

I. CITATION

JUDGMENT, Strasbourg 7 February 2012, In the case of Von Hannover v. Germany (no. 2)

II. THE FACTS

A. Material

The applicants, who are the elder daughter of the late Prince Rainier III of Monaco and her husband, were born in 1957 and 1954 respectively and live in Monaco.

Since the early 1990s the first applicant has been trying - often through the courts - to prevent the publication of photos about her private life in the press.

B. Legal

The case originated in two applications (nos. 40660/08 and 60641/08) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Monegasque national, Princess Caroline von Hannover, and a German national, Prince Ernst August von Hannover ("the applicants"), on 22 August and 15 December 2008 respectively.

The applicants alleged that the refusal by the German courts to grant an injunction against any further publication of photos of them infringed their right to respect for their private life as guaranteed by Article 8 of the Convention.

Having been informed on 17 November 2008 of their right to submit written observations, the Monegasque Government indicated to the Court that they did not intend to take part in the proceedings. After being informed of that right again on 31 March 2010, following the decision of the Chamber to relinquish jurisdiction in favour of the Grand Chamber, the Monegasque Government did not express an intention to take part in the proceedings.

III. LEGAL ISSUES

A. Specific

1. In this case, which state has rightful jurisdiction?
2. In this case, on what legal basis is jurisdiction to be determined?

B. General

1. Where is the difference between the protection of personality and freedom of speech?
2. How can a person legally protect his/her own personality?

IV. THE HOLDINGS

The court, unanimously - Disjoins the application in the case of Axel Springer AG v. Germany (no. 39954/08) from the present applications. Declares the present applications admissible. Holds that there has been no violation of Article 8 of the Convention.

V. LEGAL RATIONALE

The Court therefore considers that the criteria on which the domestic courts based their decisions were not sufficient to protect the applicant's private life effectively. As a figure of contemporary society "par excellence" she cannot - in the name of freedom of the press and the public interest - rely on protection of her private life unless she is in a secluded place out of the public eye and, moreover, succeeds in proving it (which can be difficult). Where that is not the case, she has to accept that she might be photographed at almost any time, systematically, and that the photos are then very widely disseminated even if, as was the case here, the photos and accompanying articles relate exclusively to details of her private life. The Court that, accordingly, even where persons who had hitherto been regarded as figures of contemporary society were concerned, consideration must be given to the question whether the report contributed to a factual debate (mit Sachgehalt) and whether the content went beyond a mere intention to satisfy public curiosity. In determining that question, there was nothing to prevent regard being had to how well the person concerned was known to the public.

The Court stressed that that manner of balancing the various interests at stake corresponded to the requirements of the Court regarding effective protection of the private sphere and the requirements of the freedom of the press, and that it did not conflict with the binding force of the judgment of the Federal Constitutional Court of 15 December 1999. Admittedly, that court had limited the protection afforded to the private sphere against the publication of unwanted photos to cases of spatial seclusion. That did not, however, prevent the courts - when balancing the various interests - from having more regard to the value of the information for the public. Furthermore, the Federal Constitutional Court had recently endorsed the balancing exercise undertaken by the Federal Court of Justice according to those criteria in a judgment concerning the second applicant (decision of 13 June 2006, no. 1 BvR 565/06).

The Court specified that as the determining criterion for the balancing exercise was the information value of the photo in question and as it had been published in the context of a written article, the content of the text accompanying the photo could not be ignored.

VI. QUESTIONS

1. How is the "of such a character as to awaken public interest" criterion to be interpreted?
2. Will „local“ jurisdiction fully defend us?