[DE] No injunctive relief against rebroadcasting of child abuse drama

IRIS 2016-8:1/12

Ingo Beckendorf
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a judgment of 3 June 2016 (Case 324 O 78/15), the Landgericht Hamburg (Hamburg Regional Court) ruled that a former pupil of the Odenwaldschule boarding school in Hesse, in which child abuse took place on several occasions, is not entitled to injunctive relief against the rebroadcasting by the TV station WDR and the production company of the feature film “Die Auserwählten” (The Favoured Few) depicting those events, despite the fact that he was himself a victim.

The Odenwaldschule was the focus of public attention when it came to light that systematic sexual abuse of pupils had been perpetrated by various members of staff for many years from the end of the 1990s onwards. The school filed for bankruptcy on 16 June 2015 and ceased teaching activities a few weeks later. The film was shown at 8.15pm on 1 October 2014 on the channel Das Erste. Before it began, it was pointed out in on-screen text that the film did not tell the personal story of an individual but was about the abuse of at least 132 children by the then headmaster and other teachers, portraying this as an example of the phenomenon and exploring the basic mechanisms concerned. The plaintiff demanded that the defendants, WDR and the film production company, refrain from rebroadcasting scenes showing the character Frank Hoffmann. The proceedings involved no claim for damages.

In the Court’s opinion, there were some indications that the film and its distribution breached the plaintiff’s general personality rights. It was clear, according to the judges, that the accumulation of identifying features meant that those familiar with the plaintiff’s school and personal environment could recognise that the character Frank Hoffmann had been modelled on the plaintiff. However, after weighing up all the interests involved, and particularly after taking into consideration the defendants’ artistic freedom guaranteed by Article 5(3) of the Grundgesetz (Basic Law) and in issue here, the interference with the plaintiff’s general personality right was not unlawful.

The film, the Court continued, was clearly a feature film and not a documentary, which might lay claim to supplying every detail of the facts. The important factors were therefore the extent to which the film departed from the facts and the resulting adverse effect on the plaintiff’s personality rights, because the more a

© European Audiovisual Observatory (Council of Europe) 2026

character differed from the actual individual on which he or she was modelled and became purely fictional, the more the holder of artistic freedom benefited from the application of standards specific to art. The actual events at the school contrasted with the portrayal of the character Erik and the biology teacher Petra Grust in the film. Taking into consideration all the circumstances of the individual case, those differences led to the conclusion that the film scenes in issue did not breach the law.

Moreover, the Court said, the plaintiff had in several ways brought up the subject in public himself. Furthermore, there was an overriding public interest in the broadcasting of the film. The plaintiff's personal privacy had not been violated, even if the broadcast had put a personal strain on him and he deserved particular protection as a child victim of serious criminal offences. The film is to be shown in schools, clubs and other facilities as part of educational and abuse prevention work.

Urteil des LG Hamburg vom 03. Juni 2016 (Az.: 324 O 78/15)

http://www.landesrecht-hamburg.de/jportal/portal/page/bsharprod.psml?showdoccase=1&doc.id=JURE160010025&st=ent

Judgment of the Hamburg Regional Court of 3 June 2016 (Case 324 O 78/15)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026