



The Court rejects the applications of two public figures complaining about the use of their first names without their consent in satirical cigarette advertisements

In today's two Chamber judgments¹ in the cases of [Bohlen v. Germany](#) (application no. 53495/09) and [Ernst August von Hannover v. Germany](#) (no. 53649/09) the European Court of Human Rights held, by six votes to one, that there had been:

no violation of Article 8 of the European Convention on Human Rights.

The cases concerned the use in humorous cigarette advertisements of the first names of two public figures in Germany and of news items about them, without their consent. The advertisements in question referred, respectively, to a book published by the musician Dieter Bohlen and to altercations in which Ernst August von Hannover had been involved.

The Court found in particular that the German Federal Court of Justice had struck a fair balance between freedom of expression and the right to privacy by taking into account the commercial and humorous nature of the advertisements in question, the context in which they had been published, the absence of any degrading or negative content concerning the applicants and the applicants' prior public conduct. A thorough balancing exercise had therefore been carried out between the competing interests at stake.

Principal facts

These cases concerned the use in humorous cigarette advertisements of the applicants' first names and of news items concerning them, without their consent.

The applicant Dieter Bohlen is a German national who was born in 1954 and lives in Rosengarten (Germany). He is a musician and artistic producer. In 2003 Mr Bohlen published a book, some passages of which were removed following court rulings. On 27 October 2003 the company British American Tobacco (Germany) launched an advertising campaign referring to this event, showing some text which included the applicant's first name and which had been partly crossed out using black ink, above an image of a marker propped up against a cigarette packet.

The applicant Ernst August von Hannover is a German national who was born in 1954 and lives in Monaco. He is particularly well known as the husband of Princess Caroline of Monaco. In 1998 and 2000 he was involved in two violent altercations – one with a cameraman and the other with a discotheque manager – which were reported in the press, and was subsequently convicted of assault. On 27 March 2000 the company British American Tobacco (Germany) used these events in an advertisement which mentioned Mr von Hannover's first names and showed a picture of a crumpled cigarette packet.

Dieter Bohlen and Ernst August von Hannover sought orders prohibiting the distribution of the advertisements in question, and the cigarette manufacturer complied without delay. However, the

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.

company refused to pay the applicants the sum of 100,000 euros (EUR) which they claimed by way of a notional licence fee in compensation for the use of their first names. Mr Bohlen and Mr von Hannover then applied to the Hamburg Regional Court seeking payment of a notional licence fee. The court upheld their claims and awarded them EUR 100,000 and EUR 60,000 respectively, finding that respect for their privacy should take precedence over freedom of expression. The court based its decision in particular on the purely commercial and for-profit nature of the advertisements, which had made only a marginal contribution to public debate. The Court of Appeal upheld most of the Regional Court's findings but reduced the sum awarded to Dieter Bohlen from EUR 100,000 to EUR 35,000, taking into account the fact that the advertisement had not been insulting and that only his first name had been used.

However, the Federal Court of Justice, to which the company British American Tobacco appealed on points of law, quashed the Court of Appeal judgments on 5 June 2008. It held, in particular, that despite their commercial nature the advertisements in question were apt to help shape public opinion. Furthermore, they had not exploited the applicants' good name or contained anything that was degrading to them. The applicants' claims seeking a notional licence fee were therefore dismissed.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), the two applicants complained that the ruling of the Federal Court of Justice had breached their right to privacy and in particular their right to their own names.

The applications were lodged with the European Court of Human Rights on 5 and 7 October 2009.

The company British American Tobacco (Germany) was given leave to submit written comments as a third-party intervener (Article 36 § 2 of the Convention).

The judgments were given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8

These cases concerned the applicants' complaints that the State had failed to protect them against the use of their first names without their consent. The Court was called on to assess whether a fair balance had been struck between the applicants' right to respect for their private life and the company's right to freedom of expression.

The Court noted at the outset that the issue of protection of Article 8 rights in the sphere of the relations of individuals between themselves fell within States' margin of appreciation, as did the examination of instances of interference with freedom of expression. That margin of appreciation was particularly wide in the commercial sphere.

The Court went on to reiterate the relevant criteria laid down in its case-law for assessing the manner in which the domestic courts had balanced the right to respect for private life against the right to freedom of expression. These were: the contribution to a debate of general interest, the extent to which the person in question was in the public eye, the subject of the report, the prior conduct of the person concerned and the content, form and impact of the publication.

Firstly, regarding the issue of general interest, the Court held that the advertisements had been apt to contribute to some degree to a debate of general interest as they had dealt in a satirical manner with events that had been the subject of public debate. Secondly, as to the extent to which the applicants had been in the public eye, the Court considered that they were sufficiently well known to be unable to claim the same degree of protection of their private lives as persons who were unknown to the public at large. Thirdly, in the Court's view, the subject of the advertisements had been confined to specific events already known to the public, which had been covered in the media and were beyond dispute, namely the publication of Dieter Bohlen's book and the altercations in which Ernst August von Hannover had been involved. Lastly, with regard to the content, form and impact of the advertisements, the Court noted that the image of the applicants that had been conveyed had not been degrading and that the indirect allusions made by the advertisements would have made it difficult to establish a connection with the events in question.

The Court accepted in that regard that the use of a public figure's name in connection with a commercial product without his or her consent could raise issues under Article 8, especially where the product in question was not widely accepted socially. However, in this specific case the Court found it fitting to agree with the findings of the Federal Court of Justice, particularly in view of the humorous nature of the advertisements in question.

Accordingly, the Court held that the Federal Court of Justice had struck a fair balance between freedom of expression and the right to respect for private life and that Germany had thus not failed in its obligations under Article 8. The Court therefore held in both cases that there had been no violation of that provision.

The judgments are 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.