[DE] Supreme Court rules that report on nude photo blackmail can infringe privacy rights

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In a ruling of 30 April 2019 (Case no. VI ZR 360/18), the Bundesgerichtshof (Federal Supreme Court – BGH) decided that the BILD newspaper had infringed the right to privacy of pop star Lena Meyer-Landrut by publishing a report about nude images of the singer.

The report followed the theft, by unknown individuals, of a laptop owned by the singer's boyfriend that contained private images of the singer. The thieves then demanded that the singer pay a large sum of money to prevent them from publishing the images. The BILD newspaper wrote that "spicy photos of the pop star" would be accessible "with just a few clicks". "The singer can be seen naked or in just her underwear." The report also quoted tweets posted by the alleged blackmailers announcing the publication of the pictures. However, the newspaper did not publish the images themselves. Lena Meyer-Landrut asked the court for an injunction against the publication of the report.

Whereas the singer's application had been granted in the first instance, the Kammergericht Berlin (Berlin Appeal Court) rejected her claim. It argued in particular that there was a justifiable public interest in reports on matters involving a social phenomenon. Since both private individuals and celebrities could be victims, the singer had to accept an intrusion into her privacy. However, the sixth civil chamber of the Federal Supreme Court decided that the report had unlawfully infringed the singer's privacy in a manner that could not be justified under the freedom of the press or freedom of expression. The singer was therefore entitled to an injunction under Article 1004(1)(2) in conjunction with Article 823(1) of the Bürgerliches Gesetzbuch (Civil Code – BGB).

In the BGH's opinion, the infringement of the singer's privacy was mainly linked to the tone of the report. By using the terms "intimate photos", "private videos" and "naked selfies", the newspaper had made it clear that the images were of a sexual nature. Since the pictures were meant only for Lena Meyer-Landrut's boyfriend, they should be considered part of her sex life and, therefore, part of her private life. In this context, it was irrelevant whether or not the images could actually be seen in the article published in the BILD newspaper. It was true that the tabloid had brought up a topic of social importance – the unauthorised distribution of nude photos on the Internet ('sex leaks') – and suggested how such risks could be avoided or at least reduced. However, the singer's right to

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protection of her privacy outweighed the interest in reporting the story because the article had an 'enticing' effect and could cause readers to look for the pictures themselves. The publication of the blackmailers' tweets also showed readers "how the complainant, against her will, is seen simply as an object by people who view the images". The crime that had already been committed meant the singer had an even greater right to protection.

Urteil des Bundesgerichtshofs vom 30. April 2019 (Az: VI ZR 360/18)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=98809&pos=0&anz=1

Ruling of the Federal Supreme Court of 30 April 2019 (case no. VI ZR 360/18)

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