*Case Title: Von Hannover v. Germany*

Case Analysis

*Meta-Data*:

* Case Number: Application No. 59320/00
* Date of decision: June 24, 2004
* Featured case: N/A
* Region: Central Europe and Asia
* Country: Germany
* Type of expression: Press Freedom
* Judicial Body: ECtHR, Third Section
* Type of law: International Law/Regional Human Rights Law
* Main Themes: Privacy, Data Protection and Retention
* Outcome: Violation of Art. 8 ECHR
* Status: Closed
* Tags: Privacy, Public Interest, Public Official

*Analysis:*

* **Summary and Outcome:**

In 2004, the ECtHR held that the publication of tabloid magazines, which disseminated a series of photos of Princess Caroline of Monaco taken without her knowledge and showing scenes from her daily life, violated her right to respect for the private and family life as entrenched in Article 8 of the ECHR.

The ECtHR was presented with a conflict between the freedom of the press and the right to protect private life, particularly public figures. The ECtHR rejected the German Courts' decisions, which had found that the applicant was undeniably a contemporary "public figure par excellence" and, thus, had to tolerate the publication of such photographs even when they were not related to her official duties. The ECtHR held that press reporting of details about the applicant's personal life, notably 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.

**Facts**:

The applicant, Caroline von Hannover, eldest daughter of Prince Rainier III of Monaco, was the president of humanitarian and cultural foundations and represented the Grimaldi family at certain events such as the Red Cross Ball. However, she did not perform any official function on behalf of the State of Monaco or its institutions.

The photos subject of the proceedings were published by the Burda publishing company in the German magazines *Bunte* and *Freizeit Revue* and by the Heinrich Bauer publishing company in the German magazine *Neue Post*.

The first series of photos consisted of three publications from two different magazines. In July 1993, *Freizeit Revue* printed five pictures that showed Princess Caroline with actor Vincent Lindon at a restaurant in France. The second and third sets of photographs were published by *Bunte* magazine on August 5 and 19, 1993, correspondently. The publications included photos of the applicant canoeing with her daughter Charlotte, dining with Vincent Lindon in a restaurant, riding a bicycle alone, shopping at the market, among others.

The second series consisted of 28 photos published in three different issues of  *Bunte* in 1997. Among them were pictures of the applicant on a skiing holiday in Zürs and on a horse show in Saint-Rémy-de-Provence with Prince Ernst August von Hannover.

The third series of photos were published under an article entitled "Prince Ernst August played fisticuffs, and Princess Caroline fell flat on her face" on Neue Post magazine in 1997. The publication included pictures, taken from a distance, that portrayed the applicant at the exclusive Monte Carlo Beach Club, dressed in a swimsuit and wrapped up in a bathing towel, tripping over an obstacle and falling.

On August 13, 1993, the applicant sought an injunction in the Hamburg Regional Court against any further publication by the Burda publishing company of the first series of photos. The applicant claimed that her right to protection of her personality rights guaranteed by Articles 2 § 1 and 1 § 1 of the German Basic Law, and her right to protection of her private life and the control of the use of her image, guaranteed by sections 22 et seq. of the Copyright Act were infringed.

On February 4, 1993, the Regional Court granted the application only regarding the distribution of the magazines in France, per the rules of Private International Law in conjunction with Article 9 of the French Civil Code. However, concerning the distribution of the magazines in Germany, the Regional Court held that German Laws were applicable. Therefore, under Section 23 of the German Copyright Act, the Court held that the applicant was a figure of contemporary society "*par excellence*", which meant she had to tolerate the publication of the photos in question without her consent. Further, the Court determined that even if the constant hounding by photographers made her daily life difficult, it arose from a legitimate desire to inform the general public. As a result, the applicant appealed against the judgment.

On December 8, 1994, the Hamburg Court of Appeal dismissed the applicant's appeal and disregarded the injunction against subsequent publications in France. Princess Caroline appealed on points of law against the decision.

On December 19, 1995, The German Federal Court of Justice allowed the applicant's appeal in part, granting her an injunction against any further publication of the photos in *Freizeit Revue* magazine specifically for the picture portraying her with Vincent Lindon in a restaurant. According to the Federal Court, even figures of contemporary society "*par excellence*" were entitled to the respect of their private life. The Federal Court held that they could not rely on such protection outside their home unless they had retired to a secluded place, away from the public eye. Further, the Federal Court held that interference could be materialized in cases where photos published that had been taken secretly and/or by catching unawares a person who had retired to secluded a place. Yet, in the instant case, the Federal Court considered that the applicant as a figure of contemporary society *"par excellence"*, had to tolerate the publication of photos in which she appeared in a public place even if they illustrated scenes from her daily life.

The applicant appealed to the German Federal Constitutional Court. On December 19, 1999, the Constitutional Court allowed the request only for the publication of the three photosfeaturing the applicant with her children. The Constitutional Court held had infringed her right to the protection of her personality rights guaranteed by Articles 2 § 1 and 1 § 1 of the German Basic Law, reinforced by her right to family protection under Article 6 of the Basic Law.

Regarding the second set of photos, on May 14, 1997, the applicant reapplied to the Hamburg Regional Court, seeking an injunction preventing the republishing of the pictures on the same grounds as her 1993 claim. In a judgment of September 26, 1997, the Hamburg Regional Court rejected the application, particularly to the grounds of the Federal Court of Justice's previous ruling. Princess Caroline appealed against the judgment. However, the Hamburg Court of Appeal dismissed the appeal for the same reasons. The applicant lodged a constitutional appeal directly with the Federal Constitutional Court, relying on her earlier submissions. On April 4, 2000, the Federal Constitutional Court refused to entertain the request and referred in particular to its judgment of December 1999.

Lastly, concerning the third series of photographs, on November 5, 1997, Princess Caroline reapplied to the Hamburg Regional Court, seeking an injunction preventing the Heinrich Bauer publishing company from republishing the series on the same grounds as her previous applications. Additionally, she included, among other things, a sworn attestation by the director of the Monte Carlo Beach Club to demonstrate it was a private establishment with a high entry fee and controlled access and that journalists and photographers were debarred unless they had the express permission of the owner of the Club. Hence, according to the applicant, the fact that the photos were very blurred showed that they had been taken secretly from the window or roof of a neighboring house at a distance of several hundred meters.

On April 24, 1988, the Hamburg Regional Court rejected the application, referring to the Federal Court of Justice's judgment of 1995. Further, the Regional Court stated that the Monte Carlo Beach Club had to be considered an open-air swimming pool open to the public, even if an entry fee was charged and access restricted. The applicant appealed against the judgment, and in October of the same year, the Court of Appeal dismissed the applicant's appeal for the same reasons. The Court of Appeal found that a swimming pool or beach was not a secluded place and that the photos showing the applicant tripping over an obstacle and falling were not such as to denigrate or demean her in the public's eyes.

Since the Court of Appeal failed to grant the applicant leave to appeal on points of law, Princess Caroline lodged a constitutional appeal directly to the Federal Constitutional Court, relying on her earlier submissions. As a result, on April 13, 2000, the German Federal Constitutional Court refused to entertain the appeal and again referred to its decision of 1999. Further, the Constitutional Court held that the ordinary courts had correctly found that the Monte Carlo Beach Club was not secluded. Thus, The photos of the applicant wearing a swimsuit and falling were not capable of constituting an infringement of her right to respect for her private life.

On June 6, 2000, Princess Caroline presented an application before the ECtHR against the Federal Republic of Germany on the grounds that the German court decisions had infringed her right to respect for her private and family life as guaranteed by Article 8 of the Convention.

* **Decision Overview:**

The main issue for the Third Section of the ECtHR to analyze was whether a fair balance was achieved between the right to privacy of the applicant and the right to freedom of expression of the media under Article 8 and 10 of the ECHR by the German courts.

The Court started by regurgitating that the right to private life, as entrenched in Article 8 of the ECHR is intended to safeguard people's undisturbed development and relationships with others. The Court stressed that there is a zone of social interaction, even in a public context, which may fall within the scope of what is considered private life.

The Court reiterated that the applicant did not complain of a specific action by the State, but instead of the lack of adequate protection of her private life and image. Therefore, the Court held that although the object of Article 8 of the ECHR is to protect individuals against arbitrary interference by the public authorities, it does not exclusively compel the State to abstain from such interference.

The Court recognized that the public has a right to be informed, fundamental in a democratic society that, in particular circumstances, can even extend to aspects of the private life of public figures, mainly where politicians are concerned. However, in the present case, the Court considered that "even though, strictly speaking, the present application concerns only the publication of the photos and articles by various German magazines, the context in which these photos were taken – without the applicant's knowledge or consent –and the harassment endured by many public figures in their daily lives cannot be fully disregarded" [parra. 68]. According to the ECtHR, the latter could be illustrated by the photos taken of Princess Caroline at the Monte Carlo Beach Club tripping over an obstacle and falling, where it appeared that the pictures were taken secretly at a distance.

The Court remarked on the fundamental importance of protecting private life from the point of view of the development of every human being's personality, which extends beyond the intimate family circle and includes a social dimension. Moreover, the Court considered that anyone, even if they are known to the general public, must enjoy a legitimate expectation of protection of and respect for their private life. Accordingly, the Court found it hard to agree with the German Courts' distinction drawn between figures of contemporary society "*par excellence*" and "relatively" public figures that have to be clear and obvious so that individuals have precise indications of the behavior they should adopt. In the Court's view, the criterion of spatial isolation was vague and challenging for the plaintiff to determine in advance. Therefore deemed that merely classifying the applicant as a figure of contemporary society "*par excellence*" did not justify such an intrusion into her private life.

The Court concluded that the decisive factor when balancing the protection of private life against freedom of expression must lie in the contribution that the published photos and articles make to a debate of general interest. In the instant case, the applicant exercises no official function, and pictures and articles related exclusively to details of her private life.

Moreover, the Court highlighted that the public does not hold a legitimate interest in knowing where the applicant is and how she behaves in her private life even if she appears in places that cannot always be described as secluded, even she was a well known public figure. Additionally, the Court held that the criteria established that the German Courts were insufficient to safeguard the applicant's private life and that in the circumstances of the case should have had a legitimate expectation of protection of her personal life.

Taking all of this into account, and despite the margin of appreciation afforded to the State, the ECtHR held that the German courts were unsuccessful in striking a fair balance between the competing interests and therefore infringed Article 8 of the ECHR.

Dissenting Opinions of Judges …:

Judge Carbajal Barreto presented a concurring vote. He believed that there had been a violation of Article 8 of the Convention but was unable to follow the entire reasoning of the majority. ﻿In his view, the applicant was indeed a public figure, even if she did not perform any function on behalf of the State of Monaco. Likewise, Judge Carbal Barreto disagreed that there should be a reasonable expectation of not being exposed to public view or the media in places such as the Monte Carlo Club, an open place frequented by the general public and visible from the neighboring buildings.

Judge Zupančič, also presented a concurring vote. He stated that while he agreed with the outcome of the case, he suggested it would have been best to employ the test established in the case of *Halford v. United Kingdom*, which relies upon a “reasonable expectation of privacy.”

*Direction:*

* Outcome: Contracts Expression

The ECtHR contracted freedom of expression by holding that media publications which solely aim to satisfy readers' curiosity about a person's private life do not contribute to any debate of general interest to society even when the individual is known to the public. The Court further established that everyone, even if they are known to the general public, must have a legitimate expectation of protection and respect for their private life, including a social dimension. In such circumstances, according to the Court, privacy rights under Article 8 will outweigh those of the press under Article 10 of the ECHR.

*Perspective*:

* Related International and/or regional laws:

Example:

* [ECHR, art.](https://www.echr.coe.int/Documents/Convention_ENG.pdf) 8
* [ECHR, art. 10](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
* [ECHR, art. 40](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
* [ECtHR, Amann v. Switzerland [GC], App.No. 27798/95 (2000)](https://hudoc.echr.coe.int/eng?i=001-58497)
* [ECtHR,Artico v. Italy, App.No. 6694/74 (1980)](https://hudoc.echr.coe.int/eng?i=001-57424)
* [ECtHR,Campmany y Diez de Revenga and Lopez Galiacho Perona v. Spain App.No. 54224/00 (2000)](https://hudoc.echr.coe.int/eng?i=001-22204)
* [ECtHR,Editions Plon v. France, App.No. 58148/00 (2004)](https://hudoc.echr.coe.int/eng?i=001-61760)
* [ECtHR,Halford v. the United Kingdom, App.No.20605/92 (1997)](https://hudoc.echr.coe.int/eng?i=001-58039)
* [ECtHR,Julio Bou Gibert and El Hogar Y La Moda J.A. v. Spain, App.No.14929/02 (2003)](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2214929/02%22%5D%7D)
* [ECtHR,Krone Verlag GmbH & Co. KG v. Austria, App.No. 34315/96 ( 2002)](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2234315/96%22%5D%7D)
* [ECtHR,P.G. and J.H. v. the United Kingdom, App.No. 44787/98 (2001)](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2244787/98%22%5D%7D)
* [ECtHR,Peck v. the United Kingdom, App.No. 44647/98 (2003)](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2244647/98%22%5D%7D)
* [ECtHR,Prisma Presse v. France (dec.) App.No. 66910/01 &71612/01 (2003](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2266910/01%22%5D%7D))
* [ECtHR,Rotaru v. Romania [GC], App.No. no. 28341/95 (2000)](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2228341/95%22%5D%7D)
* [Parliamentary Assembly of the Council of Europe, Resolution no. 1165(1998)](https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16641&lang%20=en#:~:text=The%20Assembly%20reaffirms%20the%20importance,fundamental%20to%20a%20democratic%20society.)
* **National law or jurisprudence:**
	+ Germany, Copyright (Arts Domain) Act, Section 23(1)
	+ Germany, Introductory Act to the Civil Code, Section 38

**Other national law or jurisprudence:**

* France, Civil Code, Article 9

*Significance*:

* The decision establishes a binding or persuasive precedent within its jurisdiction
* Related Cases: Self-generated
* Date updated: N/A

*Docs*:

* **Official Case Documents:**

Judgment (in English): https://hudoc.echr.coe.int/fre?i=001-61853

 Press release: <https://hudoc.echr.coe.int/fre?i=002-4330>

* Reports, Analysis, and News Articles:
	+ Swanturon[, Von Hannover v Germany: Waterloo for the paparazzi?,](https://swanturton.com/von-hannover-v-germany-waterloo-for-the-paparazzi/) July 20, 2004
	+ Nicolas Nohlen, “[Von Hannover v. Germany. App. No. 59320/00.2004-VI Eur. Ct. H.R](https://www.jstor.org/stable/3518838).” *The American Journal of International Law* 100, no. 1 (2006): 196–201