



Supreme Court 6 Ob 210/23k

Participation in a shitstorm can be expensive

In a recent decision, the Supreme Court dealt with the liability consequences of a shitstorm. A shitstorm is characterised by the participation of many people. The question therefore arises as to which participants are liable to the victim for financial claims. The decision made it clear that each individual participant calling for the dissemination of a shitstorm is liable to the victim for the entire damage suffered and must subsequently take the trouble to divide the damage among the other participants in order to recover from them.

The plaintiff was a police officer who was filmed during an operation. A third party published the video on Facebook with the following accompanying text - containing an appeal to participate in a shitstorm: "Let this policeman's face go around the world. This policeman escalated at the demonstration in Innsbruck. An 82-year-old innocent man was pulled to the ground, arrested and interrogated for hours. This policeman is guilty". During the operation, the police officer was in fact only a member of a police cordon and had not even taken part in the official action against the 82-year-old man.

The defendant shared the post on his Facebook profile out of "displeasure" and took the risk of circulating a picture of the plaintiff together with the disparaging text without checking its truthfulness. The police officer sought compensation for the non-material damage he suffered as a result of the shitstorm that broke out against him. The first two instances dismissed the claim for accounting and information and awarded the plaintiff EUR 450.

The Supreme Court partially upheld the plaintiff's appeal. It ordered the defendant to pay the entire amount requested of EUR 3,000 as compensation for the damage caused by the breaches of data protection and image protection. The Supreme Court dealt in detail with the question of proof of causality and the divisibility or non-divisibility of the damage caused by a shitstorm and came to the conclusion that the victim of a shitstorm does not have to name and prove the specific "source" of the disparaging statement as the cause of every offence or emotional impairment suffered by him. It is sufficient for the plaintiff to prove that he or she was the victim of a shitstorm and that the specific defendant party participated in it unlawfully and culpably.

According to the decision of the Supreme Court, the participants in a shitstorm thus bear the risk that the perpetrator of the individual consequences of the shitstorm cannot be identified and that the damage incurred cannot be allocated to the individual participants. This risk is borne by the injuring parties with the consequence that the victim can demand compensation for the entire damage from one of them by way of joint and several liability. The problem of finding other perpetrators and the risk of irrecoverability (in the case of individual perpetrators) is borne by the perpetrators. The individual posters, who are at least partially networked with each other and know to which "friends" they have forwarded the post, must distribute the damages among themselves by way of recourse.