[DE] Filming of a hostage drama within the law despite murderer's personality rights

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According to media reports, the Landgericht Aachen (Aachen Regional Court) ruled in a decision of 24 May 2016 (Case 8 O 168/16) that the planned filming of the Gladbeck hostage drama was within the law, and the personality rights of the person convicted of the hostage-taking and murder were no obstacle to carrying out the project.

In August 1988, the hostage-taker and another perpetrator robbed a bank in Gladbeck. While they were on the run through Germany and the Netherlands, two hostages and a police officer were killed. Both were sentenced to life imprisonment in 1991 by the Landgericht Essen (Essen Regional Court). In their decision, the judges dismissed the convicted murderer's application for legal aid. The purpose of the application by the prisoner who was held at Aachen prison, was to obtain the funds to apply for an injunction, to prevent a Berlin production company from making a film of the hostage taking. In principle, people on a low income can claim legal aid pursuant to Article 114(1), 1st paragraph, of the Zivilprozessordnung (Civil Code), but only when the legal action or legal defence has sufficient prospects of success. In this instance, the Aachen court denied the request, stating that although the film affected the offender's personality rights, those rights had to take a lesser position than freedom of expression and freedom of broadcasting.

In order to prevent the film being made, the offender had sent the Berlin production company a cease-and-desist order, with which it did not comply. The company is of the opinion that the Gladbeck hostage drama of 1988 is one of the most spectacular crimes in post-war German history, and the perpetrators are accordingly people of relevance to contemporary history; they therefore must, like the RAF terrorists, tolerate a cinematic presentation of the events.

The prisoner responded that the film would jeopardise his social rehabilitation and that his reintegration into society would be made significantly harder as a result of the planned portrayal of the drama from the victims' perspective. Stating that his personality rights would be considerably impacted, he referred to the "Lebach judgment" of 5 June 1973 from the Bundesverfassungsgericht (Federal Constitutional Court) (case 1 BvR 536/72), which constituted a landmark decision on the relationship between freedom of broadcasting and personality rights. In

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that judgment, the Constitutional Court judges ruled that in principle the interest of the population in obtaining information concerning a criminal offence took precedence, and that freedom of broadcasting accordingly superseded the protection of the plaintiff's personality. However, that had to be rejected if the reporting jeopardised the offender's possible social rehabilitation because his personality rights, enshrined in Article 2(1) in conjunction with Article 1(1) of the Basic Law, then carried more weight.

The Aachen judges saw no evidence that this was the case in this instance. According to the Court, the planned film did in fact affect the plaintiff's personality rights, but the threat to his social rehabilitation was a secondary consideration and was of lesser significance than freedom of expression, freedom of broadcasting, freedom of the press and freedom of artistic creation. The plaintiff indicated his intention to appeal against the decision.

Pressemitteilung des LG Aachen zum Urteil vom 24. Mai 2016 (Az.: 8 O 168/16)

http://www.olg-koeln.nrw.de/behoerde/presse/004_zt_letzte-pm_archiv_zwangs/001_letzte_pressemitteilung/index.php

Press release of the Aachen Regional Court on the judgment of 24 May 2016 (Case 8 O 168/16)

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