



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF AXEL SPRINGER AG v. GERMANY (No. 2)

(Application no. 48311/10)

JUDGMENT

*This version was rectified in accordance with Rule 81 of the Rules of Court
on 4 November 2014.*

STRASBOURG

10 July 2014

FINAL

10/10/2014

This judgment is final but it may be subject to editorial revision.

In the case of Axel Springer AG v. Germany (no. 2),

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan Mr Zupančič,
Ganna Yudkivska,
Vincent A. de Gaetano,
André Potocki,
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 June 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 48311/10) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a public limited company incorporated under German law, Axel Springer AG (“the applicant company”), on 19 August 2010.

2. The applicant company was represented by Mr U. Börger, a lawyer practising in Hamburg. The German Government (“the Government”) were represented by their Agents, Ms K. Behr and Mr H.-J. Behrens, of the Federal Ministry of Justice.

3. The applicant company alleged that an injunction prohibiting it from further publication of two sentences was in breach of Article 10 of the Convention.

4. On 28 March 2012 notice of the application was given to the Government.

5. The Media Legal Defence Initiative, a non-governmental organisation, was granted leave to submit written comments (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant company is a public limited company with its registered office in Hamburg. Among other activities, it is the publisher of the mass-circulation daily newspaper *Bild*.

A. Background to the case

7. On the evening of 22 May 2005, after his party (the Social Democratic Party (SPD)) had suffered a heavy election defeat in the *Land* of North Rhine-Westphalia, Federal Chancellor Gerhard Schröder, who had been in power as head of the Federal Government since 1998, announced that parliamentary elections would be brought forward to autumn 2005 from their scheduled date in September 2006. Because the early elections could not be held until the Bundestag (German Federal Parliament) had been dissolved – a process which could only take place by order of Federal President of Germany after a motion of confidence in the Federal Chancellor had been defeated – Chancellor Schröder called a vote of confidence on 1 July 2005 and lost it, with 148 of the 304 members of parliament from the parties making up his government abstaining as requested by the Chancellor. On 21 July 2005 Federal President Horst Köhler dissolved the Bundestag. This means of securing the dissolution of Parliament prompted discussions in public and among members of parliament, and was also the subject of appeals to the Federal Constitutional Court, which, by a majority, dismissed them and ruled that the disputed procedure was in conformity with the Basic Law (see in particular the decision of 25 August 2005, nos. 2 BvE 4/05 and 7/05).

8. The elections were held on 18 September 2005. None of the main political parties emerged victorious with a sufficient majority, but the parties forming the outgoing Schröder government (the SPD and the Greens) lost their majority. Subsequently, the conservative parties (the CDU and CSU) and the SPD agreed to form a coalition headed by Ms Angela Merkel, the candidate for the CDU and CSU. On 22 November 2005 Mr Schröder left office and Ms Merkel was elected as the new Federal Chancellor.

9. On 9 December 2005, at a ceremony to mark the start of work on the Baltic Sea gas pipeline (“*Ostseepipeline*”), it was announced that Mr Schröder had been appointed chairman of the supervisory board of the German-Russian consortium NEGP (*Konsortium Nordeuropäische Gaspipeline*). The aim of the consortium, which had its registered office in Switzerland and was controlled by the Russian company Gazprom, was to build a gas pipeline to supply Russian gas to western Europe. The

agreement on the principle of building the pipeline had been signed on 11 April 2005 by the German company BASF and Gazprom in the presence of Mr Schröder and the Russian President Vladimir Putin. The signing of the contract itself, initially scheduled for mid-October at an energy summit in Moscow, had taken place on 8 September 2005 – again in the presence of Mr Schröder and Mr Putin – ten days before the early elections.

10. On the day of the announcement, a member of *Bild*'s editorial staff attempted to contact the deputy spokesperson for the government, S. (who had continued to occupy this post under the new government), for information on the subject but received no reply. The following day he made a further attempt, which was likewise unsuccessful. Following a third request later that day, the deputy spokesperson informed the journalist that Mr Schröder had nothing to add to his statement of 9 December 2005 in which he had indicated his willingness to accept an offer from the consortium partners to take up a position on its supervisory board.

11. On Sunday 11 December 2005 a *Bild* journalist called the vice-chairman of the parliamentary group of the Free Democratic Party (FDP), Carl-Ludwig Thiele.

12. In a sworn statement of 14 December 2005 the journalist affirmed that Mr Thiele had wondered whether Chancellor Schröder had already spoken to the Russians about a lucrative position before calling the early elections in May 2005. When asked by the journalist what he meant, Mr Thiele had replied: "The early election gambit must now be seen in a new light". The journalist had then asked Mr Thiele whether he meant that Mr Schröder might have triggered the fresh elections on the basis of promises from Russia. Mr Thiele had replied: "That's a question we need to ask". He had added that, from his own experience in politics, a matter involving such a major change in personal activity must have been settled well before May. He had then asked two further questions: "Did Schröder want to resign because he had been offered lucrative positions? Did he have personal motives in deciding to call early elections in a politically desperate situation?"

According to the statement, Mr Thiele had agreed for his comments to be quoted. On 14 December 2005 the journalist called Mr Thiele again and asked him whether, in the light of the warning (*Abmahnung*) which Mr Schröder had issued to *Bild*, he still stood by his comments; Mr Thiele confirmed that he did.

B. The impugned article

13. In its edition of 12 December 2005 *Bild* published a front-page article with the headline: "What does he really earn from the pipeline project? Schröder must reveal his Russian salary." On page 2 of the

newspaper, under the headline “Russian salary – will Schröder earn more than a million a year?” the article read as follows:

“The ex-Chancellor and Russian gas: there is growing outrage among all political parties. For Schröder is to head the supervisory board of a business seeking to build a four-billion-euro gas pipeline through the Baltic Sea from Russia to Germany. While he was Chancellor, he pushed this project through despite considerable resistance.

Lower Saxony Prime Minister Christian Wulff (CDU) called on Schröder to act, either by declining the chairmanship of the NEGP consortium’s supervisory board, or by revealing all his income from his Russian job!

Wulff told *Bild*: ‘Through his behaviour Gerhard Schröder has seriously damaged the reputation of politics in Germany. Schröder must decline the job of supervisory board chairman, because otherwise this may create the impression of being a reward for promoting the pipeline.’

The politician added: ‘If Schröder nevertheless accepts his appointment to the supervisory board, he must disclose what he is getting paid. This is a requirement under the regulations on disclosure [of income], which were toughened up by the Schröder government this year. The fact that the pipeline company has its headquarters in Switzerland is no reason for the former Federal Chancellor not to abide by these rules.’

Insiders reckon that Schröder is pocketing more than a million dollars a year for his gas job. After all, the Russians are not stingy. For example, five supervisory board members of the Russian company Northgas, a Gazprom subsidiary, have received payments totalling seven million dollars.

The fact that Schröder is walking into the joint German-Russian venture so soon after leaving the Government has been met with incredulity across all political parties. One particularly delicate matter is that on 11 April the Russian energy giant Gazprom and the German [company] BASF signed a memorandum in Hanover for the joint exploitation of a Russian gas field, in the presence of Schröder and Russian head of State Vladimir Putin. Following the signing, the two government leaders stayed up late drinking red wine together.

Was Schröder’s recruitment to the multinational gas company already being discussed at that time – six weeks before he called the early elections?

The vice-chairman of the FDP parliamentary group, Carl-Ludwig Thiele, said: ‘That’s a question we need to ask!’ Thiele has a monstrous suspicion: ‘Did Schröder want to resign because he had been offered lucrative positions? Did he have personal motives in deciding to call early elections in a politically desperate situation?’ The early election gambit should ‘now be seen in a new light’, he added.

Peter Ramsauer, chairman of the CSU parliamentary group in the Bundestag, said: ‘You don’t make a deal like that overnight, and Gerhard Schröder was still Chancellor three weeks ago. He should now lay his cards on the table and say whether these agreements had already been reached while he was in office.’

The vice-chairman of the CDU parliamentary group, Wolfgang Bosbach, added: ‘Schröder should finally say what’s going on (*was Sache ist*)!’

The economic affairs spokesperson for the Greens parliamentary group, Matthias Berninger, said: ‘Schröder must now ensure maximum transparency and disclose his contract and remuneration.’”

14. The article on page 2 was accompanied by a photograph of Mr Schröder wearing a chapka on his head. Further down there was a short article stating that the NEGP consortium was headed by a former major from the State Security Ministry of the former German Democratic Republic, who was a friend of Mr Putin.

15. Mr Schröder's appointment as chairman of the supervisory board gave rise to public debate and was reported in the media and discussed in the German Parliament, in particular on 15 December 2005.

16. An article published in *Focus* magazine (no. 50/2005) on 12 December 2005 stated that a journalist from the magazine had contacted the Schröder government in August 2005 to find out whether indications from Moscow that Gazprom was preparing a post for Mr Schröder were true. The government spokesperson had said that this was absurd and denied the existence of any such offer.

17. In April 2006 it emerged that in late October 2005, while government business was still being conducted on an interim basis by the outgoing government pending Ms Merkel's election as Chancellor, guarantees had been signed whereby the German government agreed to underwrite a loan of one billion euros from two German banks in favour of Gazprom and part of the pipeline. Mr Schröder indicated that he had had no knowledge of the signing of the guarantees and Gazprom stated that it had not made use of them.

C. The proceedings in issue

18. On an unspecified date in 2006 Gerhard Schröder sought an injunction in the Hamburg Regional Court prohibiting any further publication of the following passage of the article:

“Thiele has a monstrous suspicion: ‘Did Schröder want to resign because he had been offered lucrative positions? Did he have personal motives in deciding to call early elections in a politically desperate situation?’”

1. *The Regional Court's judgment*

19. In a judgment of 24 June 2005 the Regional Court granted the injunction. It held in particular that the quotation in issue was neither a factual allegation nor a value judgment but mere speculation in the form of questions, the legality of which was a matter for assessment in the light of the principles established for reporting on suspicions (*Verdachtsberichterstattung*). According to these criteria, the courts had to assess whether the impugned report concerned a matter of public interest, whether there was a sufficient factual basis for the speculation, whether the newspaper had been sufficiently diligent in carrying out its research and in deciding to publish the report, and whether the nature of the report made it sufficiently clear that what was being reported was speculation and that the

factual reality might be different. The regional court held that the publication of the passage in issue in the case before it did not satisfy these criteria in so far as the applicant company had not sought to obtain Mr Schröder's views on the matter beforehand and had not established a sufficient factual basis to justify publishing the passage in question.

2. Judgment of the Court of Appeal

20. In a judgment of 8 April 2008 the Hamburg Court of Appeal upheld the Regional Court's judgment. It held that the publication of the offending quotation breached Article 823 § 1 of the Civil Code, in conjunction with Article 1004 § 1 (by analogy) of the Civil Code and the right to protection of personality rights (*Allgemeines Persönlichkeitsrecht* – see “Relevant domestic law and practice”), because it suggested to readers of the newspaper that Chancellor Schröder had taken the decision to hold early parliamentary elections on the basis of private considerations motivated by self-interest. The Court of Appeal found it unnecessary to determine whether the quotation in issue amounted to a genuine (open) question or a factual allegation in the form of a question, since the applicant company had conveyed a suspicion which could also have been formulated as a question. The Regional Court had thus been correct in applying the criteria for reporting on suspicions.

21. The Court of Appeal observed that the report published by the applicant company did not merely reproduce what Mr Thiele had said, but the quotation had formed part of a significantly longer article intended to steer readers in a certain direction. It further pointed out that the article had begun by saying that Mr Schröder and the Russian President Putin had met in April 2005, and had then asked whether Chancellor Schröder's activities on behalf of Gazprom had been discussed on that occasion. In the court's view, this encouraged readers to believe that it was possible that an agreement had been reached for Mr Schröder to take up a private-sector post and that he had used the election defeat in North Rhine-Westphalia as a pretext for triggering a series of events that would lead to his leaving office as Chancellor. It added that this line of thinking was borne out by the two questions in the quotation in issue and the use of the phrases “early election gambit” and “must now be seen in a new light”.

22. The Court of Appeal observed that the principles for reporting on suspicions applied to the case before it, although the report in question had not contained any suspicion that Mr Schröder had committed a criminal offence. What was decisive in the court's view was that the applicant company had conveyed a suspicion entailing a serious and damaging accusation against the former Chancellor. The article had suggested that he had misled the general public and the electorate about the true reasons for his decision to call early elections and that he had prioritised his own financial interests over the common good, which he was required to serve as

Federal Chancellor. The Court of Appeal considered that this was one of the most serious accusations that could be levelled against a person who had formerly held one of the highest State offices. In its view, the quotation in issue confirmed the seriousness of the accusation by using the phrase “monstrous suspicion”.

23. The Court of Appeal added that the applicant company had not had due regard to the principles established for reporting on suspicions. According to these principles, any such reports had to concern a matter of justifiable public interest, have a minimum factual basis, set out the facts objectively by indicating both the circumstances supporting the suspicion and those pleading in favour of the person under suspicion, be published, in principle, after obtaining comments about the accusations from the person concerned and be the result of research satisfying the requirements of journalistic rigour.

24. Applying those principles to the case before it, the Court of Appeal noted firstly that the subject-matter of the report was in the public interest. It also accepted that there had been sufficient material to justify reporting on the suspicions in question. In that connection, it recapitulated the sequence of events forming the background to the article, namely that Mr Schröder had expressed support for the pipeline project throughout his time as Chancellor, that he had met President Putin at the signing of the declaration of 11 April 2005 by two Russian and German private-sector firms, that he had decided to hold early elections at a time when his political party had been in difficulty following its election defeat in North Rhine-Westphalia, that he had triggered a process resulting in his relinquishing the office of Chancellor and that – according to the Court of Appeal – it had emerged that between the date of the early elections and his last day as Chancellor, Mr Schröder had secured a very well-paid post in a consortium controlled by Gazprom.

25. The Court of Appeal added that it was especially legitimate to ask how Mr Schröder could have secured that post as the events in question belonged to an area of fundamental importance in shaping public opinion. It pointed out that the requirements for assessing the legitimacy of such a report should not be too stringent. Otherwise, there was a risk that the media would be limited to commenting on politicians’ conduct only where there was substantial evidence corroborating the suspicions raised. Such a restriction, however, was not acceptable in this sphere. The Court of Appeal noted that anyone who attracted public attention, such as politicians, had to accept that the threshold beyond which their conduct could be investigated by the media was lower than that applicable to anyone not in the public domain.

26. The Court of Appeal added that the impugned publication had lacked objectivity and balance. It pointed out that the version of events set out in a report should not amount to a prejudgment (*Vorverurteilung*) of the person

concerned. This was not only the case where the report gave the impression that the person had in fact done what he or she was suspected of doing, but also when a report was intentionally biased and distorted the facts for sensationalist purposes, without regard to the circumstances militating in favour of the person concerned. In the Court of Appeal's view, this was what had happened in the case of the report in issue, since it had made no mention of any factors casting doubt on the accusations made but had referred solely to circumstances corroborating the suspicions, which to a certain extent were concentrated within the offending quotation.

27. In this connection the Court of Appeal observed that the report did not mention that the May election defeat in North Rhine-Westphalia had considerably weakened the authority of the government majority at federal level and could have constituted a valid reason for asking the electorate, by means of early elections, whether it still supported this majority. Likewise, the report did not mention anywhere that Chancellor Schröder had not adopted an attitude of resignation but rather had been active and combative throughout the election campaign. Lastly, the Court of Appeal found that at the time of the article's publication there had been no information from anyone close to Mr Schröder to suggest that he had based his decision to call early elections on grounds that were spurious (*sachfremd*).

28. The Court of Appeal added that the applicant company had no basis for arguing that these circumstances were so well known to readers that there was no need to reiterate them in the report, since the entire article had sought to suggest to readers that there were no circumstances casting doubt on the facts as presented. Similarly, the fact that the subject of the report was of considerable public interest could not exempt the applicant company from its duty to present a balanced account of the facts. On this point, the Court of Appeal emphasised that the applicant company was not prevented from criticising Mr Schröder. However, in view of the extremely serious accusation being made, it could have been expected to indicate that the facts had yet to be established.

29. The Court of Appeal held, lastly, that the applicant company had not carried out sufficient research before publishing the article. It considered that irrespective of whether the politician quoted in the article should have been required to conduct his own research before raising his questions, the applicant company had had a duty to clarify the facts further before publicly reproducing those questions, which concerned extremely serious allegations. It pointed out that there had been sufficient connecting factors in this regard. For example, the applicant company could have contacted the consortium in Switzerland, Mr Schröder himself or one of his team to find out when the post for the former Chancellor had been planned or created, when he had discovered the existence of the post and when and by whom the post had been offered to him. The Court of Appeal added that the fact that other media outlets had reported on similar suspicions could not release

the applicant company from its duties. Moreover, the company had not asked Mr Schröder for his views. In the Court of Appeal's opinion, irrespective of whether the views of the person concerned should always be sought when suspicions were being reported, the press had a duty in any event, in order to satisfy the requirements of journalistic rigour, to contact the person concerned when publishing speculation relating to that person's motives, provided that the person could be reached for comment. The Court of Appeal concluded that this duty had been all the more compelling in the case before it, in view of the especially serious nature of the allegation being made.

3. Decision of the Federal Court of Justice

30. In a decision of 13 January 2009 the Federal Court of Justice refused the applicant company leave to appeal on points of law, holding that the case did not raise a question of fundamental importance and was not necessary for the development of the law or to guarantee uniformity of the case-law.

4. Decision of the Federal Constitutional Court

31. On 18 February 2010 a chamber of the Federal Constitutional Court decided not to accept for adjudication a constitutional appeal by the applicant company (no. 1 BvR 368/09). It declined to give reasons for its decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. Article 823 § 1 of the Civil Code (*Bürgerliches Gesetzbuch*) provides that anyone who, intentionally or negligently, unlawfully infringes another person's right to life, physical integrity, health, liberty, property or other similar right is liable to afford compensation for the resulting damage.

33. Article 1004 § 1 provides that in the event of an interference with property by means other than removal or illegal retention, the owner may require the perpetrator to cease the interference. If there are reasonable fears of further interference, the owner may seek a prohibitory injunction.

34. In a judgment of 25 May 1954 (no. I ZR 311/53) the Federal Court of Justice acknowledged the general right to protection of personality rights by virtue of Article 1 § 1 (human dignity) and Article 2 § 1 (right to free development of personality) of the Basic Law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

35. The applicant company alleged that there had been a violation of its right to freedom of expression as guaranteed by Article 10 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ...”

A. Admissibility

36. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. The merits

1. *The parties' submissions*

(a) *The applicant company*

37. The applicant company pointed out that the present case concerned an injunction prohibiting it from reproducing a quotation from a member of the German Federal Parliament who had questioned the motives of a political decision taken by the former Federal Chancellor. The case therefore differed from *Pedersen and Baadsgaard v. Denmark* ([GC], no. 49017/99, ECHR 2004-XI), which had concerned a factual allegation that had proved to be false.

38. The applicant company asserted that there had been no indication that Mr Thiele's question was purely rhetorical and had not prompted any effort on its part to seek an answer. It observed that the German courts had not established any evidence in that regard and that the possible reasons why Mr Schröder had triggered early parliamentary elections had been the subject of intense public debate. It recounted the events following on from Mr Schröder's announcement of early elections: the Chancellor's decision to call a vote of confidence with the aim of losing it, the signing of the contract with Gazprom at an earlier date than scheduled, the guarantees signed by the interim government in late October, Mr Schröder's unusual decision to resign his seat in Parliament, and lastly the announcement only

two and a half weeks after leaving office as Chancellor that he had accepted the post at NEGP.

39. The applicant company asserted that all these facts had still been valid at the time the article had been published. It pointed out that other politicians and media outlets had also questioned Mr Schröder's motives. For example, the claim by Mr Ramsauer, as reported in the *Bild* article, that Mr Schröder "should now lay his cards on the table and say whether these agreements had already been reached while he was in office" ultimately raised the same question as the comments made by Mr Thiele.

40. The applicant company criticised the Court of Appeal's finding that it should have made the report more balanced by also mentioning factors countering the assumption that Mr Schröder had triggered the early elections out of self-interested motives. It noted that the Court of Appeal's observation that Mr Schröder had displayed a combative attitude during the election campaign was a subjective assessment which was open to other interpretations and that it could not have been compelled to mention that aspect.

41. The applicant company further submitted that the Court of Appeal had been incorrect in observing that it had not sought to obtain the former Chancellor's views. It pointed out that *Bild* journalists had contacted the government spokesperson on three occasions before receiving the answer that Mr Schröder had nothing to add to his statement released the previous day. The applicant company submitted that it had referred to those facts in the civil courts.

42. The applicant company submitted that it would in any event have been unnecessary to obtain Mr Schröder's views since the matter did not involve a suspicion of criminal conduct on the part of an unknown private individual, but rather the publication of a question from a member of parliament concerning the behaviour of a former head of government. In the applicant company's submission, it would be impossible to have a political debate if, whenever the media intended to publish comments by one politician about another, they were required to obtain the latter's opinion beforehand. The applicant company submitted that, like the applicant in *Gorelishvili v. Georgia* (no. 12979/04, 5 June 2007), it had not been obliged to carry out further research before publishing the passage in question.

(b) The Government

43. The Government submitted that the German courts, being aware that the present case concerned a report on a political issue of significant public interest, had given due consideration to the importance of freedom of expression in the case, but had found that the applicant company had not fulfilled its journalistic duties and responsibilities. In their submission, the offending passage was to be construed as a factual allegation even if it had been presented in the form of a question. The daily newspaper published by

the applicant company had not sought to find an answer to Mr Thiele's question, but rather to convey his view that Mr Schröder's envisaged move to the private sector might have been a decisive factor in triggering early elections. In any event, even if Mr Thiele's comments were to be found to amount to a genuine question or a value judgment, they would nevertheless still be unlawful as they lacked a sufficient factual basis.

44. The Government pointed out that the more serious the allegation, the more solid the factual basis had to be (referring to *Pedersen and Baadsgaard*, cited above, § 78). They asserted that the allegation that Mr Schröder had neglected the common good was one of the most serious accusations that could be levelled at a person holding public office, so the applicant company should have had to seek the opinion of the interested party before publishing the passage in question. However, it had taken no steps to do so. The Government pointed out in that connection that the request from the applicant company to the government's deputy spokesperson for information had merely related to the NEGP consortium in general and had in no way been linked to the question raised by the offending passage. Furthermore, Mr Schröder had not had the opportunity to prove that the suspicions against him were unfounded.

45. The Government observed that there was no evidence in the present case to support the argument – advanced by the applicant company with reference to *Dichand and Others v. Austria* (no. 29271/95, 26 February 2002) and *Gorelishvili* (cited above) – that the applicant company's duty of care had been lessened. They pointed out that while the article had unquestionably concerned a matter of public interest, only one specific passage had been affected by the injunction. All the other speculation and criticism relating to Mr Schröder in the article had had a sufficient factual basis and could therefore be published.

46. The fact that the passage in issue concerned a quotation by a third party – a politician at that – was not sufficient in the Government's view to make it legal. They referred to the risk that the media might publish defamatory statements without observing any duty of journalistic rigour as long as they used a quotation by a third party. That was all the more likely in the present case because the boundaries between the newspaper's own contribution and quotations from others were unclear in the article. In the Government's submission, the article had not simply reproduced a statement made previously by a politician in the public arena, but the reply which Mr Thiele had given when a journalist from the newspaper had asked him a specific, targeted question in a telephone interview.

47. In the Government's view, there were similarities between the present case and the situation in *Pedersen and Baadsgaard* (cited above). In both cases, the courts had not prohibited the disclosure of general information on a matter of public interest, but a specific, isolated allegation, the quality and scope of which went beyond the general content of the

programme and article respectively. As in *Pedersen and Baadsgaard* (§§ 74-76), through its use of the sentence after the impugned statement by Mr Thiele (“the early election gambit must now be seen in a new light”), the daily newspaper *Bild* had ultimately left readers with only one possible interpretation: that the former Chancellor had engineered the elections for his own self-interested purposes. The Government added that while the Court had criticised the applicants in the *Pedersen and Baadsgaard* case for not carrying out more detailed research and not verifying the statements made by the witness, the applicant company in the present case had quite simply carried out no research at all. Furthermore, in both cases the allegations being levelled at the specified individuals were particularly serious and the reports had reached a wide audience.

48. The Government noted, lastly, that the other articles referred to by the applicant company in its observations had accused the former Chancellor of making his own private arrangements in the event of being defeated in the elections, but had not insinuated that Mr Schröder had deliberately lost. Furthermore, although the Court of Appeal had criticised the newspaper for failing to mention Mr Schröder’s combative attitude during the election campaign, that should not be construed as a general obligation for the applicant company to also include “positive” statements about the former Chancellor. On the contrary, the Court of Appeal had held that this omission had been particularly important in the case before it since the newspaper had thereby deprived its readers of a strong argument against the insinuations made in the offending quotation. The Court of Appeal had inferred from this that the applicant company could not be said to have acted “in good faith” and in accordance with the ethics of journalism.

2. Observations of the third party

49. The Media Legal Defence Initiative submitted, in particular, that the media could not be required to carry out their own investigations in every case before publishing a statement which might carry a defamatory allegation. It was vital to recognise that there were cases relating to an important public interest where the media had a right, or even a duty, to publish statements by an individual without having verified their accuracy beforehand. The intervening association pointed to the risk of abuse if the media were required to obtain the opinion of persons referred to in a report where it was in those persons’ interests to stifle or prevent legitimate public debate on the subject concerning them. It also cautioned against concluding that the omission of certain facts and matters from a report meant that it lacked objectivity. It was not for States but for the media to choose the form and content of their reports (here it cited *Axel Springer AG v. Germany* [GC], no. 39954/08, § 81, 7 February 2012, and *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). The third party also pointed out that the reporting of information on subjects of public debate often took

place on a continuing basis, with the result that a question raised in an initial report might be answered in a subsequent report on the same debate.

3. *The Court's assessment*

50. The Court notes that the parties agreed that the judicial decisions in the present case constituted an interference with the applicant company's right to freedom of expression as guaranteed by Article 10 of the Convention and that the interference was prescribed by Article 823 § 1 and Article 1004 § 1 of the Civil Code, read in the light of the right to protection of personality rights. The Court shares that opinion.

51. The Court agrees with the Government that the interference pursued a legitimate aim, namely the protection of the reputation and rights of others within the meaning of Article 10 § 2 of the Convention. To the extent that the applicant company submitted that the injunction had in fact damaged Mr Schröder's reputation, the Court considers that this argument relates more to the question whether the interference was "necessary in a democratic society" (see *Dichand and Others*, cited above, § 33).

52. The Court must therefore determine whether the interference was "necessary in a democratic society" in order to achieve the above aims.

(a) **General principles**

53. The Court refers to the basic principles set forth in its case-law on this subject (see, among many other authorities, *Stoll v. Switzerland* [GC], no. 69698/01, §§ 101-105, ECHR 2007-V; *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 40, 27 May 2004; and *Ungváry and Irodalom Kft v. Hungary*, no. 64520/10, §§ 37-48, 3 December 2013).

54. The Court reiterates in particular that there is little scope under Article 10 § 2 for restrictions on freedom of expression in relation to political speech or matters of public interest (see *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006). Moreover, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103).

55. In a case such as the present one, the Court must take account of a particularly important factor: the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Bladet*

Tromsø and Stensaas v. Norway [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, and *Pedersen and Baadsgaard*, cited above, § 71).

56. Lastly, it should be reiterated that in cases such as the present one, which require the right to freedom of expression to be balanced against the right to respect for private life, the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the article, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Axel Springer AG*, cited above, § 87, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012).

57. In *Axel Springer AG* (cited above, §§ 89-95) and *Von Hannover (no. 2)* (cited above, §§ 108-113) the Court summarised the relevant criteria for balancing the right to freedom of expression against the right to respect for private life, including the contribution to a debate of general interest, the degree to which the person affected was well known, the subject of the report, the form and consequences of the publication and the severity of the sanction imposed (see also *Tănăsioaica v. Romania*, no. 3490/03, § 41, 19 June 2012; *Verlagsgruppe News GmbH and Bobi v. Austria*, no. 59631/09, § 72, 4 December 2012; *Küchl v. Austria*, no. 51151/06, § 67, 4 December 2012; and *Ungváry and Irodalom Kft*, cited above, § 45).

(b) Application in the present case

(i) Contribution to a debate of general interest

58. The Court notes that the passage in issue was part of an article published in a mass-circulation daily newspaper about Mr Schröder's appointment as chairman of the supervisory board of a German-Russian consortium very shortly after leaving office as Federal Chancellor. The report notably raised the question whether and to what extent Mr Schröder had taken advantage of policy decisions he himself had taken while head of government in preparation for this change. The subject of the report was clearly of considerable public interest. This was especially true of the passage covered by the injunction, which asked whether Mr Schröder had wished to be relieved of his duties as Federal Chancellor because of the post he had been offered in the consortium.

(ii) *How well known was the person concerned?*

59. As to how well known Mr Schröder was, it must be emphasised that at the time of the events reported in the article he was head of the German Government, and thus a very high-profile political figure.

(iii) *Subject of the report and nature of the information*

60. As regards the subject of the report, the Court notes that the article did not recount details of Mr Schröder's private life with the aim of satisfying the curiosity of a certain readership (compare *Axel Springer AG*, cited above, § 91), but discussed his conduct while in office as Federal Chancellor and his controversial appointment within a German-Russian consortium shortly after leaving office. Accordingly, freedom of expression must be interpreted broadly in the present case.

61. The Court observes that the German courts prohibited further publication of the passage in question on the grounds that it did not satisfy the criteria for reporting on suspicions, such criteria being applicable in the case before them. They noted in that connection that although Mr Schröder was not suspected of having committed a criminal offence, the applicant company had nevertheless conveyed a serious and damaging suspicion against him. While acknowledging that the article concerned a matter of public interest, they criticised the applicant company for, among other things, lacking objectivity and balance and failing to consult Mr Schröder or one of his team prior to publication.

62. The Court notes that the German courts left open the question whether the passage in issue amounted to a statement of fact or a value judgment, finding instead that the applicant company had expressed a suspicion, the lawfulness of which was to be assessed with reference to the criteria for reporting on suspicions. The Government submitted that the German courts had rightly taken the view that Mr Thiele's comments expressed a presumption of fact and amounted in reality to a rhetorical question which the applicant company had made no attempt to answer.

63. The Court notes firstly that the article published by the applicant company reported comments which Mr Thiele had undoubtedly made. As to the content of the questions themselves, the Court reiterates that it may sometimes be difficult to distinguish between assertions of fact and value judgments, particularly where, as in the instant case, allegations are made about the reasons for a third party's conduct (see, *mutatis mutandis*, *Fleury v. France*, no. 29784/06, § 49, 11 May 2010). Unlike in the *Pedersen and Baadsgaard* case (cited above, § 76), in which the Court found that the accusation levelled by the applicants had been an allegation of fact susceptible of proof, the questions raised by Mr Thiele about Mr Schröder's motives for calling early elections were by their very nature difficult to prove. In this connection the Court has held that inferences about the reasons or possible intentions of others are more akin to a value judgment

than to a statement of facts that may lend itself to proof (see *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, § 81, 12 July 2007, and *Ungváry and Irodalom Kft*, cited above, § 52).

64. In any event, while the Court has held that a statement amounting to a value judgment must have a sufficient factual basis (see *Pedersen and Baadsgaard*, cited above, § 76), it notes that the Court of Appeal, contrary to the Regional Court, considered that sufficient facts had been present to justify reporting on the suspicions about Mr Schröder. The Court of Appeal's criticisms of the applicant company were, firstly, that it had not mentioned any information that might cast doubt on the suspicions but only evidence in support of them, and secondly, that it had failed to carry out research to clarify the facts before publishing Mr Thiele's questions and, in particular, had not sought Mr Schröder's own opinion.

65. The Court notes firstly that the questions covered by the injunction related to a political matter of general interest and, as the Court of Appeal noted, did not allege that Mr Schröder had committed a criminal offence. Moreover, it was not suggested at any stage of the proceedings that a criminal investigation might be opened into Mr Schröder's conduct. Like the Court of Appeal, the Court notes that the questions raised by Mr Thiele could have been based on a number of facts, and that Mr Schröder's announcement was widely reported in the press and debated in Parliament. It must also be acknowledged that Mr Thiele's questions were not the only ones to be reproduced in the *Bild* article, but formed part of a series of quotations from various politicians representing different parties. The Court reiterates in this connection that it is not its task, or that of the national courts for that matter, to substitute its own views for those of the press as to what reporting technique should be adopted in a particular case (see *Jersild*, cited above, § 31, and *Erla Hlynisdóttir v. Iceland*, no. 43380/10, § 70, 10 July 2012) or what information should be included in a particular report.

66. The Court can also accept the applicant company's argument that the events in the period between the Chancellor's decision to call early elections and his announcement that he was taking up a post in the consortium were sufficiently well known to have still been present in readers' minds when the article was published. Moreover, the applicant company rightly observed that a head of government had numerous opportunities to publicise his or her political choices and to inform the public of them. In that connection, it is worth noting that according to the article published in *Focus* magazine on 12 December 2005, a journalist from the magazine had contacted the government in August 2005 to find out whether indications that Gazprom was preparing a post for Mr Schröder were correct, and the government spokesperson had denied the existence of any such offer (see paragraph 16 above).

67. Having regard to the above circumstances, the Court cannot accept the domestic courts' view that the article should also have included

information in support of the former Chancellor. Having held one of the highest political offices in the Federal Republic of Germany, the former Chancellor had a duty to display a much greater degree of tolerance than a private citizen (see, *mutatis mutandis*, *Lingens*, cited above, § 43; *Dichand and Others*, cited above, § 51; and *Feldek*, cited above, § 85).

68. The Court further notes that although the applicant company published the passage in question in its newspaper, the questions themselves were raised by a politician who was a member of the German parliament. It reiterates that not only does the press have the task of imparting information and ideas on all matters of public interest in a manner consistent with its duties and responsibilities, the public also has a right to receive information and ideas about such matters (see paragraph 53 above). In the Court's view, this is particularly true in the case of questions forming the subject of political debate, an area where freedom of expression is of the utmost importance (see *Lingens*, cited above, § 41; *Feldek*, cited above, § 83; and *Brasilier*, cited above, § 41).

69. The Court further reiterates that news reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog". Punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (see *Jersild*, cited above, § 35; *Pedersen and Baadsgaard*, cited above, § 77; *Gurgenidze v. Georgia*, no. 71678/01, § 42, 17 October 2006; and *Roberts v. the United Kingdom* (dec.), no. 38681/08, 5 July 2011). Likewise, for politicians the press may represent an important means of conveying their views.

70. The Court points out that it was not disputed that Mr Thiele made the comments reproduced in the article in question. It further considers that a newspaper cannot be required to systematically verify the truth of every comment made by one politician about another in the context of a public political debate before publishing such comments. In that context, it should also be noted that Mr Schröder would have been entitled to bring judicial proceedings against the person who had made the offending comments, namely Mr Thiele. Accordingly, having regard to the manner in which *Bild* obtained Mr Thiele's comments, to the fact that the announcement about the former Chancellor was very recent, having been issued three days prior to the article's publication, and also to the ephemeral nature of news reporting in general (see *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 69, 22 October 2009), the Court finds no indication that the applicant company should not have published the comments without carrying out other prior checks. The Court further notes that while the Court of Appeal took the view that the use of the phrase "monstrous suspicion" in the passage in issue confirmed the seriousness of the accusation levelled at Mr Schröder and

also, as a consequence, the tendentious and biased nature of the article, it apparently did not consider the possibility that in using that phrase, the applicant company might have been seeking to distance itself from the questions raised by Mr Thiele (see, *mutatis mutandis*, *Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III, and *Erla Hlynisdóttir*, cited above, § 67).

71. In so far as the Government referred to the risk that the media might disseminate defamatory comments without observing any duty of journalistic rigour as long as they used a quotation by a third party, the Court finds it necessary to point out that the comments reported in the present case were made by a politician and member of parliament in the context of a political debate of indisputable public interest.

72. As to whether the applicant company sought to obtain the views of Mr Schröder or one of his team about Mr Thiele's question, the Court notes that the civil courts found that it had made no effort to do so. The applicant company, however, asserted that one of its journalists had attempted to contact the government's deputy spokesperson, S., on three occasions following the announcement that Mr Schröder had accepted the new post, and that it had contended as much in the civil courts. The Government simply observed, without providing any further explanation, that the applicant company's requests to the deputy spokesperson for information had merely related to the NEGP consortium in general and had not been linked to the particular suspicion raised by Mr Thiele.

73. The Court notes that the Government did not provide any explanation as to why the civil courts had not had regard to, or even mentioned, the applicant company's attempts to contact the government's deputy spokesperson. On the basis of the parties' observations, the Court has no reason to believe that the applicant company did not take the steps indicated. It considers that irrespective of whether the applicant company also tried to confront the deputy spokesperson with the questions raised by Mr Thiele, it cannot be maintained that the applicant company made no attempt to contact the former Chancellor or that he was not given an opportunity to react to such questions.

(iv) Form and consequences of the publication

74. As regards the form of the publication, the Court notes that the passage in issue was part of an article about Chancellor Schröder's decision to accept the post offered by NEGP. The article included a number of comments on the matter by politicians, including Mr Thiele, the source of the offending passage. The Court observes that the article did not contain any expressions concerning the former Chancellor which could in themselves have raised an issue in the light of the Court's case-law (compare *Axel Springer AG*, cited above, § 108, and *Tănăsioaica*, cited above, §§ 52-53). Nor have any complaints been made about either the form

of the article, the expressions used or the publication of the accompanying photograph (see paragraph 14 above).

75. As regards the consequences of publication, the Court has already held that the extent to which a report has been disseminated may also be an important factor, depending on whether the newspaper is a national or local one and has a large or a limited circulation (see *Axel Springer AG*, cited above, § 94, and *Von Hannover (no. 2)*, cited above, § 112). In the present case the Court observes that *Bild* is a national daily newspaper with one of the highest circulation figures in Europe.

(v) *Severity of the sanction imposed on the applicant company*

76. Lastly, as regards the severity of the sanction imposed, the Court notes that the only measure taken against the applicant company was a civil-law injunction prohibiting further publication of a passage from the article published on 12 December 2005. It nevertheless considers that the injunction could have had a chilling effect on the exercise of the applicant company's freedom of expression (see *Brasilier*, cited above, § 43; *Tănăsioaica*, cited above, § 56; and *a/s Diena and Ozoliņš*, cited above, § 87).

(vi) *Conclusion*

77. Having regard to all the foregoing, the Court concludes that in publishing the impugned passage, the applicant company did not exceed the limits of journalistic freedom. The German courts and the Government, for their part, have failed to establish convincingly that there was any pressing social need to put the protection of former Chancellor Schröder's reputation above the applicant company's right to freedom of expression and the general interest in giving precedence to that freedom where matters of public importance are at stake. Accordingly, the interference complained of was not "necessary in a democratic society".

78. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Costs and expenses

80. The applicant company claimed EUR 26,338.25¹ for the total costs and expenses incurred before the domestic civil courts. It specified that although it had agreed on a higher amount of fees with its lawyers, it was claiming only the amounts provided for in the statutory fee scales. With regard to the amounts claimed for lodging the appeal with the Federal Constitutional Court and the application before the Court, the applicant company left the matter to the Court's discretion, while specifying that it sought at least EUR 5,000 in respect of each set of proceedings.

81. The Government contested the amount claimed in respect of the proceedings before the Federal Constitutional Court, observing that where that court did not accept a constitutional appeal for adjudication, it generally fixed the value of the subject matter of the case at EUR 4,000. The corresponding lawyers' fees would in that case be approximately EUR 500 inclusive of tax.

82. The Court finds the sums claimed to be reasonable and, accordingly, awards them.

B. Default interest

83. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sum of EUR 36,338.25 (thirty-six thousand three hundred and thirty-eight euros and twenty-five cents),² plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;

1. Rectified on 4 November 2014. Previously: EUR 31,338.25.

2. Rectified on 4 November 2014. Previously: EUR 41,338.25 (forty-one thousand three hundred and thirty-eight euros and twenty-five cents).

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in French, and notified in writing on 10 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President