European Court of Human Rights: Bohlen and Ernst August von Hannover v. Germany

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In two cases related to humorous cigarette advertisements, the European Court of Human Rights found that there had been no reason for the domestic authorities to interfere with the freedom of commercial speech in order to protect the right of reputation and the right to their own names of two public persons referred to in the advertisements, without their consent. The European Court found, in particular, that the German Federal Court of Justice had struck a fair balance between freedom of expression (Article 10) and the right to privacy (Article 8).

The first applicant, Dieter Bohlen, is a well-known musician and artistic producer in Germany, while the second applicant, Ernst August, is the husband of Princess Caroline of Monaco. In 2000, the company British American Tobacco (Germany) used in an advertisement campaign the first names and references to events associated with Mr. Bohlen and Mr. Von Hannover, who both sought injunctions prohibiting the distribution of the advertisements. The cigarette manufacturer immediately stopped the advertisement campaign, but refused to pay the sums the applicants claimed in compensation for the use of their first names. The Hamburg Regional Court and the Court of Appeal upheld the claims and awarded the applicants EUR 100 000 and EUR 35 000 respectively. However, the Federal Court of Justice quashed the Court of Appeal judgments and held that, despite their commercial nature, the advertisements in question were apt to help shape public opinion and had not exploited the applicants' good name or contained anything degrading. On this basis, it dismissed the applicants' claims seeking financial compensation. Mr. Bohlen and Mr. Von Hannover lodged applications with the European Court of Human Rights, complaining that the ruling of the Federal Court of Justice had breached their right to privacy and their right to their own names, protected by Article 8 of the European Convention on Human Rights.

The European Court reiterated the relevant criteria laid down in its case-law for assessing the manner in which the domestic courts had balanced the right to respect for private life against the right to freedom of expression: the contribution to a debate of general interest, the extent to which the person in question was in the public eye, the subject of the report, the prior conduct of the person concerned and the content, form and impact of the publication. The Court gave the opinion that the advertisements were able to contribute to a debate of general interest to some degree, as they dealt in a satirical manner with events that had been the subject of public debate. It also considered that the applicants

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were sufficiently well-known to be unable to claim the same degree of protection of their private lives as persons who were unknown to the public at large or have not been in the public eye before. Furthermore, the image of and references to the applicants in the advertisements had not been degrading, while they obviously had a humorous character. The Court agreed with the finding by the German Federal Court of Justice that, in this case, priority was to be given to the right to freedom of expression of the tobacco company and that the dismissal of the applicants' claim for financial compensation was justified, as they already had obtained the suspension of the distribution of the advertisements at issue. Hence a fair balance had been struck between freedom of expression and the right to respect for private life. The European Court found therefore, by six votes to one, that in both cases there had been no violation of Article 8 of the European Convention on Human Rights.

Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire Bohlen c. Allemagne, requête n° 53495/09, 19 février 2015

Judgment by the European Court of Human Rights (Fifth Section), case of Bohlen v. Germany, Appl. No. 53495/09, 19 February 2015

https://hudoc.echr.coe.int/eng?i=001-152647

Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire Ernst August von Hannover c. Allemagne, requête n° 53649/09, 19 février 2015

Judgment by the European Court of Human Rights (Fifth Section), case of Ernst August von Hannover v. Germany, Appl. No. 53649/09, 19 February 2015

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