[DE] Frankfurt Appeal Court refuses to grant injunction against tabloid newspaper for reporting on Russian TV channel's spying activities

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In a decision of 28 April 2022, the *Oberlandesgericht Frankfurt am Main* (Frankfurt am Main Appeal Court – OLG) rejected a complaint lodged by the provider of the German language version of the Russian TV broadcaster RT (RT DE) about an article published in the Bild newspaper. In particular, the article had alleged that the broadcaster had been involved in Russian spying activities linked to the poisoning of Alexei Navalny. In view of the overall context of the Bild article, the OLG considered the allegation to be an admissible expression of opinion.

The disputed article was published in Bild on 9 March 2021 under the headline "Kremlin TV reporter admits: I was told to spy on Navalny". The article alleged, among other things, that under orders from Vladimir Putin, Russian anti-corruption activist Alexei Navalny had been spied on while undergoing treatment at the Charité hospital in Berlin, and that the broadcaster RT DE had been involved. Stating that "They are also involved in spying activities on German soil", Bild quoted a former employee of RT DE, who had been interviewed for the article. On the grounds that its privacy rights had been violated, RT DE applied for an injunction against this and other statements, which it claimed had created the impression that it was a spying tool for the Russian government. However, the *Landgericht Frankfurt am Main* (Frankfurt am Main District Court) rejected all aspects of the application, apart from a complaint about one single statement. The appeal immediately lodged against this decision has now also been largely dismissed by the OLG. The court ruled, in particular, that the allegation that RT DE had been involved in spying activities on German soil had not unlawfully infringed the broadcaster's privacy rights, but had been an admissible expression of opinion. The overall context of the Bild article needed to be taken into account: the average reader would take the article to mean that RT DE had helped to spy on Navalny while he was in the Charité hospital in Berlin. However, the main focus of the article was not on specific facts, of which there was hard evidence and which would have needed to be weighed differently in the injunction procedure. When false allegations were published, the fundamental rights of the people reported on often took precedence. In this case, however, the evaluative nature of the statements was paramount, so they needed to be carefully weighed against the interests of RT DE. In this context, the OLG concluded that, although the statements certainly infringed on the company's honour and social reputation, they were justified by the predominant need to protect freedom of communication

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and freedom of the press. In particular, the article contributed to a debate of considerable public interest, so it was likely that the constitutionally protected rights of the press would take precedence. The only circumstances in which this would not be the case would be if there had been no evidence at all and if the allegation of spying activities had been made out of thin air. In the current case, however, the report had been backed up with evidence. In particular, based on the interview with the former RT DE employee, Bild had reported on chat posts, instructions given to employees, and other statements. The only element of the injunction application that was upheld by the OLG concerned false information about the number of participants in a chat.

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https://ordentliche-gerichtsbarkeit.hessen.de/pressemitteilungen/kein-unterlassungsanspruch-gegen-boulevardzeitung-wegen-%C3%A4u%C3%9Ferung-zu-spionage

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