[DE] Criticism of "Infotainment" on TV - Court Defends the Press

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Valentina Becker
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 23 August 1996, the Cologne Regional Court of Appeal (Oberlandesgericht - OLG) ruled that the fact that a press article on a private television station's news programme contained aggressive and belittling comments on its staff was not enough to justify the assumption that it served - even subjectively - a competitive purpose. Under the heading, "Opinion", a German magazine had published an article on the form and content of a private television station's news programme, which it described as a "daily blood and sperm soap", with reporters as "waiters, serving up easily digestible info-snacks".

The television station complained that the article had seriously damaged its community standing, and sought a court injunction against the publishers, to protect its own competitive position and the personal rights of its staff. It claimed that the article also served a competitive purpose and so technically violated Section 1 of the Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb - UWG) and that it was, in any case, defamatory criticism and as such no longer protected by the basic right to free expression guaranteed by Article 5 of the Basic Law (Grundgesetz).

The Regional Court found for the applicant and issued an interim injunction under Sections 823 (1) and 1004 of the German Civil Code (Bürgerliches Gesetzbuch - BGB). Ordered to desist, the publishers appealed successfully, and the interim injunction was lifted by the Regional Court of Appeal.

Explaining its decision, the Regional Court of Appeal stated that no claim could be based on competition law, since the defendant had not acted for competitive purposes. It was certainly true that the article complained of could, objectively speaking, affect the competition between the plaintiff and its competitors, but there had been no subjective action within the meaning of Sections 1 and 14 of the Act on Unfair Competition. Since the defendant was a publication covered by the general privileges of the press, the mere fact that the disputed article could objectively serve a competitive purpose, and that the author knew this, was no proof that this had been the actual intention. Publication of an article could, on the contrary, be motivated by the special concern of the press to inform the public on matters of general interest or help to shape public opinion. The subjective intention would have to be established with specific reference to the

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particular circumstances in which the article had been written. In the present case, it should not be forgotten that the article had clearly set out to attack a particular way of presenting the news, and indeed the criteria used to select the news in a way which might sacrifice items of world-wide importance to others chosen mainly for their `entertainment value' and presented in a way which violated the journalist's duty of discretion and impartiality and pandered to the public's taste for the sensational. To this extent, the article formed part of the public debate on `infotainment', which set out to present news items of an often violent and brutal nature as entertainingly as possible - and was thus clearly compatible with one of the specific functions of the press. This contradicted the assumption that the defendant was also motivated, to any appreciable degree, by competitive considerations.

The Regional Court of Appeal agreed that the plaintiff's personal rights had been injured, but held that its application for an injunction on this score was bound to fail, since the defendant could argue that the article in question was covered by a right to free expression, which must in this instance take precedence. It had, in other words, a valid defence.

OLG Köln, Urteil vom 23. August 1996, -6 U 98/96-

Cologne Regional Court of Appeal (Oberlandesgericht - OLG), Judgement of 23 August 1996, -6 U 98/96-

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