

German courts' decisions respected private and family life of Princess Caroline von Hannover

In today's Chamber judgment in the case of [von Hannover v. Germany \(no. 3\)](#) (application no. 8772/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a complaint lodged by Princess Caroline von Hannover relating to the refusal of the German courts to grant an injunction prohibiting any further publication of a photograph of her and her husband taken without their knowledge while they were on holiday. The photograph was accompanied by an article about the trend amongst the very wealthy towards letting out their holiday homes.

The Court held that the German courts had taken into consideration the essential criteria and the Court's case-law in balancing the different interests at stake in the case.

Principal facts

The applicant, Princess Caroline von Hannover, is a Monegasque national who was born in 1957 and lives in Monaco.

The applicant has made repeated attempts to prevent the publication of photographs portraying her private life, often by taking legal action. Two series of photographs, published in 1993 and 1997, were the subject of three sets of proceedings before the German courts. Those proceedings were the subject of the judgment of 24 June 2004 in *Von Hannover v. Germany*, in which the Court held that the court decisions in question had infringed the applicant's right to respect for her private life.

Caroline von Hannover and her husband subsequently brought several sets of proceedings seeking injunctions against the publication of further photographs published in German magazines between 2002 and 2004. The Federal Court of Justice dismissed their claims in part and the Federal Constitutional Court rejected a constitutional complaint by the applicant. Those proceedings were the subject of the Grand Chamber judgment of 7 February 2012 in the case of *Von Hannover v. Germany (no. 2)*, in which the Court held that the court decisions at issue had not infringed the right of Princess Caroline von Hannover and her husband to respect for their private life.

The photograph at issue in the present application was published in the magazine *7 Tage* on 20 March 2002. It showed the applicant and her husband on holiday in an unidentifiable location. On the same page and the following page were several photographs of the von Hannover holiday home situated on an island off Kenya. The photographs were accompanied by an article stating that it had become the custom among celebrities to let out their holiday homes. The article went on to describe

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

the von Hannover family's villa, giving details of the furnishings, the daily rental cost and different holiday pastimes. A small box inserted in the text contained two sentences in bold type which read: "The rich and beautiful are also thrifty (*"sparsam"*). Many of them let out their villas to paying guests".

On 29 November 2004, Caroline von Hannover applied to the Hamburg Regional Court seeking an injunction against any further publication of the photograph. The Regional Court granted her application but the Hamburg Court of Appeal set aside that judgment on the grounds that her right had to yield to the fundamental rights of the press.

The Federal Court of Justice allowed an appeal on points of law by the applicant and set aside the Court of Appeal's judgment, finding that the stance taken by the Court of Appeal did not correspond to the concept of "graduated protection" (*"abgestuftes Schutzkonzept"*). Referring to the 2004 judgment of the European Court of Human Rights, it considered that the reporting had not related to an event of contemporary society or of general interest.

On 26 February 2008, the Federal Constitutional Court quashed the judgment of the Federal Court of Justice and remitted the case to it. The Constitutional Court referred to the case-law of the Strasbourg Court concerning Articles 8 (right to respect for private and family life) and 10 (freedom of expression) of the European Convention on Human Rights and to its own case-law concerning the different fundamental rights at stake. It emphasised in particular that it was insufficient for the Federal Court of Justice merely to state that a celebrity's holidays fell within the core area of his or her protected private sphere. It held that the injunction granted by the Federal Court of Justice should be reviewed.

On 1 July 2008 the Federal Court of Justice ruled again and this time dismissed the applicant's appeal on points of law. It found that the applicant was a public figure and that, while the photograph did not relate to a subject of general interest, the freedom of expression of the magazine's publishers should not be overridden by the applicant's right to respect for her private life. The Federal Court of Justice set out reasons explaining why the report was capable of stimulating discussion on a matter of general interest and could therefore legitimately be accompanied by that single picture. The court further considered that nothing about the photograph itself constituted a violation.

On 24 September 2009 the Federal Constitutional Court declined to consider a fresh constitutional appeal lodged by the applicant.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the Convention, the applicant complained of the refusal of the German civil courts to grant an injunction against any further publication of the photograph at issue, which appeared in the magazine *7 Tage* on 20 March 2002. She alleged that their refusal was in breach of that Article.

The application was lodged with the European Court of Human Rights on 10 February 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8

In its judgments in *Axel Springer AG and Von Hannover (no. 2)* the Court had set forth the relevant criteria for balancing the right to respect for private life against the right to freedom of expression. These were: contribution to a debate of general interest, how well known the person concerned was, the subject of the report, the prior conduct of the person concerned, the content, form and consequences of the publication and, in the case of photographs, the circumstances in which they were taken.

The Court noted that in the present application the Federal Constitutional Court had taken the view that, while the photograph in question had not contributed to a debate of general interest, the same was not true of the article accompanying it, which reported on the current trend among celebrities towards letting out their holiday homes. The Federal Constitutional Court and, subsequently, the Federal Court of Justice had observed that the article was designed to report on that trend and that this conduct was apt to contribute to a debate of general interest. The Court also noted that the article itself did not contain information concerning the private life of the applicant or her husband, but focused on practical aspects relating to the villa and its letting.

It could not therefore be asserted that the article had merely been a pretext for publishing the photograph in question or that the connection between the article and the photograph had been purely contrived. The characterisation of the subject of the article as an event of general interest, first by the Federal Constitutional Court and then by the Federal Court of Justice, could not be considered unreasonable. The Court could therefore accept that the photograph in question had made a contribution to a debate of general interest.

As to how well known the applicant was, the Court pointed out that it had found on several occasions that the applicant and her husband were to be regarded as public figures who could not claim protection of their private lives in the same way as individuals unknown to the public.

Noting that the German courts had taken into consideration the essential criteria and the Court's case-law in balancing the various interests at stake, the Court concluded that they had not failed to comply with their positive obligations and that there had been no violation of Article 8 of the Convention.

The judgment is available only in 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.