff-beitrag-ueber-kliniken-67150/

Further information on the Hamburg District Court's decision of 12 April 2016 (Case 324 O 96/16)

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