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

Information Note on the Court's case-law 149

February 2012

Von Hannover v. Germany (no. 2) [GC] - 40660/08 and 60641/08

Judgment 7.2.2012 [GC]

Article 8

Positive obligations

Article 8-1

Respect for private life

Refusal of domestic courts to issue injunction restraining further publication of a photograph of a famous couple taken without their knowledge: *no violation*

Facts – The applicants were Princess Caroline von Hannover, daughter of the late Prince Rainier III of Monaco, and her husband Prince Ernst August von Hannover. Since the early 1990s Princess Caroline had sought, often through the courts, to prevent the publication of photographs of her private life in the press. Two series of photographs, published in German magazines in 1993 and 1997, had been the subject of litigation in the German courts that had led to leading judgments of the Federal Court of Justice in 1995 and of the Federal Constitutional Court in 1999 dismissing her claims. Those proceedings were the subject of the European Court's judgment in *Von Hannover v. Germany* (the first *Von Hannover* judgment, no. 59320/00, 24 June 2004, Information Note no. 65), in which the Court found a violation of Princess Caroline's right to respect for her private life under Article 8.

Following that judgment the applicants brought further proceedings in the domestic courts for an injunction restraining further publication of three photographs which had been taken without their consent during skiing holidays between 2002 and 2004 and had already appeared in two German magazines. The Federal Court of Justice granted an injunction in respect of two of the photographs, which it considered did not contribute to a debate of general interest. However, it refused an injunction in respect of the third photograph, which showed the applicants taking a walk during a skiing holiday in St Moritz and was accompanied by an article reporting on, among other issues, Prince Rainier's poor health. That decision was upheld by the Federal Constitutional Court, which found that the Federal Court of Justice had had valid grounds for considering that the reigning prince's poor health was a subject of general interest and that the press had been entitled to report on the manner in which his children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to go on holiday. The Federal Court of Justice's conclusion that the photograph had a sufficiently close link with the event described in the article was constitutionally unobjectionable.

Law – Article 8: In response to the applicants' submission that the domestic courts had not taken sufficient account of the Court's decision in the first *Von Hannover* judgment, the Court observed that it was not its task to examine whether Germany had satisfied its

obligations under Article 46 of the Convention regarding execution of that judgment: that was the responsibility of the Committee of Ministers. The present applications thus concerned only the new proceedings. Likewise, it was not the Court's task to review the relevant domestic law and practice *in abstracto* following the changes the Federal Court of Justice had made to its earlier case-law in the wake of the first *Von Hannover* judgment; instead its role was to determine whether the manner in which the law and practice had been applied to the applicants had infringed Article 8.

In applying its new approach the Federal Court of Justice had granted an injunction in respect of two of the photographs on the grounds that neither they, nor the articles accompanying them, contributed to a debate of general interest. As regards the third photograph, however, it had found that Prince Rainier's illness and the conduct of the members of his family at the time qualified as an event of contemporary society on which the magazines were entitled to report and to include the photograph to support and illustrate the information being conveyed. The Court found that the domestic courts' characterisation of Prince Rainier's illness as an event of contemporary society could not be considered unreasonable and it was able to accept that the photograph, considered in the light of the article, did at least to some degree contribute to a debate of general interest (in that connection, it noted that the injunctions restraining publication of the other two photographs, which showed the applicants in similar circumstances, had been granted precisely because they were being published purely for entertainment purposes). Furthermore, irrespective of the question to what extent Princess Caroline assumed official functions on behalf of the Principality of Monaco, it could not be claimed that the applicants, who were undeniably very well known, were ordinary private individuals. They had to be regarded as public figures. As to the circumstances in which the photographs had been taken, this had been taken into account by the domestic courts, which found that the applicants had not adduced any evidence to show that the photographs had been taken surreptitiously, in secret or in otherwise unfavourable conditions.

In conclusion, the domestic courts had carefully balanced the publishing companies' right to freedom of expression against the applicants' right to respect for their private life. In so doing, they had attached fundamental importance to the question whether the photographs, considered in the light of the accompanying articles, had contributed to a debate of general interest and had also examined the circumstances in which they had been taken. The Federal Court of Justice had changed its approach following the first *Von Hannover* judgment and the Federal Constitutional Court, for its part, had not only confirmed that approach, but had also undertaken a detailed analysis of the Court's case-law in response to the applicants' complaints that the Federal Court of Justice had disregarded it. In those circumstances, and regard being had to the margin of appreciation enjoyed by the national courts when balancing competing interests, the domestic courts had not failed to comply with their positive obligations under Article 8.

Conclusion: no violation (unanimously).

(See also *Axel Springer AG v. Germany*, no. 39954/08, 7 February 2012, Information Note no. 149)

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