

Case of Von Hannover v. Germany (No.2)
(Applications nos. 40660/08 and 60641/08)

**MEDIA COVERAGE OF THE PRIVATE LIVES OF CELEBRITIES IS
ACCEPTABLE IF IN THE GENERAL INTEREST AND IF REASONABLY
BALANCED WITH THE RIGHT TO RESPECT FOR PRIVATE LIFE**

No violation of Article 8

Principal facts

On 7 February 2012, the Grand Chamber of the European Court of Human Rights (ECtHR) issued an important judgment concerning the balance to be struck between the right to respect for one's private life (Article 8 of the European Convention on Human Rights (ECHR)), and the freedom of expression of the press (Article 10 ECHR). This judgment illustrates the application of the 'margin of appreciation' doctrine and the principle of 'subsidiarity', which are key methodologies in the jurisprudence of the ECtHR.

The case concerned applications against Germany - by Princess Caroline of Monaco and her husband, Prince Ernst August von Hannover – which were considered together by the Court. The applicants alleged that the refusal by the German courts to grant an injunction restraining the publication of a photograph of them, taken during a ski holiday, infringed their right to respect for their private life under Article 8 of the Convention. According to the Applicants, the failure to adequately protect their right to privacy under Article 8, meant that they continued to be the subject of press articles about their private life and to be hounded by the paparazzi.

Von Hannover v Germany (No. 1) – an earlier case

The first Applicant, Princess Caroline of Monaco, had previously applied to the ECtHR regarding her concern that her private life was not adequately protected from intrusions by the press. This earlier application also concerned the publication of photographs of the Applicant. The ECtHR, in its judgment of June 2004 in that case - *Von Hannover v Germany (No. 1)* (Application no. 59320/00) - found a violation of the Applicant's Article 8 rights as the domestic courts had not struck the correct balance to protect the Applicant's private life effectively.

In so doing, the ECtHR drew a distinction between the publication of photographs which concerned private, as opposed to public, matters. The Court held that the right to press freedom will outweigh privacy concerns where, for example, facts are reported about politicians in the exercise of their functions. Such reporting was deemed by the ECtHR to be an example of the press exercising its vital role as "watchdog" in a democratic society, "imparting information and ideas on matters of public interest" and "contributing to public debate".

The ECtHR held that press reporting of details about the Applicant's private life, particularly as she did not exercise an official State function, did not represent the

exercise of a watchdog role by the press and did not contribute to a debate of general interest. Press reporting, according to the ECtHR, which aims solely to satisfy the curiosity of readers about the private life of a particular person does not contribute to a debate of general interest and, in such circumstances, the person's Article 8 privacy rights will outweigh those of the press under Article 10.

***Von Hannover v Germany (No. 2)* – the instant case**

In the instant case, upon which, as stated above, Judgment was delivered on 7 February 2012, the Applicant claimed that the German courts should have given effect to the earlier ruling by the ECtHR – in *Von Hannover v Germany (No. 1)* – by granting an injunction restraining the publication of the photographs at issue. According to the Applicant, by not doing so Germany had failed in its positive obligation to protect her Article 8 rights. In effect, this case concerned the adequacy of the protection afforded by the German courts to the applicant's private life and the right to control the use of one's image.

In reaching its decision, the ECtHR reviewed in detail the domestic proceedings as instituted by the Applicant (which involved the Regional Court, the Court of Appeal, the Federal Court of Justice and the Federal Constitutional Court) and the consideration given in those proceedings to the Convention and the jurisprudence of the ECtHR. The ECtHR found, in particular, that following its Judgment in *Von Hannover v Germany (No. 1)*, the German Federal Court of Justice had developed a new test for assessing the information value of published material, including photographs.

This new test incorporated the balancing requirements as articulated in *Von Hannover v Germany (No. 1)*, including whether the material contributed to a factual debate and whether the published materials goes beyond the mere desire to satisfy public curiosity. The Federal Court of Justice had noted that the greater the information value for the public the more the interest of a person in being protected against its publication had to yield and, conversely, a reader's interest in being entertained generally carried less weight than protecting the private sphere.

The ECtHR also noted a number of other factors as relevant to its determination; two out of three of the impugned photographs had in fact been regarded by the domestic courts as not relating to an event of general interest and had granted an injunction preventing their publication. The domestic courts had acknowledged that although the Applicants were public figures, holidays fell within "the core area" of private life; the photographs had not been taken in unfavourable circumstances and the print article associated with the published photograph discussed the health of the first Applicant's father, Prince Rainier, and was therefore in the public interest.

Criteria relevant to the balancing exercise

In its judgment, the ECtHR restated its criteria for balancing respect for private life against freedom of expression; namely by consideration of:

- 1) the contribution made by the material to the debate of general interest;

- 2) how well known the person was and the subject of the report;
- 3) the prior conduct of the individual concerned;
- 4) the content, form and consequences of publication; and
- 5) the circumstances in which the photo was taken.

Margin of appreciation

The ECtHR reiterated its view that even where a person is known to the general public, that person has a “legitimate expectation” of protection and respect for his/ her private life. The ECtHR confirmed that the choice of the means employed by individual States to secure compliance with Article 8 of the Convention in the sphere of the relations between private actors, such as a private person and a private business enterprise (in this case a news media outlet), falls within a States’ margin of appreciation. Similarly, the ECtHR confirmed that under Article 10 States have a certain margin of appreciation in assessing whether, and to what extent, an interference with freedom of expression is necessary.

The principle of ‘subsidiarity’

Importantly, the ECtHR confirmed that where national authorities have undertaken this balancing exercise - between the right to respect for privacy and freedom of expression - in conformity with the criteria laid down by the ECtHR in its case-law, strong reasons would be required before the ECtHR would substitute its view for that of the domestic courts.

This approach is known as the principle of ‘subsidiarity’, which affirms that the role of the ECtHR is secondary to domestic courts in adjudicating on claims that Convention rights have been violated.

The decision of the ECtHR

In applying its established principles to the facts at hand, the ECtHR found that the domestic courts had carefully balanced the right of the publishing companies to freedom of expression against the applicants’ right to respect for their private life. In so doing, the ECtHR specifically referenced the fundamental importance attached by the domestic courts to the question of whether the photos, in light of the accompanying articles, had contributed to a debate of general interest. The ECtHR also observed that the national courts had taken account of the case-law under Article 8 of the Convention, including the *Von Hannover v Germany (No. 1)* Judgment.

In those circumstances, and having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, the ECtHR concluded that Germany had not failed to comply with its positive obligations under Article 8.

Accordingly, there had been no violation.

[Von Hannover v. Germany \(No.2\)](#)