



An order prohibiting the daily newspaper *Bild* from publishing or distributing a photograph of a celebrity in pre-trial detention did not breach the Convention

In its decision in the case of [Bild GmbH & Co. KG and Axel Springer v. Germany](#) (applications nos. 62721/13 and 62741/13) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned an order prohibiting the publishers of the mass-circulation daily newspaper *Bild* from publishing or distributing a photograph of a well-known Swiss journalist taken while he was in pre-trial detention.

In the Court's view, although the photograph in question had not been defamatory, depreciatory or degrading for the television presenter's image, it had nevertheless shown him in a situation – in a prison yard – where he could not have expected to be photographed.

As to the penalty imposed on the two applicant companies, the Court observed that the German courts had simply banned them from further publishing or distributing the photograph and ordered them to repay a modest sum in lawyer's fees.

The Court concluded that the German courts had duly balanced the applicant companies' right to freedom of expression and the right to privacy of the television presenter, who had been in pre-trial detention at the time.

Principal facts

The applicants, the limited liability company Bild GmbH & Co. KG and the public limited company Axel Springer AG, are legal persons established under German law and based in Berlin. The second applicant company publishes the mass-circulation daily newspaper *Bild* and the first manages the newspaper's website.

On 20 March 2010 X, a well-known Swiss journalist who presented the weather forecast on television, was arrested and remanded in custody on suspicion of the aggravated rape and assault of his former girlfriend. On 21 July 2010 *Bild's* print edition and website published an article accompanied by two photographs, one of which – the subject of the present dispute – showed X seated bare-chested in the yard of a prison surrounded by other prisoners. X was released on 29 July 2010. The criminal proceedings, which attracted considerable media coverage, ended in an acquittal.

On 15 December 2010 X applied to the Cologne Regional Court for a ban on any further publication of the impugned photograph and for reimbursement of his lawyer's fees. In June 2011 the court banned the applicant companies Bild and Axel Springer AG from publishing or distributing the photograph without X's consent and ordered them to reimburse some of the lawyer's fees. By two judgments of 14 February 2012 the Cologne Court of Appeal dismissed appeals by the applicant companies and reduced the amount of lawyer's fees to be reimbursed. The Court of Appeal held that the publication and distribution of the photograph had been unlawful because the applicant companies had failed to obtain X's consent and there had been no link between the photograph and any current event. It ruled that the photograph had had no information value. It added that even if it had had any such value, regard should be had to the fact that at the time the photograph had been taken X had been in a place of confinement inaccessible to the public and had thus had no reason to

expect to be photographed. The fact that X had long been the subject of media reports did not deprive him of protection for his privacy when in places of confinement.

The Court of Appeal dismissed appeals on points of law. On 23 March 2012 Bild and Axel Springer AG lodged two constitutional appeals, which the Federal Constitutional Court declared inadmissible.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 September 2013.

Relying on Article 10 (freedom of expression), the applicant companies complained that the German courts had infringed their right to freedom of expression and had failed to comply with the criteria established by the Court in cases involving balancing Article 8 (right to respect for private life) and Article 10.

The decision was given by a Committee of three judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,
 Gabriele **Kucsko-Stadlmayer** (Austria),
 Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Registrar*.

Decision of the Court

Article 10

The Court noted at the outset that the German courts had acknowledged the fact that X was a well-known public figure. Regarding the contribution of the photograph to a debate of general interest, the Court observed that, in the civil courts' view, the photograph had not provided any further information in addition to that contained in the text of the article concerning X, either by itself or in the context of publication of the article. The Court of Appeal had found in particular that X's pre-trial detention had been known to the public for some time and that there had been no reason to report on it afresh.

Nevertheless, the Court observed that the Court of Appeal had not addressed the issue whether the photograph had any information value. The German courts had lent considerable weight to the circumstances in which the photograph had been taken. Thus, they had noted that it had been taken surreptitiously from a place that was not normally accessible to the public, and that X had been photographed while he was in a place of confinement where he had had no reason to expect to be photographed.

The Court went on to note the civil courts' finding that the fact that X had been the subject of media reports did not suffice to deprive him of protection for his privacy and, in particular, to justify publishing a photograph showing him in a prison yard.

As to the penalty imposed on the two applicant companies, the Court observed that the German courts had simply banned them from further publishing or distributing the photograph in question and ordered them to repay a modest sum in lawyer's fees.

Accordingly, the Court considered that the German courts had duly balanced the applicant companies' right to freedom of expression and X's right to respect for his private life. In view of the margin of appreciation left to the Contracting States, the Court discerned no strong reasons which would require it to substitute its view for that of the German courts.

It therefore declared the applications inadmissible.

The decision 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.