European Court of Human Rights: Axel Springer SE and RTL Television GmbH v. Germany

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In a case against Germany, two media companies - Axel Springer SE, a publishing house, and RTL, a broadcasting company - complained about a restriction on publishing pictures of the accused (S.) in a brutal murder case. S. was charged with killing his parents, dismembering their bodies, burning some of the parts, flushing others down the toilet and disposing of the rest by putting them in barrels. S. had already confessed to the police, while a psychiatric expert opinion ordered for the trial had concluded that S. was suffering from a schizoid personality disorder at the time when he had committed the offence. Prior to the start of the court hearings, the presiding judge informed the photojournalists orally that the face of S. would have to be made unidentifiable “in the usual manner” before any images of him were published. Axel Springer and RTL protested against the order, and a week later, a written order was issued confirming that the only media representatives who were permitted to take photographs and make video recordings of S. were those who had previously registered with the court and given an assurance that prior to the publication or forwarding of the material, the face of S. would be disguised by a technical process (for example by pixelization) so that it would only be possible to use the images in such a form. Journalists would be barred from further reporting on the case if they failed to comply with the order. The order stressed the importance of the presumption of innocence, finding that reporting on S. in a way which identified him could have a “pillory effect”; moreover, the wording of the order noted that S. had never been in the public eye and had expressly requested that his identity be concealed. According to the presiding judge, in this case the personality rights of S. clearly outweighed the public interest in being informed of his identity and physical appearance.

After exhausting all national legal channels to have the order suspended, Axel Springer and RTL lodged an application with the European Court of Human Rights (ECtHR), complaining that the judicial order banning the publication of images by which S. could be identified had violated their right to freedom of expression, as provided in Article 10 of the European Convention on Human Rights (ECHR).

The ECtHR starts by referring to its earlier case law, balancing the right to freedom of expression against the right to respect for private life, and to the criteria that have to be taken into account in such cases. It clarifies that the

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criteria thus defined are not exhaustive and should be transposed and adapted in the light of the specific circumstances of the case, in particular where the presumption of innocence under Article 6 paragraph 2 ECHR comes into play. The Court identifies the following relevant criteria in the context of balancing competing rights: the contribution to a debate of public interest, the degree to which the person affected is known, the influence of the publication of the photographs on the criminal proceedings, the circumstances in which the photographs were taken, the content, form and consequences of the publication, and the severity of the sanction imposed.

The ECtHR acknowledges that the crime at issue was brutal, but had been committed within a family following a private dispute and in a domestic setting. It agrees with the domestic court's assessment that there was only a limited degree of public interest in the case. The judicial order at issue did not restrict the content of reporting but rather concerned the publication of images by which S. could be identified. The ECtHR does not consider that information on S.'s physical appearance could have contributed significantly to the debate on the case, in particular as S. was undoubtedly not a public figure, but an ordinary person who was the subject of criminal proceedings. The ECtHR dismisses the argument that S. no longer benefitted from the presumption of innocence, as he had confessed to the murder: a confession in itself does not remove the protection of the presumption of innocence, and as S. suffered from a schizoid personality disorder, the criminal court had to review carefully the confession in order to satisfy itself that it was accurate and reliable. The Court also refers to the fact that images of an accused person taken in a court room may show the person in a state of great distress and possibly in a situation of reduced self-control. The ECtHR finds that under the circumstances in question there was a strong need to protect S.'s privacy, given that S. had never sought to contact the media nor make any public comments. Furthermore, the ECtHR refers to the harmful effect which the disclosure of information enabling the identification of suspects, accused or convicted persons or other parties to criminal proceedings may have on these persons, and to the negative implications this might have on the later social rehabilitation of convicted persons. It was also in the interest of safeguarding due process not to increase the psychological pressure on S. - particularly in view of his personality disorder. Finally, the ECtHR notes that the judicial order did not constitute a particularly severe restriction on reporting: the taking of images as such was not prohibited, the order banned merely the publication of images from which S. could be identified, and any other reporting on the proceedings was not restricted. Thus, the presiding judge chose the least restrictive of several possible measures in order to safeguard due process and protect S.'s privacy. Therefore, the ECtHR does not consider that the order had a "chilling effect" on the media companies, contrary to their rights under Article 10 ECHR.

The ECtHR recognises the careful balancing act carried out by the presiding judge, clearly addressing the conflict between opposing interests and carefully weighing

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the relevant aspects of the case. The ECtHR unanimously concludes that the interference with the media companies' right to freedom of expression was "necessary in a democratic society". Accordingly, there has been no violation of their right to freedom of expression and information, as guaranteed by Article 10 of the ECHR.

Judgment by the European Court of Human Rights, Fifth Section, case of Axel Springer SE and RTL Television GmbH v. Germany, Application no. 51405/12 of 21 September 2017

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