[DE] Damages for unauthorised YouTube footage not compulsory

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In a ruling of 22 November 2018 (case no. I-4 U 140/17), the Oberlandesgericht Hamm (Hamm Regional Court of Appeal) held that the unauthorised use of a film recording of a person on the YouTube video platform only creates a right to damages if the resulting privacy breach is classified as serious.

In the case at hand, a YouTube channel operator who regularly posted travel reports filmed a member of the check-in security staff at a German airport and published a two-second clip of the recording on the YouTube video platform. The clip, which showed the staff member finding the camera and briefly commenting on it, was subsequently included in a total of 26 published videos.

The security staff member lodged a complaint and requested an injunction plus damages of around EUR 8,100 for breach of privacy. In the first instance, the claim for damages was rejected. The claimant then appealed unsuccessfully to the Oberlandesgericht Hamm. In the grounds for its decision, the Appeal Court explained that although the claimant's general personality rights had undoubtedly been breached, not every personality rights infringement triggered a right to compensation for non-material damage. This right only applied when the intrusion on general personality rights was serious and if the damage caused could not be repaired in any other way. The Court held that this could only be judged in view of all the circumstances of the individual case, taking into account the significance and consequences of the infringement, as well as the extent to which the recording had been disseminated.

In this case, the Court held that the intrusion had not been sufficiently serious, since although the recording had been used humorously, it had not exposed the man to ridicule. In addition, it had only shown him at work and not at home. The two-second clip was also not the main element of the individual videos.

Although the recordings had been permanently stored and viewed many times on the video platform, this was not sufficient to constitute a serious infringement. The Court added that the fact that the channel operator had used the videos to generate advertising revenue did not affect the decision.

Urteil des OLG Hamm vom 22. November 2018 (Az. I-4 U 140/17)

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https://www.justiz.nrw.de/nrwe/olgs/hamm/j2018/4_U_140_17_Urteil_20181122.html

Decision of the Hamm Regional Court of Appeal, 22 November 2018 (case no. I-4 U 140/17)

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