ECtHR: *B.Z. Ullstein GMBH v. Germany*

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A recent decision by the European Court of Human Rights (ECtHR) dealt with photojournalism and crime reporting in the media. The ECtHR dismissed a claim on journalistic freedom with regard to the publication of a photo of a juvenile delinquent, P. It found that an injunction preventing any publication of a portrait photo of P. had not violated a newspaper's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR).

P. was 18 years old when he attacked and severely injured a man in a subway station by hitting and kicking him in the head. He also inflicted injuries on a man who had come to the aid of the injured man. P. was able to escape from the crime scene. As the incident had been recorded by surveillance cameras, an appeal for information was launched and the recordings were made public and shown in the German mass media. P. turned himself in to the police shortly afterwards. Prior to the start of the trial, the Berlin Regional Court ordered the media not to report on the trial in a way which would make P. identifiable to the public. Already after the first day of the trial, the Berlin newspaper B.Z. published an article on the case, which contained several pictures: a pixelated photo of P. which had been taken in the courtroom; a picture from the surveillance camera which showed P. kicking the victim; and an unpixelated portrait photo from an unknown source in which P. could be identified. Two weeks later, the Hamburg Regional Court granted P. a temporary injunction against the publishing company of the newspaper, B.Z. Ullstein GMBH, prohibiting the publication of the portrait photo. Half a year later, this injunction was confirmed. The Hamburg Regional Court addressed the considerable public interest in the proceedings, which had been aroused in particular by the outbreak of juvenile violence and by the reference to the debate on the video surveillance of public spaces. However, it considered it necessary to take into account the fact that P. had been a young adult at the time of his crime and benefitted therefore from particular protection under the provisions of the criminal law relating to young offenders. The injunction was confirmed by the Hamburg Court of Appeal, while the Federal Constitutional Court refused to admit for adjudication a constitutional complaint brought by the newspaper's company.

B.Z. Ullstein GMBH complained under Article 10 ECHR of the injunction preventing any further publication of the portrait photo of P. Before the Strasbourg Court, the newspaper's company argued that by downplaying the importance of photographs for journalism, the German courts had substituted its journalistic

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choices regarding techniques of presentation. Furthermore, it claimed that the German courts generally decided in favour of the personality rights of juvenile defenders and therefore did not attach the same level of importance to the freedom of expression as to the right to private life. B.Z. Ullstein GMBH argued that the German courts had not sufficiently taken into account the fact that the article and pictures in B.Z. served a significant public interest, and that due to the surveillance camera footage, P. was already known to the wider public. Furthermore, it argued that the article had been accurate and factual.

The ECtHR reiterated that photojournalism can contribute to debates of public interest and that the public might have an interest in having someone's physical appearance disclosed, while Article 10 ECHR also protects the form in which ideas and information are conveyed. However, the ECtHR also highlighted that the interest of revealing the identity of a convicted person is not self-evident, but may depend on different factors. Although there was some level of public interest involved, related to security concerns for the general public and the outburst of violence without any plausible reason in a public subway station, the ECtHR agreed with the findings by the German courts that the picture of P. that had been published in B.Z. did not provide any additional information with respect to the reported attack, except for revealing his identity, and did not add credibility to any information in the accompanying text. The ECtHR therefore sees no reason to call into question the domestic courts' differentiation between the debate and the picture, or the conclusion that the information value of the portrait photo was only limited.

The ECtHR also highlighted P.'s vulnerability as an adolescent, referring to the importance of protecting juveniles against stigmatisation and of maintaining the possibility of reintegrating them into society. The ECtHR reiterated that the mere fact that a person is the subject of criminal proceedings does not justify treating the person concerned in the same manner as a public figure who voluntarily exposes himself or herself to publicity. The ECtHR saw no reason to disagree with the national courts' findings that P. had never voluntarily reached out to the public and that, due to his age, particular importance had to be attached to the protection of his personality rights.

Regarding the severity of the sanctions imposed on B.Z. Ullstein GMBH, the ECtHR considered that, although every sanction is capable of having a chilling effect, in the present case, the sanction did not constitute a particularly severe restriction on news reporting. Indeed, the national courts only ordered the applicant company to refrain from any further publication of the photograph. Hence, the newspaper B.Z. was not prohibited from publishing and illustrating articles, but only from publishing the portrait photo of P. that made him identifiable. Finally, the ECtHR recognised that the German courts had carefully balanced the right of the applicant company to freedom of expression against P.'s right to respect for his private life and had considered the various factors that were relevant under

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the ECHR, including P's vulnerability. Referring to the margin of appreciation enjoyed by the national courts when balancing competing interests, the ECtHR concluded that there were no reasons to substitute its view for that of the domestic courts, and that the latter had complied with their obligations under Article 10 ECHR. Accordingly, the ECtHR considered the application as manifestly ill-founded, and rejected it as inadmissible.

Decision by the European Court of Human Rights, Fifth Section, sitting as a Committee, in the case of B.Z. Ullstein GMBH v. Germany, Application no. 43231/16, 15 October 2020

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