

Violation in injunction on *Bild* nightclub-arrest video in Bremen

In today's **Chamber judgment**¹ in the case of [Bild GmbH & Co. KG v. Germany](#) (application no. 9602/18) 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 a court ruling ordering bild.de, a major news website, to take down CCTV footage of a police arrest at a nightclub in Bremen unless it blurred the face of one of the police officers involved.

The Court found in particular that the reasoning of the German courts as regards the second and any future use of the footage had been insufficient, and that the reasoning could lead to an unacceptable ban on any future publication, without the consent of the individuals concerned, of unedited images of police officers performing their duties.

Principal facts

The applicant, Bild GmbH, is a limited liability company with its registered office in Berlin. It owns and operates the news website bild.de and publishes the large-circulation newspapers *Bild* and *Bild am Sonntag*.

On 10 July 2013 an article was published on bild.de about the police having been called to a nightclub in Bremen in June of that year owing to allegations of aggressive behaviour by D., a customer, towards staff. It was entitled "Here the police beat up [D.] (28)".

The article was accompanied by a video, which showed several police officers forcing D. to the ground, with one of the officers (not the applicant) kicking him and hitting him with a baton while he was on the floor. The website followed this up with a second article, "How the night of the beating unfolded", which had further footage, showing D.'s aggressive actions before the officers' arrival.

The face of one of the officers, P., was clearly visible in the footage; there was no suggestion that he had used excessive force. On 18 July 2013 he asked that Bild take down the video until it had blurred his face. Following their refusal, Officer P. went to court.

The Oldenburg Regional Court ordered that the video be taken down until Officer P.'s face was blurred. It emphasised the importance of discussion around the State's monopoly on the use of force, but set that against P.'s personality rights in finding for him. It also noted that the footage of D.'s actions had not been shown with the first article. The Oldenburg Court of Appeal upheld that decision, stating that publication of the unedited CCTV footage without Officer P.'s consent would violate his rights.

In August 2017 the Federal Constitutional Court refused to entertain a constitutional complaint by the applicant company.

1. 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.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant company complained that the injunction to take down the unpixellated video from its website had violated its freedom of expression.

The application was lodged with the European Court of Human Rights on 16 February 2018.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Branko **Lubarda** (Serbia),
Armen **Harutyunyan** (Armenia),
Anja **Seibert-Fohr** (Germany),
Anne Louise **Bormann** (Denmark),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

In cases such as this, the Court was tasked with balancing the right to freedom of expression with the individual's right to respect for private life, examining it under its well-established criteria.

The Court agreed with the Regional Court that there was a legitimate public interest in the actions of the police as an institution. However, it was important to recognise that under certain circumstances publishing a police officer's image could have adverse consequences for his or her private life, which the national authorities should take into account.

As regards the form in which the video was presented, the Court held that the mere fact that the use of force by the police was not portrayed in a negative way did not mean that its coverage in the media should cease to enjoy any protection. The Court noted that the injunction had applied not just to the already published footage, but to any future videos. This must have had a dissuasive effect, which the German courts should have taken into account in their reasoning, but they had failed to do so.

Overall, the Court was satisfied with the balancing of competing rights as regards the first video published, but held that that exercise had been insufficient as regards the second and any future use of the footage. In particular, without evaluating the contribution to a public debate, the courts had stated in a general reasoning that neutral coverage of the police intervention, although it might not depict the police officer in a negative way, could not be considered to be portraying a general aspect of contemporary society and thus would be unlawful. This could lead to an unacceptable ban on any future publication, without their consent, of unedited images of police officers performing their duties.

The injunction had therefore not been necessary in a democratic society and had violated Article 10 of the Convention.

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

The Court held that Germany was to pay the applicant company 12,000 euros (EUR) in respect of costs and expenses.

The judgment is available only in English.

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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.