



## Photos in press of residences of Karl-Theodor zu Guttenberg and his family: fair balance between right to respect for private life and freedom of expression

In its decision in the case of [Zu Guttenberg v. Germany](#) (application no. 14047/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the publication in the German press of photos of residences in Germany and in the USA belonging to Karl-Theodor zu Guttenberg and his family.

The Court found that the Cologne Court of Appeal had struck a fair balance between the applicant's right to respect for his private life and the freedom of expression of the magazine *Bunte*, which had published the photos. In view of the margin of appreciation afforded to Contracting States in such matters, the Court saw no reason to substitute its own opinion for that of the German courts.

### Principal facts

The applicant, Karl-Theodor zu Guttenberg, is a German national who was born in 1971 and lives in Guttenberg (Germany).

A politician, Karl-Theodor zu Guttenberg was, among other capacities, Federal Minister for the Economy and Technology and Federal Defence Minister. In 2011, following a case of plagiarism, he resigned from his office and gave up his seat in parliament. In the summer of 2011 he moved with his family to the USA.

On 17 April 2014 the weekly magazine *Bunte* published an article concerning his houses in Berlin and in the USA. On 22 April 2014 Karl-Theodor zu Guttenberg and his wife asked the magazine to stop publishing these photos with captions, but the magazine refused. The couple then referred the matter to the Cologne Regional Court. In a provisional order of 15 May 2004, the court prohibited any further publication of all the photos, with captions, showing the houses in question. On 14 July 2014 the magazine acknowledged the injunction on publication with the exception of three photos showing the outside of houses together with the corresponding captions. In a judgment of 14 January 2015 the Regional Court confirmed its order in respect of the three photos, finding that there was no overriding public interest in seeing them.

On 2 July 2015 the Cologne Court of Appeal quashed the judgment, while confirming that the publication of the photos constituted an interference with the applicant's right to the protection of his personality rights, particularly in the private sphere. The Court of Appeal found that the publication of the material in question did not only serve to satisfy the public's curiosity about the circumstances, including the financial situation, of Karl-Theodor zu Guttenberg and his wife, but was also justified on account of his possible return to politics, in particular following his public appearances in 2014. The Federal Constitutional Court decided not to allow an appeal by the applicant, without giving reasons for its decision.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 March 2016.

Relying on Article 8 (right to respect for private and family life), the applicant complained of a refusal by the German courts to prohibit any fresh publication of the impugned photos.

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

Yonko **Grozev** (Bulgaria), *President*,  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lado **Chanturia** (Georgia),

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

## Decision of the Court

### Article 8

The Court noted the Cologne Court of Appeal's view that the publication had not merely satisfied the public's curiosity about the private life of Karl-Theodor zu Guttenberg and his family, but had also related to the question of his possible return to public life. The domestic court had also taken account of the high degree of notoriety of the applicant and his wife in the past and the ongoing public interest in being informed about the couple's life. Given the public duties previously held by Karl-Theodor zu Guttenberg and the circumstances of his resignation, the Court concluded that he was certainly a well-known public figure and therefore that he could not expect the same protection of his private life as a private individual unknown to the public.

As to the content of the publication, the Court noted that the photos showed the old and new residences of the applicant and his family seen from the front. As the Court of Appeal had found, there was little risk of these houses being identified and disturbance thus being caused to the applicant. One of the houses was only theoretically used as a home and the photo of the other house showed only the façade visible from the garden, an area inaccessible to the public. Lastly, the photos and their captions revealed few details about the life of Karl-Theodor zu Guttenberg and his family.

The Court thus found that the Court of Appeal had struck a fair balance between the applicant's right to respect for his private life and the magazine's freedom of expression. In view of the margin of appreciation afforded to Contracting States in such matters, the Court saw no reason to substitute its own opinion for that of the German courts.

The complaints were thus ill-founded and had to be rejected.

*The decision is available only in French.*

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