

[DE] Constitutional Court Rules on Publication of Photographs Depicting the Everyday Private Lives of Famous People

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After the *Bundesgerichtshof* (Federal Supreme Court – BGH) ruled on various injunction suits brought by Princess Caroline of Hanover in March last year concerning the relationship between the privacy of famous people and the freedom of the press under Art. 5 para. 1.2 of the Basic Law (case no. VI ZR 51/06 and VI ZR 52/06), the *Bundesverfassungsgericht* (Federal Constitutional Court – BVerfG) has now also had to deal with this issue following complaints that the Constitution had been infringed.

The complainants in these proceedings were Princess Caroline on one side, and two of the press companies against whom the initial complaint had been made on the other. One of the two publishers had reported in its magazine about an illness suffered by the late Prince Rainier of Monaco and the Princess's possible attendance at a ball in the principality, as well as her stay at a well known ski resort. Each article had been accompanied by photographs showing the Princess on holiday with her husband. The other publisher had reported on the letting of a holiday villa owned by the couple, also illustrating the story with a photograph of the Princess on holiday with her husband. Caroline of Hanover had applied to the civil courts for an injunction against publication of the photographs and finally had her complaint partially upheld by the BGH.

Both the Princess and the two publishing companies felt that their basic rights had been breached by the BGH's decision and lodged complaints about its constitutionality. The BVerfG only upheld part of the BGH's decision and rejected the complaints of the first publisher and the Princess as unfounded. In the opinion of the Constitutional Court judges, the BGH's legal consideration that the only admissible publications were those connected to the report on the illness of the ruling Prince of Monaco, was not incompatible with the Constitution. Rather, they thought that the BGH had appropriately weighed up the relevant interests of both parties, taking into account the main provisions of European Court of Human Rights (ECHR) case law. In particular, the BGH – also in accordance with the benchmarks laid down by ECHR case-law – was entitled to view the illness of the ruling Prince of Monaco as an event of general interest which had a sufficient connection with the published photograph.

However, the complaint lodged by the second publisher against the ban on the photograph published alongside the report on the letting of the holiday villa was upheld. In this case, the judges ruled that it could not be concluded from the courts' considerations that the subject of the report on the holiday villa letting did not justify the publication of a photograph of the complainant. In particular, they thought insufficient account had been taken of the information content of the report, which could, in connection with the commentary it contained, give cause for criticism from its readers. The ban upheld by the BGH therefore infringed the right of freedom of the press to which the publishing company concerned was entitled.

Beschluss des Bundesverfassungsgerichts vom 26. Februar 2008 (Az. 1 BvR 1602/07 und 1 BvR 1606/07 und 1 BvR 1626/07)

http://www.bundesverfassungsgericht.de/entscheidungen/rs20080226_1bvr160207.html

Ruling of the Federal Constitutional Court of 26 February 2008 (case no. 1 BvR 1602/07, 1 BvR 1606/07 and 1 BvR 1626/07)

