

CASE OF VON HANNOVER v. GERMANY

(Application no. 59320/00)

JUDGMENT

STRASBOURG

24 June 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of von Hannover v. Germany,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr I. Cabral Barreto, *President*,
Mr G. Ress,
Mr L. Caflisch
Mr R. Türmen
Mr B. Zupančič,
Mr J. Hedigan,
Mr K. Traja, *judges*,

and Mr V. Berger, *Section Registrar*,

Having deliberated in private on 6 November 2003 and on 3 June 2004,

Delivers the following judgment, which was adopted on the last mentioned date:

PROCEDURE

1. The case originated in an application (no. 59320/00) 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 national of Monaco, Caroline von Hannover (the applicant), on 6 June 2000.
2. The applicant alleged that the German court decisions in her case had infringed her right to respect for her private and family life as guaranteed by Article 8 of the Convention.
3. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.
4. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).
5. By a decision of 8 July 2003, the Chamber declared the application admissible.
6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, comments were received from the Association of German Magazine Publishers (*Verband deutscher Zeitschriftenverleger*) and from Hubert Burda Media GmbH & Co.KG, which had been given leave by the

President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The applicant replied to those comments (Rule 44 § 5).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 November 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr K. Stoltenberg, <i>Ministerialdirigent</i> ,	<i>Agent,</i>
Mr A. Ohly, Professor of civil law at Bayreuth University,	<i>Counsel,</i>
Mrs A. Laitenberger, executive assistant to the Agent,	<i>Adviser;</i>

(b) *for the applicant*

Mr M. Prinz, lawyer,	<i>Counsel,</i>
Ms C. Moffat, lawyer,	
Mr A. Toucas, lawyer,	<i>Advisers.</i>

The Court heard addresses by Mr Prinz and Mr Stoltenberg and Mr Ohly.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, who is the eldest daughter of Prince Rainier III of Monaco, was born in 1957. Her official residence is in Monaco but she lives in the Paris area most of the time. As a member of Prince Rainier's family, the applicant is the president of certain humanitarian or cultural foundations, such as the 'Princess Grace' foundation or the 'Prince Pierre de Monaco' foundation, and also represents the ruling family at events such as the Red Cross Ball or the opening of the International Circus Festival. She does not, however, perform any function within or on behalf of the State of Monaco or one of its institutions.

A. Background to the case

9. Since the early 1990s the applicant has been trying 'often through the courts' in a number of European countries to prevent the publication of photos about her private life in the tabloid press.

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

1. The first series of photos

(a) **The five photos of the applicant published in *Freizeit Revue* magazine (edition no. 30 of 22 July 1993)**

11. These photos show her with the actor Vincent Lindon at the far end of a restaurant courtyard in Saint-Rémy-de-Provence. The first page of the magazine refers to 'the tenderest photos of her romance with Vincent' (*die zärtlichsten Fotos Ihrer Romanze mit Vincent*) and the photos themselves bear the caption 'these photos are evidence of the tenderest romance of our time' (*diese Fotos sind der Beweis für die zärtlichste Romanze unserer Zeit*).

(b) The two photos of the applicant published in *Bunte* magazine (edition no. 32 of 5 August 1993)

12. The first photo shows her on horseback with the caption 'Caroline and the blues. Her life is a novel with innumerable misfortunes, says the author Roig' (*Caroline und die Melancholie. Ihr Leben ist ein Roman mit unzähligen Unglücken, sagt Autor Roig*). The second photo shows her with her children Peter and Andrea. The photos are part of an article entitled 'I don't think I could be a man's ideal wife' (*ich glaube nicht, dass ich die ideale Frau für einen Mann sein kann*).

(c) The seven photos of the applicant published in *Bunte* magazine (edition no. 34 of 19 August 1993)

13. The first photo shows her canoeing with her daughter Charlotte, the second shows her son Andrea with a bunch of flowers in his arms. The third photo shows her doing her shopping with a bag slung over her shoulder, the fourth with Vincent Lindon in a restaurant and the fifth alone on a bicycle. The sixth photo shows her with Vincent Lindon and her son Pierre. The seventh photo shows her doing her shopping at the market, accompanied by her bodyguard. The article is entitled 'Pure happiness' (*vom einfachen Glück*).

2. The second series of photos

(a) The ten photos of the applicant published in *Bunte* magazine (edition no. 10 of 27 February 1997)

14. These photos show the applicant on a skiing holiday in Zürs/Arlberg. The accompanying article is entitled 'Caroline ... a woman returns to life' (*Caroline...eine Frau kehrt ins Leben zurück*).

(b) The eleven photos of the applicant published in *Bunte* magazine (edition no. 12 of 13 March 1997)

15. Seven photos show her with Prince Ernst August von Hannover visiting a horse show in Saint-Rémy-de-Provence. The accompanying article is entitled 'The kiss. Or: they are not hiding anymore' (*Der Kuss. Oder: jetzt verstecken sie sich nicht mehr*). Four other photos show her leaving her house in Paris with the caption 'Out and about with Princess Caroline in Paris' (*Mit Prinzessin Caroline unterwegs in Paris*).

(c) The seven photos of the applicant published in *Bunte* magazine (edition no. 16 of 10 April 1997)

16. These photos show the applicant on the front page with Prince Ernst August von Hannover and on the inside pages of the magazine playing tennis with him or both putting their bicycles down.

3. The third series of photos

17. The sequence of photos published in *Neue Post* magazine (edition no. 35/97) shows the applicant at the Monte Carlo Beach Club, dressed in a swimsuit and wrapped up in a bathing towel, tripping over an obstacle and falling down. The photos, which are quite blurred, are accompanied by an article entitled 'Prince Ernst August played fisticuffs and Princess Caroline fell flat on her face' (*Prinz Ernst August haute auf den Putz und Prinzessin Caroline fiel auf die Nase*).

B. The proceedings in the German courts

1. The first set of proceedings

(a) Judgment of the Hamburg Regional Court of 4 February 1993

18. On 13 August 1993 the applicant sought an injunction in the Hamburg Regional Court (*Landgericht*) against any further publication by the Burda publishing company of the first series of photos on the ground

that they infringed her right to protection of her personality rights (*Persönlichkeitsrecht*) guaranteed by sections 2(1) and 1(1) of the Basic Law (*Grundgesetz*) and her right to protection of her private life and to the control of the use of her image guaranteed by sections 22 et seq. of the Copyright (Arts Domain) Act (*Kunsturhebergesetz* ? the Copyright Act?? ? see paragraphs 43-44 below).

19. In a judgment of 4 February 1993 the Regional Court granted the application only in respect of the distribution of the magazines in France, in accordance with the rules of private international law (section 38 of the Introductory Act to the Civil Code ? *Einführungsgesetz in das bürgerliche Gesetzbuch*) read in conjunction with Article 9 of the French Civil Code.

With regard to the distribution of the magazines in Germany, however, the Regional Court reiterated that it was German law which applied. Under section 23(1) no.1 of the Copyright Act, the applicant, as a figure of contemporary society ?*par excellence*?? (*eine ?absoluteâ?? Person der Zeitgeschichte*) had to tolerate this kind of publication.

The Regional Court held that she had failed to establish a legitimate interest (*berechtigtes Interesse*) justifying an injunction against further publication because, where figures of contemporary society ?*par excellence*?? were concerned, the right to protection of private life stopped at their front door. All the photos of the applicant had been taken exclusively in public places.

(b) Judgment of the Hamburg Court of Appeal of 8 December 1994

20. The applicant appealed against that judgment.

21. In a judgment of 8 December 1994 the Hamburg Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal and set aside the injunction against subsequent publications in France. Indeed, like the Regional Court, the Court of Appeal found that the applicant was a contemporary figure ?*par excellence*?? and therefore had to tolerate publication without her consent of the photos in question, which had all been taken in public places. Even if the constant hounding by photographers made her daily life difficult, it arose from a legitimate desire to inform the general public.

(c) Judgment of the Federal Court of Justice of 19 December 1995

22. The applicant appealed on points of law against that judgment.

23. In a judgment of 19 December 1995 the Federal Court of Justice (*Bundesgerichtshof*) allowed the applicant's appeal in part, granting her an injunction against any further publication of the photos that had appeared in *Freizeit Revue* magazine (30th edition of 22 July 1993) showing her with Vincent Lindon in a restaurant courtyard on the ground that the photos interfered with her right to respect for her private life.

The Federal Court held that even figures of contemporary society ?*par excellence*?? were entitled to respect for their private life and that this was not limited to their home but also covered the publication of photos. Outside their home, however, they could not rely on the protection of their privacy unless they had retired to a secluded place ? away from the public eye (*in eine örtliche Abgeschiedenheit*) ? where it was objectively clear to everyone that they wanted to be alone and where, confident of being away from prying eyes, they behaved in a given situation in a manner in which they would not behave in a public place. Unlawful interference with the protection of that privacy could therefore be made out if photos were published that had been taken secretly and/or by catching unawares a person who had retired to such a place. That was the position here, where the applicant and her boyfriend had withdrawn to the far end of a restaurant courtyard with the clear aim of being out of the public eye.

However, the Federal Court dismissed the remainder of her appeal on the ground that, as a figure of contemporary society ?*par excellence*??, the applicant had to tolerate the publication of photos in which she appeared in a public place even if they were photos of scenes from her daily life and not photos showing her

exercising her official functions. The public had a legitimate interest in knowing where the applicant was staying and how she behaved in public.

(d) Judgment of the Federal Constitutional Court of 15 December 1999

24. The applicant then appealed to the Federal Constitutional Court (*Bundesverfassungsgericht*) submitting that there had been an infringement of her right to the protection of her personality rights (section 2(1) read in conjunction with section 1(1) of the Basic Law).

In the applicant's submission, the criteria established by the Federal Court of Justice regarding the protection of privacy in respect of photos taken in public places did not effectively protect the free development of the personality, be it in the context of private life or family life. Those criteria were so narrow that in practice the applicant could be photographed at any time outside her home and the photos subsequently published in the media.

Given that the photos were not used genuinely to inform people, but merely to entertain them, the right to control the use of one's image in respect of scenes from private life, which had been recognised by the case-law of the Federal Constitutional Court, prevailed over the right ? also guaranteed by the Basic Law ? to freedom of the press.

25. In a landmark judgment of 15 December 1999, delivered after a hearing, the Constitutional Court allowed the applicant's appeal in part on the ground that the three photos that had appeared in the 32nd and 34th editions of *Bunte* magazine, dated 5 August 1993 and 19 August 1993, featuring the applicant with her children had infringed her right to the protection of her personality rights guaranteed by sections 2(1) and 1(1) of the Basic Law, reinforced by her right to family protection under section 6 of the Basic Law. It referred the case to the Federal Court of Justice on that point. However, the Constitutional Court dismissed the applicant's appeal regarding the other photos.

The relevant extract of the judgment reads as follows:

?The appeal is well-founded in part.

...

II.

The decisions being appealed do not fully satisfy the requirements of section 2(1) read in conjunction with section 1(1) of the Basic Law.

1. The provisions of sections 22 and 23 of the KUG (*Kunsturhebergesetz* ? Copyright Act) on which the civil courts based their decisions in the present case are, however, compatible with the Basic Law.

Under section 2(1) of the Basic Law general personality rights are guaranteed only within the framework of the constitutional order. The provisions concerning the publication of photographic representations of persons listed in sections 22 and 23 of the KUG are part of that constitutional order. They derive from an incident which at the time caused a scandal (photos of Bismarck on his deathbed ...) and from the ensuing politico-legal debate sparked by this incident ... , they aim to strike a fair balance between respect for personality rights and the community's interest in being informed

Under section 22, first sentence, of the KUG pictures can only be disseminated or exposed to the public eye with the express approval of the person represented. Pictures relating to contemporary society are excluded from that rule under section 23(1) of the KUG Under 23(2) of the KUG, however, that exception does not apply where the dissemination interferes with a legitimate interest of the person represented. The protection by degrees under these rules ensures that they take account of both the need to protect the person being represented and the community's desire to be informed and the interest of the media which satisfy that desire. That much has already been established by the Federal Constitutional Court

...

(b) In the instant case regard must be had, in interpreting and applying sections 22 and 23 of the KUG, not only to general personality rights, but also to the freedom of the press guaranteed by section 5(1), second sentence, of the Basic Law in so far as the provisions in question also affect those freedoms.

..
The fact that the press fulfils the function of forming public opinion does not exclude entertainment from the functional guarantee under the Basic Law. The formation of opinions and entertainment are not opposites. Entertainment also plays a role in the formation of opinions. It can sometimes even stimulate or influence the formation of opinions more than purely factual information. Moreover, there is a growing tendency in the media to do away with the distinction between information and entertainment both as regards press coverage generally and individual contributions, and to disseminate information in the form of entertainment or mix it with entertainment (?infotainmentâ??). Consequently, many readers obtain information they consider to be important or interesting from entertaining coverage

Nor can mere entertainment be denied any role in the formation of opinions. That would amount to unilaterally presuming that entertainment merely satisfies a desire for amusement, relaxation, escapism or diversion. Entertainment can also convey images of reality and propose subjects for debate that spark a process of discussion and assimilation relating to philosophies of life, values and behaviour models. In that respect it fulfils important social functions When measured against the aim of protecting press freedom, entertainment in the press is neither negligible nor entirely worthless and therefore falls within the scope of application of fundamental rights

The same is true of information about people. Personalization is an important journalistic means of attracting attention. Very often it is this which first arouses interest in a problem and stimulates a desire for factual information. Similarly, interest in a particular event or situation is usually stimulated by personalised accounts. Additionally, celebrities embody certain moral values and lifestyles. Many people base their choice of lifestyle on their example. They become points of crystallisation for adoption or rejection and act as examples or counter-examples. This is what explains the public interest in the various ups and downs occurring in their lives.

As regards politicians this public interest has always been deemed to be legitimate from the point of view of transparency and democratic control. Nor can it in principle be disputed that it exists in respect of other public figures. To that extent it is the function of the press to show people in situations that are not limited to specific functions or events and this also falls within the sphere of protection of press freedom. It is only when a balancing exercise has to be done between competing personality rights that an issue arises as to whether matters of essential interest for the public are at issue and treated seriously and objectively or whether private matters, designed merely to satisfy the public's curiosity, are being disseminated

(c) The decision of the Federal Court of Justice largely stands up to an examination of its compatibility with the constitutional rules.

(aa) The Federal Court of Justice cannot be criticised under constitutional law for assessing the conditions of application (*Tatbestandsvoraussetzungen*) of section 23(1) no. 1 of the KUG according to the criterion of the community's interest in being informed and deciding on that basis that the photos showing the applicant outside her representative function in the Principality of Monaco were lawful.

Under section 23(1) no. 1 of the KUG the publication of pictures portraying an aspect of contemporary society are exempted from the obligation to obtain the consent of the person concerned within the meaning of section 22 of the KUG. Judging from the drafting history to the Act ... and from the meaning and purpose of the words used, the provision in question takes into consideration the community's interest in being informed and the freedom of the press. Accordingly, the interpretation of this element (*Tatbestandsmerkmal*) must take account of the interests of the public. Pictures of people who are of no significance in contemporary society should not be made freely accessible to the public: they require the prior consent of the person concerned. The other element that is affected by fundamental rights, that of a ?legitimate interestâ?? for the purposes of section 23(2) of the KUG, concerns only ? and this must be stressed at the outset ? figures of contemporary society and cannot therefore take sufficient account of the interests of the freedom of the press if these have previously been neglected when the circle of the persons concerned was defined.

It is in keeping with the importance and scope of the freedom of the press, and not unreasonably restrictive of the protection of personality rights, that the concept of contemporary society referred to in section 23(1) no. 1 of the KUG should not only cover, in accordance with a definition given by the courts, events of historical or political significance, but be defined on the basis of the public interest in being informed The kernel of press freedom and the free formation of opinions requires the press to have sufficient margin of manoeuvre to allow it to decide, in accordance with its publishing criteria, what the public interest demands and the process of forming opinion to establish what amounts to a matter of public interest. As has been stated, entertaining

coverage is no exception to these principles.

Nor should the Federal Court of Justice be criticised for including in the 'domain of contemporary society', within the meaning of section 23(1) no. 1 of the KUG, pictures of people who have not only aroused public interest at a certain point on the occasion of a particular historical event but who, on account of their status and importance, attract the public's attention in general and not just on the odd occasion. Account should also be taken in this regard of the fact that, compared to the situation at the time the Copyright Act was passed, increased importance is given today to illustrated information. The concept of a 'figure of contemporary society *par excellence*' (*absolute Person der Zeitgeschichte*), often employed in this respect in the case-law and legal theory, does not conclusively derive from statute or the Constitution. If, as was done by the Court of Appeal and the Federal Court of Justice, it is interpreted as a shortened expression designating people whose image is deemed by the public to be worthy of respect out of consideration for the people concerned, it is irreproachable from the point of view of constitutional law at least as long as a balancing exercise is carried out, in the light of the circumstances of the case, between the public's interest in being informed and the legitimate interests of the person concerned.

General personality rights do not require publications that are not subject to prior consent to be limited to pictures of figures of contemporary society in the exercise of their function in society. Very often the public interest aroused by such figures does not relate exclusively to the exercise of their function in the strict sense. It can, on the contrary, by virtue of the particular function and its impact, extend to information about the way in which these figures behave generally – that is, also outside their function – in public. The public has a legitimate interest in being allowed to judge whether the personal behaviour of the individuals in question, who are often regarded as idols or role models, convincingly tallies with their behaviour on their official engagements.

If, on the other hand, the right to publish pictures of people considered to be figures of contemporary society were to be limited to their official functions, insufficient account would be taken of the public interest properly aroused by such figures and this would, moreover, favour a selective presentation that would deprive the public of certain necessary judgmental possibilities in respect of figures of socio-political life, having regard to the function of role model of such figures and the influence they exert. The press is not, however, allowed to use any picture of figures of contemporary society. On the contrary, section 23(2) of the KUG gives the courts adequate opportunity to apply the protective provisions of section 2(1) read in conjunction with section 1(1) of the Basic Law

(bb) In theory the criteria established by the Federal Court of Justice for interpreting the concept of 'legitimate interest' used in section 23(2) of the KUG are irreproachable from the point of view of constitutional law. According to the decision being appealed, the privacy meriting protection that must also be afforded to 'figures of contemporary society *par excellence*' presupposes that they have retired to a secluded place with the objectively perceptible aim of being alone and in which, confident of being alone, they behave differently from how they would behave in public. The Federal Court of Justice accepted that there had been a breach of sections 22 and 23 of the KUG where this type of picture was taken secretly or by catching the person unawares.

The criterion of a secluded place takes account of the aim, pursued by the general right to protection of personality rights, of allowing the individual a sphere, including outside the home, in which he does not feel himself to be the subject of permanent public attention – and relieves him of the obligation of behaving accordingly – and in which he can relax and enjoy some peace and quiet. This criterion does not excessively restrict press freedom because it does not impose a blanket ban on pictures of the daily or private life of figures of contemporary society, but allows them to be shown where they have appeared in public. In the event of an overriding public interest in being informed, the freedom of the press can even, in accordance with that case-law authority, be given priority over the protection of the private sphere

The Federal Court of Justice properly held that it is legitimate to draw conclusions from the behaviour adopted in a given situation by an individual who is clearly in a secluded spot. However, the protection against dissemination of photos taken in that context does not only apply where the individual behaves in a manner in which he would not behave in public. On the contrary, the development of the personality cannot be properly protected unless, irrespective of their behaviour, the individual has a space in which he or she can relax without having to tolerate the presence of photographers or cameramen. That is not in issue here, however, since, according to the findings on which the Federal Court of Justice based its decision, the first of the

conditions to which protection of private life is subject has not been met.

Lastly, there is nothing unconstitutional, when balancing the public interest in being informed against the protection of private life, in attaching importance to the method used to obtain the information in question It is doubtful, however, that the mere fact of photographing the person secretly or catching them unawares can be deemed to infringe their privacy outside the home. Having regard to the function attributed to that privacy under constitutional law and to the fact that it is usually impossible to determine from a photo whether the person has been photographed secretly or caught unawares, the existence of unlawful interference with that privacy cannot in any case be made out merely because the photo was taken in those conditions. As, however, the Federal Court of Justice has already established in respect of the photographs in question that the appellant was not in a secluded place, the doubts expressed above have no bearing on the review of its decision.

(cc) However, the constitutional requirements have not been satisfied in so far as the decisions of which the appellant complains did not take account of the fact that the right to protection of personality rights of a person in the appellant's situation is strengthened by section 6 of the Basic Law regarding that person's intimate relations with their children.

(dd) The following conclusions can be drawn from the foregoing considerations with regard to the photographs in question:

The decision of the Federal Court of Justice cannot be criticised under constitutional law regarding the photos of the appellant at a market, doing her market shopping accompanied by her bodyguard or dining with a male companion at a well-attended restaurant. The first two cases concerned an open location frequented by the general public. The third case admittedly concerned a well circumscribed location, spatially speaking, but one in which the appellant was exposed to the other people present.

It is for this reason, moreover, that the Federal Court of Justice deemed it legitimate to ban photos showing the applicant in a restaurant garden, which were the subject of the decision being appealed but are not the subject of the constitutional appeal.

The presence of the applicant and her companion there presented all the features of seclusion. The fact that the photographs in question were evidently taken from a distance shows that the applicant could legitimately have assumed that she was not exposed to public view.

Nor can the decision being appealed be criticised regarding the photos of the applicant alone on horseback or riding a bicycle. In the Federal Court of Justice's view, the appellant had not been in a secluded place, but in a public one. That finding cannot attract criticism under constitutional law. The applicant herself describes the photos in question as belonging to the intimacy of her private sphere merely because they manifest her desire to be alone. In accordance with the criteria set out above, the mere desire of the person concerned is not relevant in any way.

The three photos of the applicant with her children require a fresh examination, however, in the light of the constitutional rules set out above. We cannot rule out the possibility that the review that needs to be carried out in the light of the relevant criteria will lead to a different result for one or other or all the photos. The decision must therefore be set aside in that respect and remitted to the Federal Court of Justice for a fresh decision.

(d) The decisions of the Regional Court and the Court of Appeal resulted in a violation of fundamental rights by limiting to the home the privacy protected by section 2(1) read in conjunction with section 1(1) of the Basic Law in accordance, moreover, with a rationale that was in keeping with the case-law at the time.

The decisions in question do not need to be set aside, however, since the violation complained of has been remedied in part by the Federal Court of Justice and the remainder of the case remitted to that court.

...â??

(e) Sequel to the proceedings

26. Following the remittal of the case to the Federal Court of Justice in connection with the three photos that had appeared in *Bunte* magazine (edition no. 32 of 5 August 1993 and no. 34 of 19 August 1993) showing the applicant with her children, Burda publishers undertook not to republish the photos (*Unterlassungserklärung*).

2. The second set of proceedings

(a) Judgment of the Hamburg Regional Court of 26 September 1997

27. On 14 May 1997 the applicant reapplied to the Hamburg Regional Court for an injunction preventing Burda publishers from republishing the second series of photos on the ground that they breached her right to protection of her personality rights guaranteed by sections 2(1) and 1(1) of the Basic Law and her right to protection of her private life and the right to control the use of her image guaranteed by sections 22 et seq. of the Copyright Act.

28. In a judgment of 26 September 1997 the Hamburg Regional Court dismissed the appeal, referring in particular to the grounds of the Federal Court of Justice's judgment of 19 December 1995.

(b) Judgment of the Hamburg Court of Appeal of 10 March 1998

29. The applicant appealed against that judgment.

30. In a judgment of 10 March 1998 the Hamburg Court of Appeal also dismissed the applicant's appeal for the same reasons.

(c) Decision of the Federal Constitutional Court of 4 April 2000

31. As the Court of Appeal did not grant leave to appeal on points of law to the Federal Court of Justice, the applicant lodged a constitutional appeal directly with the Federal Constitutional Court relying on her earlier submissions.

32. In a decision of 4 April 2000 the Federal Constitutional Court, ruling as a panel of three judges, refused to entertain the appeal. It referred in particular to the Federal Court of Justice's judgment of 19 December 1995 and to its own landmark judgment of 15 December 1999.

3. The third set of proceedings

(a) Judgment of the Hamburg Regional Court of 24 April 1998

33. On 5 November 1997 the applicant reapplied to the Hamburg Regional Court for an injunction preventing Heinrich Bauer publishers from republishing the third series of photos on the ground that they infringed her right to the protection of her personality rights, guaranteed by sections 2(1) and 1(1) of the Basic Law, and the right to protection of her private life and to the control of the use of her image, guaranteed by sections 22 et seq. of the Copyright (Arts Domain) Act.

The applicant submitted, among other things, a sworn attestation by the director of the Monte Carlo Beach Club to the effect that the swimming baths in question were a private establishment, access to which was subject to a high fee and strictly controlled and from which journalists and photographers were debarred unless they had the express permission of the owner of the establishment. The fact that the photos were very blurred showed that they had been taken secretly, at a distance of several hundred metres, from the window or roof of a neighbouring house.

34. In a judgment of 24 April 1998 the Hamburg Regional Court dismissed the applicant's appeal, referring in particular to the grounds of the Federal Court of Justice's judgment of 19 December 1995. The court stated that the Monte Carlo Beach Club had to be considered as an open-air swimming pool that was open to the public even if an entry fee was charged and access restricted.

(b) Judgment of the Hamburg Court of Appeal of 13 October 1998

35. The applicant appealed against that judgment.

36. In a judgment of 13 October 1998 the Hamburg Court of Appeal dismissed the 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 down were not such as to denigrate or demean her in the public's eyes.

(c) The decision of the Federal Constitutional Court of 13 April 2000

37. As the Court of Appeal did not grant the applicant leave to appeal on points of law to the Federal Court of Justice, the applicant lodged a constitutional appeal directly with the Federal Constitutional Court on the basis of her earlier submissions.

38. In a decision of 13 April 2000 the Federal Constitutional Court, ruling as a panel of three judges, refused to entertain the appeal, referring in particular to the Federal Court of Justice's judgment of 19 December 1995 and to its own landmark judgment of 15 December 1999.

The Constitutional Court held that the ordinary courts had properly found that the Monte Carlo Beach Club was not a secluded place and that the photos of the applicant wearing a swimsuit and falling down were not capable of constituting an infringement of her right to respect for her private life.

II. RELEVANT DOMESTIC AND EUROPEAN LAW

A. The Basic Law

39. The relevant provisions of the Basic Law are worded as follows:

Section 1(1)

‘The dignity of human beings is inviolable. All public authorities have a duty to respect and protect it.’

Section 2(1)

‘Everyone shall have the right to the free development of their personality provided that they do not interfere with the rights of others or violate the constitutional order or moral law (*Sittengesetz*).’

Section 5(1)

(1) Everyone shall have the right freely to express and disseminate his or her opinions in speech, writing and pictures and freely to obtain information from generally accessible sources. Freedom of the press and freedom of reporting on the radio and in films shall be guaranteed. There shall be no censorship.

(2) These rights shall be subject to the limitations laid down by the provisions of the general laws and by statutory provisions aimed at protecting young people and to the obligation to respect personal honour (*Recht der persönlichen Ehre*).’

Section 6(1) and (2)

(1) Marriage and the family enjoy the special protection of the State.

(2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent on them. The State community shall oversee the performance of that duty.â??

B. The Copyright (Arts Domain) Act

40. Section 22(1) of the Copyright (Arts Domain) Act provides that images can only be disseminated with the express approval of the person concerned.

41. Section 23(1) no. 1 of that Act provides for exceptions to that rule, particularly where the images portray an aspect of contemporary society (*Bildnisse aus dem Bereich der Zeitgeschichte*) on condition that publication does not interfere with a legitimate interest (*berechtigtes Interesse*) of the person concerned (section 23(2)).

C. Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy

42. The full text of this resolution, adopted by the Parliamentary Assembly on 26 June 1998, is worded as follows:

1. The Assembly recalls the current affairs debate it held on the right to privacy during its September 1997 session, a few weeks after the accident which cost the Princess of Wales her life.

2. On that occasion, some people called for the protection of privacy, and in particular that of public figures, to be reinforced at the European level by means of a convention, while others believed that privacy was sufficiently protected by national legislation and the European Convention on Human Rights, and that freedom of expression should not be jeopardised.

3. In order to explore the matter further, the Committee on Legal Affairs and Human Rights organised a hearing in Paris on 16 December 1997 with the participation of public figures or their representatives and the media.

4. The right to privacy, guaranteed by Article 8 of the European Convention on Human Rights, has already been defined by the Assembly in the declaration on mass communication media and human rights, contained within Resolution 428 (1970), as 'the right to live one's own life with a minimum of interference'.

5. In view of the new communication technologies which make it possible to store and use personal data, the right to control one's own data should be added to this definition.

6. The Assembly is aware that personal privacy is often invaded, even in countries with specific legislation to protect it, as people's private lives have become a highly lucrative commodity for certain sectors of the media. The victims are essentially public figures, since details of their private lives serve as a stimulus to sales. At the same time, public figures must recognise that the special position they occupy in society - in many cases by choice - automatically entails increased pressure on their privacy.

7. Public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain.

8. It is often in the name of a one-sided interpretation of the right to freedom of expression, which is guaranteed in Article 10 of the European Convention on Human Rights, that the media invade people's

privacy, claiming that their readers are entitled to know everything about public figures.

9. Certain facts relating to the private lives of public figures, particularly politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.

10. It is therefore necessary to find a way of balancing the exercise of two fundamental rights, both of which are guaranteed by the European Convention on Human Rights: the right to respect for one's private life and the right to freedom of expression.

11. The Assembly reaffirms the importance of every person's right to privacy, and of the right to freedom of expression, as fundamental to a democratic society. These rights are neither absolute nor in any hierarchical order, since they are of equal value.

12. However, the Assembly points out that the right to privacy afforded by Article 8 of the European Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media.

13. The Assembly believes that, since all member states have now ratified the European Convention on Human Rights, and since many systems of national legislation comprise provisions guaranteeing this protection, there is no need to propose that a new convention guaranteeing the right to privacy should be adopted.

14. The Assembly calls upon the governments of the member states to pass legislation, if no such legislation yet exists, guaranteeing the right to privacy containing the following guidelines, or if such legislation already exists, to supplement it with these guidelines:

(i) the possibility of taking an action under civil law should be guaranteed, to enable a victim to claim possible damages for invasion of privacy;

(ii) editors and journalists should be rendered liable for invasions of privacy by their publications, as they are for libel;

(iii) when editors have published information that proves to be false, they should be required to publish equally prominent corrections at the request of those concerned;

(iv) economic penalties should be envisaged for publishing groups which systematically invade people's privacy;

(v) following or chasing persons to photograph, film or record them, in such a manner that they are prevented from enjoying the normal peace and quiet they expect in their private lives or even such that they are caused actual physical harm, should be prohibited;

(vi) a civil action (private lawsuit) by the victim should be allowed against a photographer or a person directly involved, where paparazzi have trespassed or used "visual or auditory enhancement devices" to capture recordings that they otherwise could not have captured without trespassing;

(vii) provision should be made for anyone who knows that information or images relating to his or her private life are about to be disseminated to initiate emergency judicial proceedings, such as summary applications for an interim order or an injunction postponing the dissemination of the information, subject to an assessment by the court as to the merits of the claim of an invasion of privacy;

(viii) the media should be encouraged to create their own guidelines for publication and to set up an institute with which an individual can lodge complaints of invasion of privacy and demand that a rectification be published.

15. It invites those governments which have not yet done so to ratify without delay the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

16. The Assembly also calls upon the governments of the member states to:

(i) encourage the professional bodies that represent journalists to draw up certain criteria for entry to the profession, as well as standards for self-regulation and a code of journalistic conduct;

(ii) promote the inclusion in journalism training programmes of a course in law, highlighting the importance of the right to privacy vis-à-vis society as a whole;

(iii) foster the development of media education on a wider scale, as part of education about human rights and responsibilities, in order to raise media users' awareness of what the right to privacy necessarily entails;

(iv) facilitate access to the courts and simplify the legal procedures relating to press offences, in order to ensure that victims' rights are better protected.â??

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

43. The applicant submitted that the German court decisions had infringed her right to respect for her private and family life guaranteed by Article 8 of the Convention, which is worded as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.â??

A. Submissions of the parties and interveners

1. The applicant

44. The applicant stated that she had spent more than ten years in unsuccessful litigation in the German courts trying to establish her right to the protection of her private life. She alleged that as soon as she left her house she was constantly hounded by paparazzi who followed her every daily movement, be it crossing the road, fetching her children from school, doing her shopping, out walking, practising sport or going on holiday. In her submission, the protection afforded to the private life of a public figure like herself was minimal under German law because the concept of a 'secluded place' as defined by the Federal Court of Justice and the Federal Constitutional Court was much too narrow in that respect. Furthermore, in order to benefit from that protection the onus was on her to establish every time that she had been in a secluded place. She was thus

deprived of any privacy and could not move about freely without being a target for the paparazzi. She affirmed that in France her prior agreement was necessary for the publication of any photos not showing her at an official event. Such photos were regularly taken in France and then sold and published in Germany. The protection of private life from which she benefited in France was therefore systematically circumvented by virtue of the decisions of the German courts. On the subject of the freedom of the press the applicant stated that she was aware of the essential role played by the press in a democratic society in terms of informing and forming public opinion, but in her case it was just the entertainment press seeking to satisfy its readers' voyeuristic tendencies and make huge profits from generally anodyne photos showing her going about her daily business. Lastly, the applicant stressed that it was materially impossible to establish in respect of every photo whether or not she had been in a secluded place. As the judicial proceedings were generally held several months after publication of the photos, she was obliged to keep a permanent record of her every movement in order to protect herself from paparazzi who might photograph her. With regard to many of the photos that were the subject of this application it was impossible to determine the exact time and place at which they had been taken.

2. *The Government*

45. The Government submitted that German law, while taking account of the fundamental role of the freedom of the press in a democratic society, contained sufficient safeguards to prevent any abuse and ensure the effective protection of the private life of even public figures. In their submission, the German courts had in the instant case struck a fair balance between the applicant's rights to respect for her private life guaranteed by Article 8 and the freedom of the press guaranteed by Article 10, having regard to the margin of appreciation available to the State in this area. The courts had found in the first instance that the photos had not been taken in a secluded place and had, in the second instance, examined the limits on the protection of private life, particularly in the light of the freedom of the press and even where the publication of photos by the entertainment press were concerned. The protection of the private life of a figure of contemporary society *par excellence* did not require the publication of photos without his or her authorisation to be limited to showing the person in question engaged in their official duties. The public had a legitimate interest in knowing how the person behaved generally in public. The Government submitted that this definition of the freedom of the press by the Federal Constitutional Court was compatible with Article 10 and the European Court's relevant case-law. Furthermore, the concept of a secluded place was only one factor, albeit an important one, of which the domestic courts took account when balancing the protection of private life against the freedom of the press. Accordingly, while private life was less well protected where a public figure was photographed in a public place other factors could also be taken into consideration, such as the nature of the photos, for example, which should not shock the public. Lastly, the Government reiterated that the decision of the Federal Court of Justice which had held that the publication of photos of the applicant with the actor Vincent Lindon in a restaurant courtyard in Saint-Rémy-de-Provence were unlawful showed that the applicant's private life was protected even outside her home.

3. *The interveners*

46. The Association of Editors of German Magazines submitted that German law, which was half way between French law and United Kingdom law, struck a fair balance between the right to protection of private life and the freedom of the press. In its submission, it also complied with the principles set out in Resolution no. 1165 of the Council of Europe on the right to privacy and the European Court's case-law, which had always stressed the fundamental role of the press in a democratic society. The public's legitimate interest in being informed was not limited to politicians, but extended to public figures who had become known for other reasons. The press's role of *watchdog* could not be narrowly interpreted here. In that connection account should also be taken of the fact that the boundary between political commentary and entertainment was becoming increasingly blurred. Given that there was no uniform European standard concerning the protection of private life, the State had a wide margin of appreciation in this area.

47. Burda joined the observations of the Association of Editors of German Magazines and stated that German law required the courts to balance the competing interests of informing the public and protecting the right to control of the use of one's image very strictly and on a case by case basis. Even figures of contemporary society *par excellence* enjoyed a not inconsiderable degree of protection and recent case-law had even tended towards reinforcing that protection. Since the death of her mother in 1982 the applicant had officially been First Lady of the reigning family in Monaco and was as such an example for the public (*Vorbildfunktion*). Moreover, the Grimaldi family had always sought to attract media attention and was therefore itself responsible for the public interest in it. The applicant could not therefore, especially if account were taken of her official functions, be regarded as a victim of the press. The publication of the photos in question had not infringed her right to control the use of her image because they had been taken while she was in public and had not been damaging to her reputation.

B. The Court's assessment

1. As regards the subject of the application

48. The Court notes at the outset that the photos of the applicant with her children are no longer the subject of this application, as it stated in its admissibility decision of 8 July 2003.

The same applies to the photos published in *Freizeit Revue* magazine (edition no. 30 of 22 July 1993) showing the applicant with Vincent Lindon at the far end of a restaurant courtyard in Saint-Rémy-de-Provence (see paragraph 11 above). In its judgment of 19 December 1995 the Federal Court of Justice prohibited any further publication of the photos on the ground that they infringed the applicant's right to respect for her private life (see paragraph 23 above).

49. Accordingly, the Court considers it important to specify that the present application concerns the following photos, which were published as part of a series of articles about the applicant:

(i) the photo published in *Bunte* magazine (edition no. 32 of 5 August 1993) showing the applicant on horseback (see paragraph 12 above)

(ii) the photos published in *Bunte* magazine (edition no. 34 of 19 August 1993) showing the applicant shopping on her own; with Mr Vincent Lindon in a restaurant; alone on a bicycle; and with her bodyguard at a market (see paragraph 13 above);

(iii) the photos published in *Bunte* magazine (edition no. 10 of 27 February 1997) showing the applicant on a skiing holiday in Austria (see paragraph 14 above);

(iv) the photos published in *Bunte* magazine (edition no. 12 of 13 March 1997) showing the applicant with Prince Ernst August von Hannover or alone leaving her Parisian residence (see paragraph 15 above);

(v) the photos published in *Bunte* magazine (edition no. 16 of 10 April 1997) showing the applicant playing tennis with Prince Ernst August von Hannover or both of them putting their bicycles down (see paragraph 16 above);

(vi) the photos published in *Neue Post* magazine (edition no. 35/97) showing the applicant tripping over an obstacle at the Monte Carlo Beach Club (see paragraph 17 above).

2. As regards the applicability of Article 8

50. The Court reiterates that the concept of private life extends to aspects relating to personal identity, such as a person's name (see *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A no. 280 B, p. 28, § 24), or a person's picture (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002).

Furthermore, private life, in the Court's view, includes a person's physical and psychological integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings (see, *mutatis mutandis*, *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, p. 33, § 29, and *Botta v. Italy*, judgment of 24 February 1998, *Reports of Judgments and Decisions* 1998 I, p. 422, § 32). There is therefore a zone of interaction of a person with others, even in a public context, which may fall within the scope of 'private life' (see, *mutatis mutandis*, *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 56, ECHR 2001 IX, and *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003 I.).

51. The Court has also indicated that, in certain circumstances, a person has a 'legitimate expectation' of protection and respect for his or her private life. Accordingly, it has held in a case concerning the interception of telephone calls on business premises that the applicant 'would have had a reasonable expectation of privacy for such calls' (see *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports* 1997 III, p.1016, § 45).

52. As regards photos, with a view to defining the scope of the protection afforded by Article 8 against arbitrary interference by public authorities, the Commission had regard to whether the photographs related to private or public matters and whether the material thus obtained was envisaged for a limited use or was likely to be made available to the general public (see, *mutatis mutandis*, *Friedl v. Austria*, judgment of 31 January 1995, Series A no. 305 B, Friendly Settlement, Commission opinion, p. 21, §§ 49-52; *P.G. and J.H.*, cited above, § 58; and *Peck*, cited above, § 61).

53. In the present case there is no doubt that the publication by various German magazines of photos of the applicant in her daily life either on her own or with other people falls within the scope of her private life.

3. Compliance with Article 8

a. The domestic courts' position

54. The Court notes that, in its landmark judgment of 15 December 1999, the Federal -Constitutional Court interpreted sections 22 and 23 of the Copyright (Arts Domain) Act (see paragraphs 40-4