



Media coverage of celebrities' private lives: acceptable if in the general interest and if in reasonable balance with the right to respect for private life

The European Court of Human Rights has today delivered two Grand Chamber judgments, in the cases of **Axel Springer AG v. Germany** (application no. 39954/08) and **Von Hannover v. Germany (no. 2)** (application nos. 40660/08 and 60641/08), which are both final.¹

In the case **Axel Springer AG**, the Court held, by a majority, that there had been: **A violation of Article 10 (freedom of expression)** of the European Convention on Human Rights

In the case **Von Hannover (no. 2)**, the Court held, unanimously, that there had been: **No violation of Article 8 (right to respect for private and family life)** of the Convention

Both cases concerned the publication in the media of articles and, in the second case, of photos depicting the private life of well-known people.

Principal facts

Axel Springer AG

The applicant company, Axel Springer AG ("Springer"), is registered in Germany. It is the publisher of the *Bild*, a national daily newspaper with a large circulation.

In September 2004, the *Bild* published a front-page article about X, a well-known television actor, being arrested in a tent at the Munich beer festival for possession of cocaine. The article was supplemented by a more detailed article on another page and was illustrated by three pictures of X. It mentioned that X, who had played the role of a police superintendent in a popular TV series since 1998, had previously been given a suspended prison sentence for possession of drugs in July 2000. The newspaper published a second article in July 2005, which reported on X being convicted and fined for illegal possession of drugs after he had made a full confession.

Immediately after the first article appeared, X brought injunction proceedings against Springer with the Hamburg Regional Court, which granted his request and prohibited any further publication of the article and the photos. The prohibition to publish the article was eventually upheld by the court of appeal in June 2005, the judgment concerning the photos was not challenged by Springer

In November 2005, Hamburg Regional Court prohibited any further publication of almost the entire article, on pain of penalty for non-compliance, and ordered Springer to pay an agreed penalty. The court held in particular that the right to protection of X's personality rights prevailed over the public's interest in being informed, even if the truth of the facts related by the daily had not been disputed. The case had not concerned a serious

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

offence and there was no particular public interest in knowing about X's offence. The judgment was upheld by the Hamburg Court of Appeal and, in December 2006, by the Federal Court of Justice.

In another set of proceedings concerning the second article, about X's conviction, the Hamburg Regional Court granted his application on essentially the same grounds as those set out in its judgment on the first article. The judgment was upheld by the Hamburg Court of Appeal and, in June 2007, by the Federal Court of Justice.

In March 2008, the Federal Constitutional Court declined to consider constitutional appeals lodged by the applicant company against the decisions.

Von Hannover (no. 2)

The applicants are Princess Caroline von Hannover, daughter of the late Prince Rainier III of Monaco, and her husband Prince Ernst August von Hannover.

Since the early 1990s Princess Caroline has been trying to prevent the publication of photos of her private life in the press. Two series of photos, published in 1993 and 1997 respectively in German magazines had been the subject of three sets of proceedings before the German courts. In particular, leading judgments of the Federal Court of Justice of 1995 and of the Federal Constitutional Court of 1999 dismissed her claims. Those proceedings were the subject of the European Court of Human Rights' judgment in *Caroline von Hannover v. Germany* (no. 59320/00) of 24.06.2004, in which the Court held that the court decisions had infringed Princess Caroline's right to respect for her private life under Article 8.

Relying on that judgment, Princess Caroline and Prince Ernst August subsequently brought several sets of proceedings before the civil courts seeking an injunction against the publication of further photos, showing them during a skiing holiday and taken without their consent, which had appeared in the German magazines *Frau im Spiegel* and *Frau Aktuell* between 2002 and 2004.

While the Federal Court of Justice granted Princess Caroline's claim as regards the publication of two of the photos in dispute in a judgment of 6 March 2007 (no. VI ZR 51/06) – stating that they did not contribute to a debate of general interest – it dismissed her claim as regards another photo which had appeared in February 2002 in *Frau im Spiegel*. It showed the couple taking a walk during their skiing holiday in St. Moritz and was accompanied by an article reporting, among other issues, on the poor health of Prince Rainier of Monaco. The Federal Court found that the reigning prince's poor health was a subject of general interest and that the press had been entitled to report on the manner in which his children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to go on holiday. In a judgment of 26 February 2008, the Federal Constitutional Court dismissed Princess Caroline's constitutional complaint, rejecting in particular the allegation that the German courts had disregarded or taken insufficient account of the Court's case-law. On 16 June 2008, the Federal Constitutional Court declined, without giving reasons, to consider further constitutional complaints brought by the applicants concerning the same photo and a similar photo published in *Frau aktuell*.

Complaints, procedure and composition of the Court

Axel Springer AG complained, under Article 10, about the injunction prohibiting any further publication of the articles.

Princess Caroline von Hannover and Prince Ernst August von Hannover complained, under Article 8, of the German courts' refusal to prohibit any further publication of the photos in dispute. They alleged in particular that the courts had not taken sufficient account of the European Court of Human Rights' judgment in *Caroline von Hannover v. Germany* of 2004.

The application in the case *Axel Springer AG* was lodged with the European Court of Human Rights on 18 August 2008. The case *Von Hannover v. Germany (no. 2)* originated in two applications which were lodged with the Court on 22 August and 15 December 2008 respectively, and which were joined on 24 November 2009.

On 30 March 2010, the Chamber to which all three applications had been allocated joined the application Springer to the applications of Von Hannover and relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing, in both cases jointly, was held on 13 October 2010.

The following organisations were granted the right to submit written comments:

In both cases:

Media Lawyers Association
Media Legal Defence Initiative
International Press Institute
World Association of Newspapers and News Publishers

In the case of *Von Hannover (no. 2)*:

Association of German Magazine Publishers (*Verband Deutscher Zeitungsverleger*)
Ehrlich & Sohn GmbH & Co. KG publishing company

Judgment was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Lech **Garlicki** (Poland),
Peer **Lorenzen** (Denmark),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
David Thór **Björgvinsson** (Iceland),
Ján **Šikuta** (Slovakia),
Mark **Villiger** (Liechtenstein),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Nona **Tsotsoria** (Georgia),
Zdravka **Kalaydjieva** (Bulgaria),
Mihai **Poalelungi** (The Republic of Moldova),
Kristina **Pardalos** (San Marino), *Judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Axel Springer AG

It was undisputed between the parties that the German courts' decisions had constituted an interference with Springer's right to freedom of expression under Article 10. It was

further common ground that the interference was prescribed by German law and that it had pursued a legitimate aim, namely the protection of the reputation of others.

As regards the question whether the interference had been necessary in a democratic society, the Court noted that the articles in question, about the arrest and conviction of the actor, concerned public judicial facts, of which the public had an interest in being informed. It was in principle for the national courts to assess how well known a person was, especially where that person, as the actor concerned, was mainly known at national level. The court of appeal had found that, having played the role of a police superintendent over a long period of time, the actor was well known and very popular. The Court thus considered that he was sufficiently well known to qualify as a public figure, which reinforced the public's interest in being informed of his arrest and the proceedings against him.

While the Court could broadly agree with the German courts' assessment that Springer's interest in publishing the articles was solely due precisely to the fact that it was a well-known actor who had committed an offence – which would not have been reported on if committed by a person unknown to the public – it underlined that the actor had been arrested in public at the Munich beer festival. The actor's expectation that his private life would be effectively protected had furthermore been reduced by the fact that he had previously revealed details about his private life in a number of interviews.

According to a statement by one of the journalists involved, the truth of which had not been contested by the German Government, the information published in the *Bild* in September 2004 about the actor's arrest had been obtained from the police and the Munich public prosecutor's office. It therefore had a sufficient factual basis, and the truth of the information related in both articles was not in dispute between the parties.

Nothing suggested that Springer had not undertaken a balancing exercise between its interest in publishing the information and the actor's right to respect for his private life. Given that Springer had obtained confirmation of the information conveyed by the prosecuting authorities, it did not have sufficiently strong grounds for believing that it should preserve the actor's anonymity. It could therefore not be said to have acted in bad faith. In that context, the Court also noted that all the information revealed by Springer on the day on which the first article appeared was confirmed by the prosecutor to other magazines and to television channels.

The Court noted, moreover, that the articles had not revealed details about the actor's private life, but had mainly concerned the circumstances of his arrest and the outcome of the criminal proceedings against him. They contained no disparaging expression or unsubstantiated allegation, and the Government had not shown that the publication of the articles had resulted in serious consequences for the actor. While the sanctions imposed on Springer had been lenient, they were capable of having a chilling effect on the company. The Court concluded that the restrictions imposed on the company had not been reasonably proportionate to the legitimate aim of protecting the actor's private life. There had accordingly been a violation of Article 10.

Von Hannover (no. 2)

It was not the Court's task to examine whether Germany had satisfied its obligations in executing the Court's judgment in *Caroline von Hannover v. Germany* of 2004, as that task was the responsibility of the Council of Europe's Committee of Ministers.² Today's case only concerned the new proceedings brought by the applicants.

² In its resolution adopted on 31 October 2007 on the execution of the Court's judgment in *Caroline von Hannover v. Germany* of 2004, the Committee of Ministers declared that Germany had executed the judgment and decided to close the examination of the case.

The Court observed that following its 2004 judgment in *Caroline von Hannover v. Germany*, the German Federal Court of Justice had made changes to its earlier case-law. In particular, it had stated that it was significant whether a report in the media contributed to a factual debate and whether its contents went beyond a mere desire to satisfy public curiosity. The Federal Court of Justice had noted that the greater the information value for the public the more the interest of a person in being protected against its publication had to yield, and vice versa, and that the reader's interest in being entertained generally carried less weight than the interest in protecting the private sphere. The German Federal Constitutional Court had confirmed that approach.

The fact that the German Federal Court of Justice had assessed the information value of the photo in question – the only one against which it had not granted an injunction – in the light of the article that was published together with it could not be criticised under the Convention. The Court could accept that the photo, in the context of the article, did at least to some degree contribute to a debate of general interest. The German courts' characterisation of Prince Rainier's illness as an event of contemporary society could not be considered unreasonable. It was worth underlining that the German courts had granted the injunction prohibiting the publication of two other photos showing the applicants in similar circumstances, precisely on the grounds that they were being published for entertainment purposes alone.

Furthermore, irrespective of the question to what extent Caroline von Hannover assumed official functions on behalf of the Principality of Monaco, it could not be claimed that the applicants, who were undeniably very well known, were ordinary private individuals. They had to be regarded as public figures.

The German courts had concluded that the applicants had not provided any evidence that the photos had been taken in a climate of general harassment, as they had alleged, or that they had been taken secretly. In the circumstances of the case, the question as to how the pictures had been taken had required no more detailed examination by the courts, as the applicants had not put forward any relevant arguments in that regard.

In conclusion, the German courts had carefully balanced the right of the publishing companies to freedom of expression against the right of the applicants to respect for their private life. In doing so, they had explicitly taken into account the Court's case-law, including its 2004 judgment in *Caroline von Hannover v. Germany*. There had accordingly been no violation of Article 8.

Article 41 (just satisfaction)

The Court held that Germany was to pay Axel Springer AG 17,734.28 euros (EUR) in respect of pecuniary damage and EUR 32,522.80 in respect of costs and expenses.

Separate opinions

In the case *Axel Springer AG*, Judge López Guerra expressed a dissenting opinion, joined by Judges Jungwiert, Jaeger, Villiger and Poalelungi, which is annexed to the judgment.

The judgments are available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.