

Being made to publish a correction to a newspaper article had not violated the Axel Springer publishing house's freedom of expression

In today's **Chamber judgment**¹ in the case of [Axel Springer SE v. Germany](#) (application no. 8964/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a court decision ordering the Axel Springer company to publish a correction to a newspaper article of October 2013 about the executive director of the political party *die Linke*, and her connection to the former German Democratic Republic's ruling party (*Sozialistische Einheitspartei Deutschlands (SED)*).

The Court found that the German Court of Appeal had given due consideration to the principles and criteria laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression.

Principal facts

The applicant, Axel Springer SE, is a publishing house registered in Berlin. It is the publisher of the daily newspaper *Die Welt*.

On 4 October 2013 an article on page 8 of that newspaper was published under the headline "The Stasi woman by Gregor Gysi's side" (*Die Stasi-Frau an Gregor Gysis Seite*). At the time, Mr Gysi was a member of the German Parliament and chairperson of the political party *die Linke* (formerly the PDS). The article stated that K., the party's executive director, had been an agent for the former GDR's Ministry of State Security (*Ministerium für Staatssicherheit* – commonly referred to as "the Stasi"); it also addressed the disappearance, following the fall of the communist regime in 1989, of vast assets that had belonged to the East German Communist Party (SED).

A week later, K.'s lawyer asked the publishing house to publish a reply to the article, with K. stating, notably, that she had not been involved in the disappearance of SED assets. When it refused to publish the reply, K. lodged an application for an injunction with the Berlin Regional Court, which dismissed the application. It found that the article had not actually connected her to the disappearance of SED assets and the fact that the text could be interpreted in such a way did not warrant rectification.

K. appealed against the decision. On 18 November 2013 the Court of Appeal, relying on the Berlin Press Act, allowed the application and ordered the Axel Springer company to publish a reply. In the subsequent main proceedings, the Berlin Regional Court again dismissed her application for an injunction, essentially for the same reasons as before.

In response to a further appeal, the Axel Springer company argued that K., prior to the publication of the article, had refused to answer their questions regarding the disappearance of the assets. It also argued that some of the information that K. had provided in her reply was superfluous.

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.

On 16 January 2014 the Court of Appeal again ordered the Axel Springer company to publish K.'s reply, albeit rejecting her demand for a front-page announcement. Although the article had not explicitly stated that she had concealed SED party assets, it considered that such a conclusion would be reached by the average reader and that she had a right to reply. The fact that she had not responded to the publishing house's questions was irrelevant, as she had been under no obligation to do so.

The requested right to reply was published in *Die Welt* on 3 February 2014.

Complaints, procedure and composition of the Court

The applicant company complained that being ordered to publish the right to reply had violated its freedom of expression under Article 10 of the Convention.

The application was lodged with the European Court of Human Rights on 14 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),
Ana Maria Guerra Martins (Portugal),

and also Ilse Freiwirth, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the interference with the Axel Springer company's freedom of expression had had a legal basis, stemming from section 10 of the Berlin Press Act, and had served to protect K's reputation. What remained to be established was whether it had been "necessary in a democratic society", that is if it had answered a pressing social need, had been proportionate, relevant and justified.

The Court reiterated that the principal aim behind the right of reply was to allow individuals to challenge false information published about them in the press. In cases such as this, which required the right to respect for private life to be balanced against the right to freedom of expression, Article 8 of the Convention and Article 10 deserved equal respect and equal leeway.

In assessing the content of the article, the Court of Appeal had taken into account the various statements in the article to the effect that K.'s name was linked to the disappearance of SED party assets but that no evidence linked her to any criminal activities. In the Court's view, the Court of Appeal had given a lengthy and well-reasoned assessment of the article's content, and there were no signs of arbitrariness in its interpretation. Moreover, the requested right of reply had been sufficiently connected and relevant to the article in question and had been requested without delay.

Furthermore, K's refusal to answer the publishing house's questions prior to publication could not be used as a valid argument. The Court observed that while press outlets were held to report in good faith in order to provide reliable and precise information in accordance with the ethics of journalism and should give the person concerned the chance to defend him or herself, the fact that the allegations were notified to the person beforehand did not grant the press unrestricted freedom to publish unverified allegations. Nor did it prevent the right of reply of the person concerned.

The Court observed that the Court of Appeal had considered that the newspaper article had presented K.'s connection to companies with alleged ties to the SED in some detail. Accordingly, it had found that the information provided in her reply was not disproportionate. Moreover, it had asked for the rectification to be printed on the same-numbered page as the original article and had refused K.'s request to have it announced on the newspaper's front page.

Lastly, with regard to a discrepancy in the date of the published rectification, the Court noted that, while the text of the reply had been modified several times in order to alleviate the domestic courts' legal concerns, the core message of the reply had not changed and the fact that it had borne the original date of submission, rather than the date of finalisation was insignificant.

All things considered, the Court found that the Court of Appeal had given due consideration to the principles and criteria laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression and saw no reason to challenge or disagree with its assessment. Accordingly, there had been no violation of Article 10 of the Convention.

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.