European Court of Human Rights: Axel Springer AG v. Germany

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In two judgments of 7 February 2012 the Grand Chamber of the European Court of Human Rights has balanced the right to freedom of expression by the media (Article 10 of the Convention) with celebrities' personality rights and their right of privacy (Article. 8 of the Convention). The overall conclusion is that media coverage including pictures of celebrities is acceptable when the media reporting concerns matters of public interest or at least to some degree contributes to a debate of general interest. In the case of Von Hannover v. Germany (no. 2), the Court held unanimously that the publication of a picture of Princess Caroline of Monaco illustrating an article about the Principality of Monaco and the refusal by the German Courts to grant an injunction against it, did not amount to a violation of the right of privacy of the Princess. The European Court is of the opinion that the Princess, irrespective of the question to what extent she assumed official functions, is to be regarded as a public person. The article with the picture at issue did not solely serve entertainment purposes and there was nothing to indicate that the photo had been taken surreptitiously or by equivalent secret means such as to render its publication illegal.

The judgment in the case Axel Springer AG v. Germany concerns the media coverage by the newspaper Bild of the arrest and conviction of a famous TV-actor (X), found in possession of drugs. X had played the part of Police Superintendent as the hero of a popular television series on German TV, reaching between 3,000,000 and 4,700,000 viewers per episode. X brought injunction proceedings against the publishing company of Bild because of the publication of two articles, one reporting that X was arrested for possession of cocaine and another, a year later, that he was convicted of the same offence. The German courts granted X's request to prohibit any further publication of the two articles and the photos illustrating these articles. Although these injunctions were prescribed by law and pursued the legitimate aim of protecting the reputation of X, the Grand Chamber of the European Court is of the opinion that the interference by the German judicial authorities cannot be considered necessary in a democratic society. The Court noted that the arrest and conviction of X concerned public judicial facts of which the public has an interest in being informed. It is also emphasized that there was a close link between the popularity of the actor in question and his character as a TV-actor, playing a police superintendent, whose mission was law enforcement and crime prevention. This element increased the public's interest in

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being informed of X's arrest for a criminal offence. The Court also observed that X was arrested in public, in a tent at the beer festival in Munich. According to the Court there were no sufficiently strong grounds for believing that Bild should preserve X's anonymity, having regard to the nature of the offence committed by X, the degree to which X was well-known to the public, the circumstances of his arrest and the veracity of the information in question. Furthermore the articles in Bild did not reveal details about X's private life, but mainly concerned the circumstances of and events following his arrest. They contained no disparaging expression or unsubstantiated allegation. The fact that the first article contained certain expressions which, to all intents and purposes, were designed to attract the public's attention cannot in itself raise an issue, according to the Court. Finally the Court finds that the injunction against the articles in Bild was capable of having a chilling effect on the applicant company. In conclusion, the grounds advanced by the German authorities, although relevant, are not sufficient to establish that the interference complained of by Springer Verlag AG was necessary in a democratic society. Despite the margin of appreciation enjoyed by Contracting States, the Court considers that there is no reasonable relationship of proportionality between, on the one hand, the restrictions imposed by the national courts on Bild's right to freedom of expression and, on the other hand, the legitimate aim pursued. Accordingly, there has been a violation of Article 10 of the Convention. Germany is ordered to pay EUR 50,000 in respect of pecuniary damages and costs and expenses to Springer Verlag AG.

Five judges dissented with the finding of a violation of Article 10, mainly arguing that the European Court should have respected a broader margin of appreciation for the German courts. According to the five dissenting judges it is not the task of the Strasbourg Court to act as a "fourth instance to repeat anew assessments duly performed by the domestic courts". The majority of 12 judges of the Grand Chamber however found that the interference in Bild's reporting by the German authorities amounted to a violation of Article 10 of the European Convention, especially taking into account 6 criteria of the media content: the contribution to a debate of general interest, the fact that the reporting concerned a public figure, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the media content and the severity of the sanction imposed. In essence the European Court found that the injunctions against Bild were capable of having a chilling effect on the applicant's freedom of expression.

Judgment by the European Court of Human Rights (Grand Chamber), case of Axel Springer AG v. Germany, No. 39954/08 of 7 February 2012

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Judgment by the European Court of Human Rights (Grand Chamber), case of Von Hannover v. Germany (no. 2), Nos. 40660/08 and 60614/08 of 7 February 2012

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