[DE] Federal Supreme Court considers parts of TV documentary unlawful on victim protection grounds

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In a ruling of 6 June 2023, the *Bundesgerichtshof* (Federal Supreme Court – BGH), the highest German civil court, examined the boundaries of film and photo-based reporting with victim protection in mind. It decided that public-service broadcaster Zweites Deutsches Fernsehen (ZDF) had exceeded the limits of permissible reporting in a television programme broadcast in 2018 concerning two child abduction cases dating back to 1981 and 1980 by showing in particular letters and photographs of the abducted children, and playing audio recordings.

Although there was high public interest in the reporting of crimes, even decades after the event in some cases, the media needed to consider the protection of victims and the psychological effect of being reminded of traumatic events. In this case, the BGH considered that the protection of privacy outweighed the public interest in reporting.

The case concerned the television programme “Entführte Kinder”, broadcast on ZDFInfo on 25 February 2018 and subsequently made available for download in the ZDF online media library. The documentary dealt with two child abduction cases dating back to 1980 and 1981, focusing on the role and perspective of a TV journalist who had mediated between the kidnappers, the police and the children’s families at the time. In 1981, an eight-year-old girl had been kidnapped on her way to school and released when a ransom was paid five months later.

The ZDF programme showed two photos of the child that her parents had given to the police at the time to assist with the public search for her, which had been published in the media. It also showed a magazine cover depicting the child with her mother after her release, which had been published at the time with their consent. A letter written by the girl to her parents at the time of the kidnapping and an audio clip of her explaining how the ransom should be paid, were also included in the documentary; at the time, both had been published in various media. The kidnapped girl, now an adult, instigated court proceedings against the programme on the grounds that, although she had consented to general reporting at the time, she did not wish to be presented as the victim in a highly personal way decades after her abduction.

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Unlike the appeal court, the BGH upheld the victim's claim for an injunction after carefully weighing up the interests of media freedom on the one hand, and personal privacy on the other. It was true that this was a particularly newsworthy story, even decades after the event. A crime was a matter of topical interest that could be reported in the media. The fact that the story was being told for the first time from the perspective of the journalist who had acted as an intermediary made the programme, even more topical. Furthermore, the images, audio recording and written documents had been published at the time and had therefore already been made accessible to the public.

Nevertheless, the BGH concluded that the victim's legitimate interest should take precedence in this case. It points out that the significant public interest is limited to the presentation of the facts and does not lie in a highly individualised and personalised approach such as that shown in the report in question. Moreover, the person concerned, as a child victim at the time of this serious crime, deserved special protection. This covers not only the first public revelation of the identity of a victim previously unknown to the public, but also the reactivation of this identification.

The victim of a crime should be allowed, after a certain period of time, to decide for themselves whether their image could continue to be used to illustrate their role as a victim and bring it back into the public eye. The photos that had been handed over to the investigating authorities had been published in a desperate attempt to increase the chances of the child being released. However, in view of the considerable amount of time that had passed, the victim now had a right to regain control of the photos and take the link between the crime and the images out of the public domain. The audio clips and letter were also much more personal than the photographs, which in themselves were "neutral", and using them in reporting was no longer in the public interest.

BGH, Urteil vom 6. Juni 2023 - VI ZR 309/22

https://openjur.de/u/2473140.html

Federal Supreme Court ruling of 6 June 2023, VI ZR 309/22

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