



## Publication by the daily newspaper *Bild* of suspicions concerning former Chancellor Gerhard Schröder was covered by journalistic freedom

In today's Chamber judgment in the case of [Axel Springer AG \(no. 2\) v. Germany](#) (application no. 48311/10), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the publication of an article in the daily newspaper *Bild* repeating suspicions and doubts on the part of Mr Thiele – deputy president of the Liberal Democratic Party's (FDP) parliamentary group – with regard to the conditions and circumstances preceding former Chancellor Schröder's appointment as chairman of the supervisory board of the German-Russian consortium *Konsortium Nordeuropäische Gaspipeline* (NEGP). An agreement on construction of a pipeline had been signed in April 2005, in the presence of Mr Schröder and the Russian President Vladimir Putin. Having complained to the courts, Mr Schröder obtained an order banning further publication of the passage which reported Mr Thiele's comments.

The Court noted that the case concerned matters of public interest. The former Chancellor, having held one of the highest political offices in the Federal Republic of Germany, had a duty to show a much greater degree of tolerance than a private citizen.

The Court concluded that *Bild* had not exceeded the limits of journalistic freedom. The German courts had failed to establish that there was a pressing social need to put the protection of the reputation of the former Federal Chancellor Gerhard Schröder above the right of the press to freedom of expression.

### Principal facts

The applicant, Axel Springer AG, is a limited company based in Hamburg (Germany). Among other activities, it is the publisher of the mass-circulation daily newspaper *Bild*.

On 9 December 2005 it was announced that Mr Schröder had been appointed as chairman of the supervisory board of the German-Russian consortium *Konsortium Nordeuropäische Gaspipeline* (NEGP). The Federal Chancellor, in power since 1998, had previously lost early parliamentary elections.

The aim of the consortium, headed by the Russian company *Gazprom*, was to construct a gas pipeline. The agreement on construction of the pipeline had been signed on 11 April 2005 in the presence of Mr Schröder and the Russian President Vladimir Putin. The contract had been signed on 8 September 2005, also in the presence of Mr Schröder and Mr Putin, ten days before the early elections.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

In its edition of 12 December 2005, the daily newspaper *Bild* published a front-page article with the headline: “What does he really earn from the pipeline project? Schröder must reveal his Russian salary”.

Mr Schröder applied to the Hamburg Regional Court seeking a ban on any further publication by *Bild* of a passage which set out suspicions expressed by Mr Thiele, deputy president of the FDP Liberal Democratic Party’s parliamentary group, namely as to whether Mr Schröder had resigned from his political functions because he had been offered a lucrative post in the consortium and whether the decision to call early elections had been taken with that sole, self-interested, aim.

The regional court issued an order prohibiting the newspaper from republishing the disputed part of the article. The judgment was upheld on appeal, and a constitutional complaint by Axel Springer AG against the appeal court’s judgment was rejected.

## Complaints, procedure and composition of the Court

Relying on Article 10, the applicant company alleged a violation of its right to freedom of expression.

The application was lodged with the European Court of Human Rights on 19 August 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,  
Angelika Nußberger (Germany),  
Boštjan M. Zupančič (Slovenia),  
Ganna Yudkivska (Ukraine),  
Vincent A. de Gaetano (Malta),  
André Potocki (France),  
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

## Decision of the Court

### Article 10

The Court noted that the article in *Bild* did not recount details of Mr Schröder’s private life with the aim of satisfying public curiosity, but related to Mr Schröder’s conduct in the exercise of his term of office as Federal Chancellor and his controversial appointment to a German-Russian gas consortium shortly after he ceased to hold office as Chancellor.

The German courts had noted that although Mr Schröder was not suspected of having committed a criminal offence, the *Bild* article had expressed a serious and insulting suspicion against him. While acknowledging that the article concerned a matter of public interest, they had criticised the newspaper, among other things, for lacking objectivity and balance and for failing to consult Mr Schröder or one of his team prior to publication.

The *Bild* newspaper had reproduced comments which Mr Thiele, deputy president of the FDP (Liberal Democratic Party’s) parliamentary group had indisputably made. The Court noted that the questions raised by Mr Thiele with regard to the Chancellor’s reasons for calling fresh elections were closer to an expression of a value judgment than to allegations of fact that were susceptible to proof.

The Court noted that, unlike the regional court, the court of appeal had considered that there were sufficient facts which could justify suspicions with regard to Mr Schröder’s conduct. However, the court of appeal had criticised the newspaper for mentioning only evidence in support of those

suspicious and no information likely to soften them or balance them out. It had criticised the newspaper for failing to carry out research to clarify the facts before publishing Mr Thiele's questions and for never having consulted Mr Schröder himself.

The Court noted that the disputed questions had been raised in a political context of general interest and had not accused Mr Schröder of having committed a criminal offence. Like the court of appeal, the Court noted that the questions raised by Mr Thiele could be based on a number of facts, and that the announcement of Mr Schröder's appointment as chairman of the consortium's supervisory board had been widely reported in the press and debated in parliament. Mr Thiele's questions were not the only comments to be reproduced in the *Bild* article, but supplemented a series of statements made by different political figures from various parties.

The Court could not subscribe to the German courts' opinion that the article ought also to have contained elements in favour of the former Chancellor. The former Chancellor, having held one of the highest political offices in the Federal Republic of Germany, had a duty to show a much greater degree of tolerance than a private citizen.

The Court further noted that although the disputed comments had been published by the *Bild* newspaper, the comments themselves had been made by a politician and member of the German Parliament. It reiterated that the role of the press was to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In the political arena, freedom of expression was of the utmost importance and the press had a vital role as public “watchdog”. The punishment of a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to discussions of matters of public interest. The Court held that a newspaper could not be required to verify systematically the merits of every comment made by one politician about another, where such comments were made in a context of public political debate. Furthermore, the Court noted that the day after the announcement of Mr Schröder's appointment to the post of the chairman of the consortium's supervisory board, a *Bild* journalist had unsuccessfully attempted on three occasions to contact the government's deputy spokesperson. Having regard to the manner in which *Bild* had obtained Mr Thiele's remarks, and taking account of the information about the former Chancellor and the transient character of news events, the Court found that there was no indication that the newspaper ought to have published these comments only after carrying out other prior checks.

As to the severity of the measure imposed, the Court noted that although only a civil-law ban on further publication of the passage in the article which reported Mr Thiele's comments had been imposed on the limited company Axel Springer AG, it nonetheless considered that this prohibition could have had a chilling effect on its freedom of expression.

The Court concluded that *Bild* had not exceeded the limits of journalist freedom in publishing the disputed passage. The German courts had not established convincingly that there existed any pressing social need for putting the protection of the reputation of the former Federal Chancellor Gerhard Schröder above the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest were concerned.

There had therefore been a violation of Article 10.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Germany was to pay the applicant 41,338.25 euros (EUR) in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.