European Court of Human Rights: *Bild GmbH & Co. KG v. Germany*

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A judgment of 31 October 2023 of the European Court of Human Rights (ECtHR) found a violation of Article 10 of the European Convention on Human Rights (ECHR) at the request of *Bild GmbH & Co. KG* (Bild), the owner and operator of a news website (bild.de) in Germany. The case concerns a court ruling ordering Bild to cease publication of the CCTV footage of a police arrest without the face of one of the police officers involved being blurred. The ECtHR was opposed in particular to the general reasoning in the court order that any unpixelated coverage of the police action would be unlawful. Such an approach could lead to an unacceptable ban on any non-consensual future publication of unedited images of police officers performing duties irrespective of the public interest in the use of force by the police. Therefore, the court ruling was not necessary in a democratic society, which resulted in the finding of a violation of Bild's right to freedom of expression and information.

In 2013 bild.de published two articles that reported on a police intervention at a nightclub, after a customer (D.) had behaved aggressively towards a staff member of the club. Together with the articles, bild.de published CCTV footage it had obtained from the club owner. The video published with the first article showed several police officers standing around D. and bringing him down to the ground by force. One of the officers could be seen hitting D. with a police baton and kicking him while he was already immobilised on the floor. The video with the second article, published two days later, also showed D.'s aggressive behaviour before the police intervened . P. was one of the police officers involved in D.'s arrest. The CCTV footage showed him assisting his fellow officers in bringing D. down to the ground. His face was clearly visible for several seconds. However, the video gave no indication that P. had used excessive force during the arrest. P.'s lawyer requested that Bild cease publication of the CCTV footage without his client's face being blurred. When Bild refused, P. lodged a claim with the Oldenburg Regional Court. Bild was ordered to cease publication of the CCTV footage without P.'s face being blurred. The Oldenburg Court of Appeal confirmed the order. The Appeal Court confirmed that the use of the unpixelated image of P. violated his personality rights. It stated: "If future reporting were to portray the claimant in a negative light, suggesting criminal responsibility, pixelation would be necessary ... Similarly, if the coverage were to be positive from the claimant's perspective – that is, reflecting the actual circumstances – pixelation would also be necessary, since the footage could no longer be considered to be portraying an

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aspect of contemporary society but only a routine and everyday police intervention."

Bild lodged an application with the ECtHR, complaining that the injunction to cease publication of the CCTV footage without P.'s face being pixelated had violated its freedom of expression under Article 10 ECHR. The ECtHR focussed on the question whether the interference was necessary in a democratic society, recalling the general principles as established in the Court's case-law when balancing the rights under Article 8 (privacy/reputation) and Article 10 ECHR (see *Axel Springer AG v. Germany*, IRIS 2012-3/1). Notably, the ECtHR referred to the relevant criteria, including: the contribution to a debate of public interest, how well known the person affected is, the prior conduct of the person concerned, and the content, form and consequences of the publication. The way in which the information was obtained and its veracity, and the gravity of the penalty imposed on the journalists or publishers were also to be considered. The ECtHR emphasised that the quality of the judicial examination regarding the necessity of the measure is of particular importance in the context of assessing the proportionality under Article 10 ECHR. It also reiterated that where the "duties and responsibilities" of journalists are concerned, the potential impact of the medium of expression involved is an important factor in assessing the proportionality of the interference. It further stated that the audiovisual media have a more immediate and powerful effect than the print media, and that this a fortiori applies to publications on the Internet, since the capacity to store and transmit information, and the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms – particularly the right to respect for private life – is certainly higher than that posed by the press.

The ECtHR agreed with the domestic courts that the CCTV footage portrayed an aspect of contemporary society and expressly acknowledged the importance of the news media in covering the use of force by police officers. It recognised that the use of force by state agents was inherently a matter of public interest. But it noted that in the present case the applicant company did not argue that P. had been involved in any kind of misconduct. The ECtHR confirmed that P. was not a public person, but it considered that in some circumstances, civil servants, when acting in an official capacity, are subject to wider limits of acceptable criticism than private individuals, for instance in the case of alleged misconduct by a civil servant or public official. However, civil servants, including police officers, are not deprived of a legitimate interest in protecting their private life against, *inter alia*, being falsely portrayed as abusing their office. The ECtHR also observed that, whereas there is no general rule under Article 8 ECHR requiring that police officers should generally not be recognisable in press publications, there may be circumstances in which the interest of the individual officer in the protection of his or her private life prevails. This would be the case, for example, if publication of

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the image of a recognisable officer, irrespective of any misconduct, is likely to lead to specific adverse consequences in his or her private or family life. The ECtHR clarified that the right to private life, as protected under Article 8 ECHR, may make it necessary to impose on press organs an obligation to blur the image of an individual depicted in its publication (see also *Haldimann a.o. v. Switzerland*, IRIS 2015-4/1).

The ECtHR accepted the ruling by the German courts as to the publication of the CCTV accompanying the first article. But it decided that the order to cease publication of the second article with the CCTV footage and of any future publication of the unpixelated CCTV footage, regardless of the accompanying coverage, did not meet the standard of necessity in a democratic society. The ECtHR referred to the reasoning of the Court of Appeal that in all circumstances P.'s prior consent was needed. The ECtHR was opposed to such general reasoning. The mere fact that the use of force by the police is not portrayed in a negative way does not mean that its coverage in the media should cease to enjoy any protection. Taking into account the public interest in the coverage of the use of force by state agents and the potentially dissuasive effect that the obligation to blur the images of police officers involved in an operation would have on the exercise of the right to freedom of expression, there is a need to balance the competing rights involved, which in the present case the domestic courts failed to do in respect of any future unedited CCTV footage. And while the order did not constitute a particularly severe restriction on Bild's freedom of expression, the ECtHR found the interference not justified, since, in the circumstances of the present case and for the reasons stated above, its imposition lacked the necessary balancing of the competing interests with respect to the second publication and any future publication of the unedited CCTV footage. Finally, the ECtHR emphasised that the court order imposed by the Court of Appeal could lead to a ban – unacceptable in such general terms irrespective of the public interest in the use of force by the police – on any future publication, without the consent of the persons concerned, of unedited images of police officers performing their duties. Therefore, the ECtHR, unanimously found the court order at issue not necessary in a democratic society, and it concluded that Bild's right under Article 10 ECHR had been violated.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Bild GmbH & Co. KG v. Germany, Application No. 9602/18, 31 October 2023

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