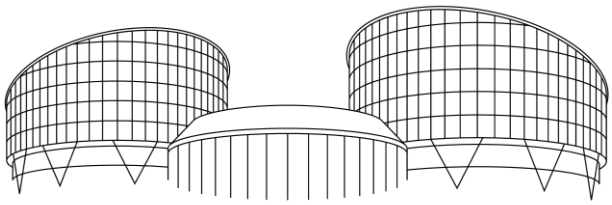

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF VON HANNOVER v. GERMANY (No. 2)

(Applications nos. 40660/08 and 60641/08)

JUDGMENT

STRASBOURG

7 February 2012

In the case of Von Hannover v. Germany (no. 2),

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,
Jean-Paul Costa,
Françoise Tulkens,
Josep Casadevall,
Lech Garlicki,
Peer Lorenzen,
Karel Jungwiert,
Renate Jaeger,
Davíd Thór Björgvinsson,
Ján Šikuta,
Mark Villiger,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Mihai Poalelungi,
Kristina Pardalos, *judges*,

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 13 October 2010 and on 7 December 2011,

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

PROCEDURE

1. 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.

2. 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.

3. The applications were initially allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 13 November 2008 a Chamber of that Section decided to give notice of application no. 40660/08

to the German Government ("the Government"). By virtue of Article 29 § 3 of the Convention, as worded at the relevant time, it also decided that the admissibility and merits of the case should be considered together. On 8 January 2009 the President of the Fifth Section decided to give notice of application no. 60641/08 to the Government. By virtue of Article 29 § 3 of the Convention, as worded at the relevant time, he also decided that the admissibility and merits of the case should be considered together. On 24 November 2009 a Chamber of the Fifth Section decided to join the two applications.

On 30 March 2010 the Chamber, composed of Peer Lorenzen, President, Renate Jaeger, Karel Jungwiert, Rait Maruste, Mark Villiger, Mirjana Lazarova Trajkovska and Zdravka Kalaydjieva, judges, and Claudia Westerdiek, Section Registrar, after deciding to join the present applications to the application *Axel Springer AG v. Germany* (no. 39954/08), also communicated by it on 13 November 2008 and concerning an injunction against the applicant company on publishing two reports on the arrest and criminal conviction of a television actor, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

4. The composition of the Grand Chamber was determined according to the provisions of former Article 27 §§ 2 and 3 of the Convention (now Article 26 §§ 4 and 5) and Rule 24. On 3 November 2011 Jean-Paul Costa's term as President of the Court came to an end. Nicolas Bratza succeeded him in that capacity and took over the presidency of the Grand Chamber in the present case (Rule 9 § 2). Mr Costa continued to sit following the expiry of his term of office, in accordance with Article 23 § 3 of the Convention and Rule 24 § 4. At the final deliberations Lech Garlicki and Nona Tsotsoria, substitute judges, replaced Rait Maruste and Christos Rozakis, who were unable to take part in the further consideration of the case (Rule 24 § 3).

5. The President of the Grand Chamber decided to maintain the application of Article 29 § 3 of the Convention before the Grand Chamber with a view to a joint examination of the admissibility and merits of the applications. He also decided that the proceedings in the present cases should be conducted simultaneously with those in *Axel Springer AG v. Germany* (Rule 42 § 2).

6. The applicants and the Government each filed observations on the admissibility and the merits of the case. The parties replied in writing to each other's observations.

7. In addition, third-party comments were received from the Association of German Magazine Publishers (*Verband Deutscher Zeitungsverleger*), from the publishing company that had published one of the photos in question, Ehrlich & Sohn GmbH & Co. KG, from the Media Lawyers Association, from the Media Legal Defence Initiative, from the

International Press Institute and from the World Association of Newspapers and News Publishers, 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 parties were given an opportunity to reply to those comments (Rule 44 § 5).

8. Having been informed on 17 November 2008 of their right to submit 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.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 13 October 2010 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms	A. WITTLING-VOGEL, Federal Ministry of Justice,	*Agent*,
Mr	C. WALTER, Professor of Public Law,	*Counsel*,
Ms	A. VON UNGERN-STERNBERG, Assistant,	
Mr	R. SOMMERLATTE, Federal Office for Culture,	
Mr	A. MAATSCH, Judge of the Hamburg Regional Court,	*Advisers*;

(b) *for the applicants*

Mr	M. PRINZ, member of the Hamburg Bar,	
Mr	M. LEHR, member of the Hamburg Bar,	*Counsel*,
Ms	S. LINGENS, Lawyer,	*Adviser*.

The Court heard addresses by Mr Walter and Mr Prinz.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. 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.

A. Background to the cases

11. 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.

12. Two series of photos, published in 1993 and 1997 respectively in three German magazines and showing the first applicant with the actor Vincent Lindon or her husband, had been the subject of three sets of proceedings in the German courts and, in particular, leading judgments of the Federal Court of Justice of 19 December 1995 and of the Federal Constitutional Court of 15 December 1999 dismissing the first applicant's claims.

13. Those proceedings were the subject of the *Von Hannover v. Germany* judgment of 24 June 2004 (no. 59320/00, ECHR 2004-VI) in which the Court held that the court decisions had infringed the first applicant's right to respect for her private life, a right guaranteed by Article 8 of the Convention.

14. Regarding the reasoning of the domestic courts, the Court made the following findings in particular:

> "72. The Court finds it hard to agree with the domestic courts' interpretation of section 23(1) of the Copyright (Arts Domain) Act, which consists in describing a person as such as a figure of contemporary society '*par excellence*'. Since that definition affords the person very limited protection of their private life or the right to control the use of their image, it could conceivably be appropriate for politicians exercising official functions. However, it cannot be justified for a 'private' individual, such as the applicant, in whom the interest of the general public and the press is based solely on her membership of a reigning family, whereas she herself does not exercise any official functions.
>
> In any event the Court considers that, in these conditions, the Act has to be interpreted narrowly to ensure that the State complies with its positive obligation under the Convention to protect private life and the right to control the use of one's image.
>
> 73. Lastly, the distinction drawn between figures of contemporary society '*par excellence*' and 'relatively' public figures has to be clear and obvious so that, in a State governed by the rule of law, the individual has precise indications as to the behaviour he or she should adopt. Above all, they need to know exactly when and where they are in a protected sphere or, on the contrary, in a sphere in which they must expect interference from others, especially the tabloid press.
>
> 74. 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.

75. In the Court's view, the criterion of spatial isolation, although apposite in theory, is in reality too vague and difficult for the person concerned to determine in advance. In the present case, merely classifying the applicant as a figure of contemporary society '*par excellence*' does not suffice to justify such an intrusion into her private life."

B. The photos in issue

15. Relying on the Court's judgment in the first applicant's case, the applicants subsequently brought several sets of proceedings in the civil courts seeking an injunction against any further publication of photos that had appeared in German magazines.

1. The photos published in the magazine Frau im Spiegel

16. The first three photos were published by the publishing company Ehrlich & Sohn GmbH & Co. KG in the magazine *Frau im Spiegel*.

(a) The first photo

17. The first photo, which appeared in issue no. 9/02 of 20 February 2002, shows the applicants out for a walk during their skiing holiday in St Moritz. It is accompanied by an article with the heading: "Prince Rainier – not home alone" ("*Fürst Rainier – Nicht allein zu Haus*"). The article reads as follows.

"The first magnolia buds are flowering in the grounds of Monaco Palace – but Prince Rainier (78) appears to have no interest in the burgeoning spring. He goes for a walk outside with his daughter Stéphanie (37). She supports him as he walks along slowly. He is cold despite the sunshine. The old gentleman is weary. The Monegasques saw their prince for the last time three weeks ago at a circus festival. He had appeared bright and cheerful, walking along beside his daughter who was laughing. But since then he has not left the palace. Not even for the St Devota celebration held in honour of the national Patron Saint. The Principality is worried, as are Prince Rainier's children. Prince Albert (who is currently taking part in the Olympic Games in Salt Lake City), Princess Caroline (on holiday in St Moritz with Prince Ernst August von Hannover) and Princess Stéphanie take it in turns to look after their father. He must not be left home alone when he is not well. Not without his children's love."

A photo of Prince Rainier with his daughter Princess Stéphanie and a photo of Prince Albert of Monaco taken during the Olympic Games in Salt Lake City appeared on the same page.

(b) The second photo

18. The second photo, which appeared in issue no. 9/03 of 20 February 2003, shows the applicants out for a walk in St Moritz. The caption says: "Ernst August von Hannover and his wife, Princess Caroline of Monaco, enjoy the sun and snow in St Moritz." A small photo of Prince Albert and two photos of members of a European royal family appeared on the same page. The article accompanying the photos, bearing the heading "Royal fun in the snow", is about how happy the persons photographed are to meet up in St Moritz.

(c) The third photo

19. The third photo, which appeared in issue no. 12/04 of 11 March 2004, shows the applicants in a chair lift in Zürs am Arlberg during their skiing holiday. On the same page there is a small photo of Prince Rainier, the first applicant and Prince Albert, taken during the national holiday on 19 November and bearing the heading "The princess's last appearance". Another photo, taking up half the page, shows the first applicant at the Rose Ball.

The three photos illustrate an article bearing the heading "Princess Caroline. The whole of Monaco awaits her", of which the passages relevant to the present case read as follows.

> "Tickets for the Rose Ball, which will be held on 20 March in Monaco, have been selling for weeks. And the guests will be coming only for her: Princess Caroline von Hannover (47). She has not attended any official engagements since the national holiday ... She was not at the circus festival or the St Devota celebration held in honour of the patron saint of Monaco. By tradition, the eldest daughter of Prince Rainier (80) opens the annual ball. She has inherited this role from her mother, who died in an accident, and this ball is Caroline's favourite ... The prince, who is seriously ill, has just come out of hospital after a heart operation and is still too weak to attend the ball. The welcome speech which he will be making in honour of the guests will be retransmitted via television cameras and projected onto a big screen. Princess Caroline and her husband [Prince] Ernst August von Hannover will open the Rose Ball with a waltz.
>
> They celebrated their fifth wedding anniversary together in January. And there was more cause for celebration in the von Hannover household: the prince turned 50 on 26 February. He celebrated his birthday with Caroline and some friends at the fashionable resort of St Moritz, glistening white in the snow. The couple were actually spending their holiday in Zürs am Arlberg, but for the birthday party they went down to the Palace Hotel in St Moritz for a few days."

2. The photo published in the magazine Frau Aktuell

20. The publishing company WZV Westdeutsche Zeitschriftenverlag GmbH & Co. KG published in issue no. 9/02 of 20 February 2002 of the magazine *Frau Aktuell* the same photo (or a virtually identical one) as the

one that had appeared the same day in the magazine *Frau im Spiegel* no. 9/02 (see paragraph 17 above). The article accompanying the photo in *Frau Aktuell* bears the heading: "That is genuine love. Princess Stéphanie. She is the only one looking after the sick prince." The relevant passages of the article are worded as follows.

> "Her love life may appear unbridled. One thing is certain, though: as far as her father is concerned, Princess Stéphanie knows where her heart lies. While the rest of the family are travelling around the world, she has run to be at the side of Prince Rainier (78), who appears to be seriously ailing. She is the only one who takes care of the sick monarch. Stéphanie's sister, Caroline (45), has taken a few days' holiday with her husband Ernst August (48) and their daughter Alexandra (2) at the fashionable St Moritz ski resort in Switzerland. Prince Albert, for his part, has been at the Olympic Games in Salt Lake City taking part in the four-man bobsleigh race. 'For the fifth and last time,' he said. From time to time he would disappear for a number of days. It is said that the prince has seen his heart-throb, Alicia Warlick (24), an American pole vaulter who is rumoured to become his future wife. [Prince Rainier], who hates being alone now, was very glad to see his younger daughter. Stéphanie has devoted a lot of time to him. She has been out on long walks with him and they have greatly confided in each other. 'Rainier has relished the company of his younger daughter. When she is at his side he truly flourishes. During those moments he forgets that he is old and sick,' say the Monegasques. 'Stéphanie should come much more often.'"

On the same page there is the photo of Princess Stéphanie with her father that had appeared the same day in the magazine *Frau im Spiegel* no. 9/02 (see paragraph 17 above), a headshot of her and two other photos, one of Prince Albert alone and the other of the prince with Alicia Warlick.

C. The proceedings in issue

1. The proceedings instituted by the first applicant

(a) The first set of proceedings

(i) Judgment of the Regional Court of 29 April 2005

21. On an unspecified date in 2004, the first applicant sought an injunction in the Hamburg Regional Court against any further publication of the three photos by the Ehrlich & Sohn publishing company.

22. In a judgment of 29 April 2005, the Regional Court granted the injunction on the ground that the first applicant had not consented to publication of the photos, which was a precondition under section 22 of the Copyright (Arts Domain) Act (hereafter "the Copyright Act" – see paragraph 70 below). The court stated, however, that even if consent were deemed unnecessary in the case of the first photo on the ground that it was an image from contemporary society (*Bildnis aus dem Bereich der*

Zeitgeschichte) within the meaning of section 23(1)(1) of the same Act, publication of the photo was not justified. Under subsection 2 of that provision, publication of such an image was only lawful if it did not interfere with a legitimate interest of the person photographed. According to the court, the question as to whether there was such a legitimate interest had to be determined by balancing the interests of the person photographed against those of the public in being informed.

23. The Regional Court found that in the present case it was the first applicant's right to the protection of her personality rights that prevailed. In reaching that conclusion the Regional Court referred extensively to the Court's judgment in *Von Hannover*. It found that the first applicant's relationship with her father, regardless of the fact that he was ill, did not contribute to a debate of general interest to society especially as the first applicant was connected to the prince of a State of minor importance in international politics merely through a family tie and did not exercise any official function.

24. The Regional Court stated that, whilst that reasoning was not entirely in keeping with the principles established by the Federal Constitutional Court, which did not recognise a legitimate interest unless the person photographed had retired to a secluded place away from the public eye, it was not bound by that precedent to the extent that it could not take into consideration the Court's case-law on the subject.

(ii) Judgment of the Court of Appeal of 31 January 2006

25. The publishing company appealed against that judgment.

26. In a judgment of 31 January 2006, the Hamburg Court of Appeal set aside the judgment on the ground that the applicant's right under Article 8 of the Convention had to yield to the fundamental rights of the press. It found that, whilst the articles were primarily of entertainment value, publication of the photos was nonetheless lawful in terms of the judgment of the Federal Constitutional Court of 15 December 1999 whose main legal reasoning (*tragende Erwägungen*) was binding on the Court of Appeal. It pointed out that public figures should certainly be protected from the risk of being photographed at any time and anywhere and seeing the photos subsequently published. However, in the Court of Appeal's opinion, the legitimate interest of such figures, within the meaning of section 23(2) of the Copyright Act, should not result in the prohibition of any reporting on well-known people outside their official appearances. In any event, the right to respect for private life did not require the banning of publication of photos taken in public places accessible to all and where the individual concerned was amongst many other people.

(iii) Judgment of the Federal Court of Justice of 6 March 2007

27. The first applicant appealed on points of law against that judgment.

28. In a judgment of 6 March 2007 (no. VI ZR 51/06), the Federal Court of Justice dismissed her appeal in respect of the first photo. With regard to the second and third photos, it upheld her appeal, quashed the judgment of the Court of Appeal and reinstated the injunction imposed by the Regional Court.

29. The Federal Court of Justice found that the opinion of the Court of Appeal did not correspond to the concept of graduated protection (*abgestuftes Schutzkonzept*) that had been developed in the case-law on the basis of sections 22 and 23 of the Copyright Act and which it had clarified in a number of recent decisions delivered following the *Von Hannover* judgment and in response to the reservations of principle which the Court had expressed in that judgment. According to that new concept of protection, section 23(1) of the Copyright Act, which provided for an exception to the rule according to which a photo could not be published without the prior consent of the person concerned, took account of the public's interest in being informed and of the freedom of the press. Accordingly, when assessing whether or not the impugned publication portrayed an aspect of contemporary society within the meaning of section 23(1)(1) of the Copyright Act, a balancing exercise had to be undertaken between the rights under Articles 1 § 1 and 2 § 1 of the Basic Law and Article 8 of the Convention on the one hand, and those under Article 5 § 1, second sentence, of the Basic Law and Article 10 of the Convention on the other hand.

30. The Federal Court of Justice added that the Court's criticism of the expression "figure of contemporary society *par excellence*" ultimately concerned the determination of the conditions in which the media could report on well-known people such as these. It considered that, irrespective of the issue whether the first applicant should be regarded as a figure of contemporary society *par excellence*, she was in any case a well-known person who particularly attracted public attention. In the court's view, that fact, combined with the fact that she had not been in a secluded place out of the public eye when the photos had been taken, was nonetheless insufficient to deprive her of protection of her private sphere. That conclusion was not only appropriate in the light of the Court's ruling but also reflected a proper understanding of the concept of protection thus developed.

31. Accordingly, the Federal Court of Justice found that the publication of images of persons who – on account of their importance in contemporary society – were in theory required, under section 23(1)(1) of the Copyright Act, to tolerate the publication of photos of themselves was nevertheless unlawful if the legitimate interests of the person concerned were infringed (section 23(2)). There could be no exception to the obligation to obtain the consent of the person in question unless the report in question concerned an important event of contemporary society. The expression "contemporary society" – and indeed the term "information value" – had to be interpreted

in a broad sense and according to whether there was a public interest. It comprised any matter of general interest to society and included reports for entertainment purposes, which could also play a role in the formation of opinions, or even stimulate or influence these to a greater degree than purely factual information.

32. Whilst the freedom of the press and the prohibition of censorship required the press to be able to decide for itself which subjects it intended to report on and what it intended to publish, the press was not exempt from the duty to weigh its interest in publishing the information against the protection of the privacy of the person concerned. The greater the information value for the general public, the more the right to protection had to yield. Conversely, where the interest in informing the public decreased, the importance of protecting the person concerned carried correspondingly greater weight. The reader's interest in being entertained generally carried less weight than that of protecting privacy, in which case the reader's interest did not merit protection.

33. The Federal Court of Justice stated 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.

34. The Federal Court of Justice 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).

35. The Federal Court of Justice 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.

36. Applying the criteria thus established to the case submitted to it, the Federal Court of Justice, beginning with the second and third photos, observed that the second photo showed the applicants in a busy street in St Moritz during their skiing holiday. Whilst the press could, as a matter of

principle, make its own decision regarding the content of its publications and the applicants had indeed been in a public place amongst other people, neither the article nor the photo related to an event of general interest or contemporary society. A celebrity's holidays fell within the core area (*Kernbereich*) of his or her private sphere. The publication of the article and photo had been for entertainment purposes only and was not in any way relevant to matters of public interest, so could only be done with the first applicant's consent.

37. The Federal Court of Justice noted that the third photo showed the applicants in a chair lift in Zürs during their skiing holiday. Whilst the Rose Ball shortly to be held in Monaco, which was the subject of the article accompanying the photo, could possibly be regarded as an event of contemporary society that was a matter of general interest to society, there was no link between the photo and that event. The purpose of the photo had been to supplement the part of the article about the second applicant's birthday party in St Moritz and the applicants' skiing holiday in Zürs. Thus the information centred exclusively on the first applicant's private life and served merely entertainment purposes. Accordingly, the third photo could not be published without the first applicant's consent either.

38. Regarding the first photo, the Federal Court of Justice observed that whilst it contained no information having any connection with an event of contemporary society or contributing to a debate of general interest, the same was not true of the accompanying text. Admittedly, the part about the first applicant's skiing holiday did not concern an event of contemporary society or general interest, even interpreting those terms broadly. However, with regard to the prince's health, the Federal Court of Justice found as follows:

> "The information also concerned the ill-health of the reigning Prince of Monaco. His ill-health was thus an event of contemporary society on which the press was entitled to report. The journalistic quality and the conception of the article are not decisive because the principle of the freedom of the press does not allow the applicability of a fundamental right to depend upon the quality of the press coverage or how the article is drafted. This also applies to the comments in the article on the conduct of members of the family during the prince's illness, and, moreover, the applicant has not complained about the article in that respect. The photo in question supports and illustrates the information being conveyed."

39. The Federal Court of Justice concluded that, in those circumstances and having regard to the context of the report as a whole, the first applicant had no legitimate interest that could have opposed publication of the photo of the applicants out in the street. There had, in particular, been nothing about the photo itself that constituted a violation (*eigenständiger Verletzungseffekt*) and thus justified a different conclusion; nor was there anything to suggest that the photo had been taken surreptitiously or by using secret technical devices that rendered its publication unlawful.

(iv) Judgment of the Federal Constitutional Court of 26 February 2008

40. In a judgment of 26 February 2008, the First Division (*Senat*) of the Federal Constitutional Court dismissed constitutional appeals lodged by the first applicant (no. 1 BvR 1626/07) and by the Ehrlich & Sohn GmbH & Co. KG publishing company (no. 1 BvR 1602/07) against the judgment of the Federal Court of Justice (no. VI ZR 51/06).

In the same judgment it allowed a constitutional appeal (no. 1 BvR 1606/07) lodged by the Klambt-Verlag GmbH & Co. publishing company against an injunction, imposed by the Federal Court of Justice (judgment of 6 March 2007, no. VI ZR 52/06), on any further publication of a photo that had appeared in *7 Tage* magazine showing the applicants on holiday in an unspecified location and accompanying a written and photographic report on the possibility of renting a holiday villa owned by the von Hannover family in Kenya. Those proceedings are the subject of a separate application by the first applicant to the Court (no. 8772/10).

41. The Federal Constitutional Court observed, firstly, that the court decisions constituted an interference with the first applicant's right to the protection of her personality rights guaranteed by Articles 1 § 1 and 2 § 1 of the Basic Law. There were limits on the protection afforded to that right and on the freedom of the press, however. The freedom of the press was subject to the restrictions laid down in sections 22 et seq. of the Copyright Act and Article 8 of the Convention, whilst the provisions of the Copyright Act and Article 10 of the Convention limited the right to the protection of personality rights. In the German legal order the Convention had the status of an ordinary federal law. At constitutional-law level, the rights and freedoms guaranteed by the Convention and the Court's case-law served as guides to interpretation when determining the content and scope of a fundamental right.

42. The Federal Constitutional Court reiterated the case-law of the Court regarding Articles 8 and 10 of the Convention and its own case-law on the different fundamental rights at stake by referring to the principles established in its leading judgment of 15 December 1999 (*Von Hannover*, cited above, § 25). It added that in so far as an image did not itself make any contribution to the formation of public opinion, its information value had to be assessed in the context of the accompanying article. However, if that article was merely a pretext for publishing a photo of a well-known person, no contribution was made to the formation of public opinion and there were therefore no grounds for allowing the interest in publication to prevail over the protection of personality rights.

43. The Federal Constitutional Court went on to say that, in order to determine the weight to be attached to the protection of personality rights, regard had to be had not only to the circumstances in which the photo had been taken, for example whether it had been taken surreptitiously or as a result of persistent hounding by photographers, but also to the situation in

which the person concerned had been photographed and how he or she was portrayed. The right to protection of personality rights thus carried more weight where the photo showed details of the person's private life that were not normally the subject of public discussion. The same was true where the person concerned could legitimately expect, having regard to the circumstances, that no photo would be published because he or she was in a private place (*räumliche Privatheit*), such as in a specially protected location. The right to protection of personality rights could also prevail over the interest in publication in cases other than those of spatial isolation, notably where the person concerned was pictured enjoying a moment of relaxation or letting go, freed from the constraints of professional or everyday life.

44. The Federal Constitutional Court stated that importance had to be attached in that connection to the allocation of procedural obligations regarding the presentation of the facts and the burden of proof. It had to be ensured that neither the press nor the person being photographed was prevented from adducing proof of circumstances relevant for the balancing of the competing interests. Where the press intended to publish a photo without the consent of the person concerned, it could be required to substantiate the circumstances in which the photo had been taken in order to allow the courts to examine the question whether publication of the photo could be opposed on grounds of the legitimate expectations of the person photographed.

45. The Federal Constitutional Court observed that it was the task of the civil courts to apply and interpret the provisions of civil law in the light of the fundamental rights at stake while having regard to the Convention. It added that its own role was limited to examining whether the lower courts had had sufficient regard to the impact of fundamental rights when interpreting and applying the law and when balancing the competing rights. Such was also the scope of the scrutiny of the Constitutional Court regarding the question whether the courts had fulfilled their obligation to incorporate the Court's relevant case-law into the national legal order (*Teilrechtsordnung*). The fact that the court's balancing exercise of the various rights in multi-polar disputes – that is, disputes involving the interests of several different persons – and complex ones could also result in a different outcome was not sufficient reason for requiring the Federal Constitutional Court to correct a court decision. However, there would be a violation of the Constitution if the protective scope (*Schutzbereich*) or extent of a fundamental right had been wrongly determined and the balancing exercise were accordingly flawed, or if the requirements under constitutional law or the Convention had not been duly taken into account.

46. Applying those principles to the case submitted to it, the Federal Constitutional Court observed that the Federal Court of Justice and the criteria it had established were constitutionally unobjectionable. It

considered in particular that nothing, from a constitutional-law perspective, had prevented the Federal Court of Justice from departing from its own established case-law in the field and developing a new concept of protection. The fact that it had not itself called into question, in its leading judgment of 15 December 1999, the former concept of protection established by the Federal Court of Justice merely meant that this had been in conformity with constitutional-law criteria. It did not mean, by extension, that a different concept could not meet those criteria. The Federal Court of Justice had not been prevented, in particular, from dispensing with the legal concept of "figure of contemporary society" and instead balancing the competing interests when examining the question whether a photo was an aspect of contemporary society and could accordingly be published without the consent of the person concerned (unless it interfered with a legitimate interest of the latter).

47. Applying the criteria thus established to the photos in question, starting with the second and third ones on which an injunction had been imposed by the courts and then challenged by the publishing company Ehrlich & Sohn (see paragraph 40 above), the Federal Constitutional Court noted that the Federal Court of Justice had had regard to the fact that the second photo showed the applicant in a public place which was neither isolated nor out of public view. It had attached decisive weight, however, to the fact that the article concerned only the applicant's skiing holiday, that is, a situation falling within the core area of private life and concerning the applicant's need for peace and quiet, and the consequent lack of public interest other than satisfying public curiosity. Contrary to the submissions of the publishing company, the readers' interest in the applicant's fashionable ski suit did not amount to a public interest. Moreover, that aspect had not been mentioned anywhere in the article.

48. In the opinion of the Federal Constitutional Court, the same conclusion had to be drawn with regard to the third photo whose publication had been challenged by the first applicant. There had been no public interest, beyond merely satisfying public curiosity, in the information contained in either the article commenting on the first applicant and her husband's trip to St Moritz to celebrate the latter's birthday or the photo showing them both in a chairlift. Whilst the article had also mentioned the Rose Ball – an event which, according to the Federal Court of Justice, could possibly be regarded as an aspect of contemporary society – no link had been made between that event and the photo.

49. With regard to the first photo, the Federal Constitutional Court found that the Federal Court of Justice had had valid grounds for considering that the reigning Prince of Monaco's ill-health was a matter of general interest and that the press had accordingly been entitled to report on the manner in which the prince's children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to

go on holiday. The conclusion reached by the Federal Court of Justice, according to which the photo that had been published had a sufficiently close link with the event described in the article, was constitutionally unobjectionable.

50. The Federal Constitutional Court pointed out that the Federal Court of Justice had indicated that the protection of personality rights could prevail in cases where the photo in question had been taken in conditions that were particularly unfavourable for the person concerned, for example where it had been taken surreptitiously or following continual harassment by photographers. However, the publishing company had given details about how the photo had been taken and the first applicant had not complained before the lower civil courts or the Federal Court of Justice that those details were insufficient. In particular, she had not alleged that the photo had been taken in conditions that were unfavourable to her.

51. The Federal Constitutional Court also dismissed the first applicant's allegation that the Federal Court of Justice had disregarded or taken insufficient account of the Court's case-law. Pointing out that a complaint of that nature could be raised in constitutional proceedings if it was based on a fundamental right guaranteed by the Basic Law, it observed that the Federal Court of Justice had taken account of the judgments delivered in *Von Hannover*, cited above, and *Karhuvaara and Iltalehti v. Finland* (no. 53678/00, ECHR 2004-X) and had not failed to comply with its obligation to satisfy the criteria established by the Convention. The Federal Constitutional Court had undertaken an analysis of the Court's relevant case-law and observed that the Court's decisive criterion when balancing the competing rights was the question whether the report in its entirety (article and photo) contributed to the free formation of public opinion. Furthermore, a distinction had to be drawn between political figures, public figures and ordinary individuals. Whilst the latter enjoyed the greatest protection of the three groups, political figures could expect only a small degree of protection from media reports about themselves.

52. According to the Court's case-law (*Gurguenidze v. Georgia*, no. 71678/01, § 57, 17 October 2006, and *Sciacca v. Italy*, no. 50774/99, § 27, ECHR 2005-I), the first applicant was a public figure, which allowed the press – where there was an interest in informing the public – to publish photos, even of the person going about his or her daily business in public. Publication of that sort, which, moreover, attracted the protection of Article 10 of the Convention, could serve to exercise public scrutiny over the private conduct of persons who were influential in the economic, cultural or media sectors. The Federal Constitutional Court pointed out that the Court had previously criticised the approach taken by domestic courts which had applied over-restrictive criteria to the question whether the media were or were not reporting matters of public interest when they reported on circumstances relating to the private life of a person who was not part of

political life (*Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 87, 1 March 2007). It was sufficient that the report concerned, at least to some degree, important matters relating to politics or another sphere (*Karhuvaara and Iltalehti*, cited above, § 45).

53. The Federal Constitutional Court concluded that the Federal Court of Justice had found in the present case that the report in question concerned important subjects in a democratic society. In its *Von Hannover* judgment, cited above, the Court had not categorically excluded the possibility that a report contributing to a debate about questions of interest to the public could be illustrated by photos showing a scene from the daily life of a political or public figure. Even though the Court had concluded in *Von Hannover* that the photos in question had not been of information value, the decision reached by the Federal Court of Justice – after assessing the circumstances of the case submitted to it and having regard to the Court's case-law – that the photo in question was of information value was constitutionally unobjectionable.

(b) The second set of proceedings

54. On an unspecified date, the first applicant sought an injunction in the Hamburg Regional Court against any further publication of the photo that had appeared in the magazine *Frau Aktuell*, issue no. 9/02 of 20 February 2002.

55. In a judgement of 1 July 2005, the Regional Court granted the applicant's request.

56. In a judgment of 13 December 2005, the Hamburg Court of Appeal allowed an appeal lodged by the publishing company and set aside the Regional Court's judgment.

57. In a judgment of 6 March 2007 (no. VI ZR 14/06), the Federal Court of Justice dismissed an appeal by the first applicant on the same grounds as those set out in its judgment of the same date (no. VI ZR 51/06 – see paragraphs 28-39 above). It stated that the first applicant had not argued before it – and nor was there anything to suggest – that the photo had been taken surreptitiously or with equivalent secret technical devices such as to render its publication unlawful.

58. In a decision of 16 June 2008 (no. 1 BvR 1625/07), a three-judge panel of the Federal Constitutional Court declined, without giving reasons, to entertain a constitutional appeal lodged by the first applicant.

2. The proceedings brought by the second applicant

(a) The first set of proceedings

59. On 30 November 2004 the second applicant sought an injunction in the Hamburg Regional Court against any further publication by the Ehrlich

& Sohn GmbH & Co. KG publishing company of the three photos that had appeared in the magazine *Frau im Spiegel*.

60. In a judgment of 1 July 2005, the Regional Court granted the injunction.

61. In a judgment of 31 January 2006, the Hamburg Court of Appeal allowed an appeal by the publishing company.

62. In a judgment of 6 March 2007 (no. VI ZR 50/06), the Federal Court of Justice dismissed an appeal on points of law by the second applicant in respect of the first photo. With regard to the second and third photos, it allowed the appeal, quashed the judgment of the Court of Appeal and reinstated the injunction imposed by the Regional Court. It based its conclusions on the same grounds as those set out in its judgment no. VI ZR 51/06 of the same day (see paragraphs 28-39 above). With regard to the second applicant's high profile, it upheld the opinion of the Court of Appeal that he was well known to the public, in particular as the husband of the first applicant who was especially the subject of public attention.

63. In a decision of 16 June 2008 (no. 1 BvR 1624/07), a three-judge panel of the Federal Constitutional Court declined, without giving reasons, to entertain a constitutional appeal lodged by the second applicant.

(b) The second set of proceedings

64. On 29 November 2004 the second applicant sought an injunction in the Hamburg Regional Court against any further publication by the WZV Westdeutsche Zeitschriftenverlag GmbH & Co KG publishing company of the photo that had appeared in the magazine *Frau Aktuell*.

65. In a judgment of 24 June 2005, the Regional Court granted the injunction.

66. In a judgment of 13 December 2005, the Hamburg Court of Appeal allowed an appeal by the publishing company.

67. In a judgment of 6 March 2007 (no. VI ZR 13/06), the Federal Court of Justice dismissed an appeal on points of law lodged by the second applicant on the same grounds as those set out in its judgment of the same date (no. VI ZR 14/06 – see paragraph 57 above).

68. In a decision of 16 June 2008 (no. 1 BvR 1622/07), a three-judge panel of the Federal Constitutional Court declined, without giving reasons, to entertain a constitutional appeal lodged by the second applicant.

II. RELEVANT DOMESTIC AND EUROPEAN LAW

A. The Basic Law

69. The relevant provisions of the Basic Law provide as follows.

Article 1 § 1

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

Article 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*]."

Article 5 §§ 1 and 2

"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 via the radio, television and cinema 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 to statutory provisions for the protection of young people and to the obligation to respect personal honour [*Recht der persönlichen Ehre*]."

B. The Copyright (Arts Domain) Act

70. Section 22(1) of the Copyright (Arts Domain) Act (*Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie*) provides that images can only be disseminated with the express consent of the person concerned. Section 23(1)(1) of the Act provides for exceptions to that rule, 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

71. The relevant passages of this Resolution, adopted by the Parliamentary Assembly of the Council of Europe on 26 June 1998, read 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 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 in 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.

..."

D. Resolution of the Committee of Ministers on the execution of the *Von Hannover* judgment (no. 59320/00) of 24 June 2004

72. The Resolution of the Committee of Ministers (CM/ResDH(2007)124), including the Appendix (extracts), adopted on 31 October 2007 at the 1007th meeting of the Ministers' Deputies, is worded as follows:

"The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter 'the Convention' and 'the Court');

Having regard to the judgments transmitted by the Court to the Committee once they had become final;

Recalling that the violation of the Convention found by the Court in this case concerns a breach of the right to respect for private life of the applicant, Princess Caroline von Hannover, the eldest daughter of Prince Rainier III of Monaco, on account of [the] German courts' refusal of her requests to prohibit publication of a series of photographs of her (see details in Appendix);

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with Germany's obligation under Article 46, paragraph 1, of the Convention to abide by the judgment;

Having examined the information provided by the government in accordance with the Committee's Rules for the application of Article 46, paragraph 2, of the Convention;

Having satisfied itself that, within the time-limit set, the respondent State paid the applicant the just satisfaction provided in the judgment (see details in Appendix);

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the judgment, the adoption by the respondent State, where appropriate, of

– individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and

– general measures, preventing similar violations;

DECLARES, having examined the measures taken by the respondent State (see Appendix), that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case and

DECIDES to close the examination of this case.

Appendix to Resolution CM/ResDH(2007)124

Information about the measures to comply with the judgment in the case of

...

I. Payment of just satisfaction and individual measures

...

b) Individual measures

Although it is possible under German law, the applicant did not take action to prevent further publication of the photographs in question after the European Court's judgment, but took action against a similar photograph (see under "General Measures", No. 4) below. According to information available to the Secretariat, the photographs at issue in the European Court's judgment have not been reprinted by the German press.

II. General measures

– Publication and dissemination of the judgment of the European Court: The judgment has been widely published and discussed by the German legal community. As is the case with all judgments of the European Court against Germany it is publicly available via the website of the Federal Ministry of Justice (www.bmj.de, *Themen: Menschenrechte*, EGMR) which provides a direct link to the Court's website for judgments in German (www.coe.int/T/D/Menschenrechtsgerichtshof/Dokumente_auf_Deutsch/). Furthermore, the judgment was disseminated by letter of the Government Agent to the courts and justice authorities concerned.

– Change of domestic case-law: When deciding upon similar cases, domestic courts have taken into account the judgment of the European Court, thus giving it direct effect in German law:

1) The partner of a famous singer successfully sued at the Berlin Court of Appeal (KG Urt. v. 29.10.2004, 9 W 128/04, *Neue Juristische Wochenschrift*, NJW, 2005, pp. 605-07).

2) The Convention's principles as set out in the European Court's judgments were also acknowledged, even though they were not directly relevant to the case, in a judgment of the Hamburg District Court forbidding commercial exploitation of the popularity of former Chancellor Schröder (AG Hamburg, Urt. v. 2.11.2004, 36A C 184/04, NJW-RR 2005, pp. 196-98).

3) On the basis of the judgment of the European Court, the German Federal Civil Court upheld a judgment allowing the publication of an article about fining the applicant's husband for speeding on a French motorway. The Court stated that the public had a justified interest in this information as it constitutes an offence, making this behaviour the topic of a public discussion (BGH, Urt. v. 15.11.2005, VI ZR 286/04, available via www.bundesgerichtshof.de).

4) Concerning the applicant herself, in July 2005, the regional court of Hamburg (*Landgericht*), referring to the judgment of the European Court, decided in favour of the applicant, prohibiting the publication of a photograph showing her together with her husband in a St Moritz street during a skiing holiday. However, in December 2005, the second instance (Appeal Court of Hamburg, *Oberlandesgericht*) reversed this decision, basing its judgment rather on the case-law of the German Federal Constitutional Court (*Bundesverfassungsgericht*). Upon revision to the Federal Civil Court (*Bundesgerichtshof*) sought by the applicant, the Federal Civil Court on 6 March 2007 decided that the photograph in question may be published. In its reasoning the domestic court, balancing the different interests at stake, explicitly took into account the Convention's requirements as set out in the European Court's judgment (BGH, Urt. v. 6.3.2007, VI ZR 14/06 available via www.bundesgerichtshof.de).

..."

THE LAW

I. DISJOINDER OF THE APPLICATIONS

73. The Court notes that before relinquishing jurisdiction in favour of the Grand Chamber the Chamber had joined the present applications to another application, *Axel Springer AG v. Germany* (no. 39954/08 – see paragraph 3 above). Having regard, however, to the nature of the facts and the substantive issues raised in these cases, the Grand Chamber considers it appropriate to disjoin application no. 39954/08 from the present applications.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

74. The applicants complained of the refusal by the German courts to grant an injunction against any further publication of the photo that had appeared on 20 February 2002 in the magazines *Frau im Spiegel*, issue no. 9/02, and *Frau aktuell*, issue no. 9/02. They alleged that there had been a violation of their right to respect for their private life, as guaranteed by Article 8 of the Convention, the relevant parts of which read as follows:

"1. Everyone has the right to respect for his private and family life ...

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 ... the protection of the rights and freedoms of others."

A. Admissibility

75. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It notes further that no other ground for declaring it inadmissible has been established and that it must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

76. The Government pointed out at the outset that there was no conflict between the Federal Constitutional Court and the Court. They observed that in its judgment of 14 October 2004 (*Görgülü* judgment – no. 2 BvR 1481/04, Reports of Judgments and Decisions of the Federal Constitutional Court no. 111, p. 307), the Federal Constitutional Court had stated that there were grounds for lodging a constitutional appeal before it where the domestic court had failed to take sufficient account of the Convention or of the Court's case-law. They pointed out that in the present cases the Federal Court of Justice and the Federal Constitutional Court had taken the Court's case-law into consideration, particularly the *Von Hannover* judgment. It could not therefore be alleged that there was an attitude of denial on the part of the German courts; on the contrary, they had granted far greater protection to personality rights than had been the case in the past.

77. The Government pointed out that the present applications related in essence to only one photo. In their submission, whilst it was true that the photos published on 20 February 2002, although not identical, were apparently part of the same series, the fact remained that from the point of view of an unbiased observer it was the same photographic representation of the applicants, albeit in a different size and format. The Government observed that in respect of the other photos examined in the judgment of the Federal Constitutional Court of 26 February 2008 either the Federal Court of Justice had upheld the injunction on their publication or they were the subject of a separate application before the Court. Other photos, mentioned by the applicants in their observations, could not be taken into consideration

by the Court as the relevant domestic proceedings had not yet been concluded.

78. The Government submitted that up until the *Von Hannover* judgment the German courts had used the hard and fast concept of "figure of contemporary society *par excellence*", which attracted only limited protection under German law. Following the *Von Hannover* judgment, the Federal Court of Justice had abandoned that concept and developed a new concept of (graduated) protection according to which it was henceforth necessary to show in respect of every photo why there was an interest in publishing it. Furthermore, under the new approach adopted by the Federal Court of Justice the balancing of competing interests consisted in determining whether the publication contributed to a public debate. The information value of the publication was of particular importance in that respect. In sum, the new case-law of the Federal Court of Justice, endorsed by the Federal Constitutional Court, afforded greater weight to the protection of personality rights, as evidenced by the fact that an injunction was imposed on publication of two of the initial three photos. Besides that, the photo in question and the articles accompanying it could be clearly differentiated from the photos and their commentaries that had been the subject of the *Von Hannover* judgment.

79. The Government contested the applicants' allegation that, according to the clear findings of the Court, the first applicant was a private individual. The Court had in several judgments referred to her as a public figure in order to differentiate her from a private individual (see *Gurguenidze v. Georgia*, no. 71678/01, § 40, 17 October 2006; *Sciacca v. Italy*, no. 50774/99, § 27, ECHR 2005-I; and *Reklos and Davourlis v. Greece*, no. 1234/05, § 38, 15 January 2009). In categorising the applicants as public figures the German courts had merely followed the Court's case-law. As a member of a reigning dynasty, the first applicant appeared in public at official functions in the Principality. Moreover, she was the Chair of the Princess Grace Foundation, whose activities had been published by the Monegasque authorities in the official yearbook of the Principality.

80. The Government pointed out that the applicants had not complained before the national courts about the circumstances in which the photos had been taken, although those were factors which, as a general rule, the courts duly took into account. In their submission, whilst the photos in question had certainly been taken without the knowledge or consent of the relevant parties, this did not mean that they had been taken surreptitiously or in conditions unfavourable to the applicants.

81. The Government argued that the special nature of certain cases, such as the present ones, in which the domestic courts were required to balance the rights and interests of two or more private individuals lay in the fact that the proceedings before the Court were in fact a continuation of the original legal action, with each party to the domestic proceedings potentially able to

apply to the Court. It was precisely for that reason that one result alone of the balancing exercise of the competing interests was insufficient, and that there should be a "corridor" of solutions within the confines of which the national courts should be allowed to give decisions in conformity with the Convention. Failing that, the Court would have to take the decision on every case itself, which could hardly be its role. Consequently, it should limit the scope of its scrutiny and intervene only where the domestic courts had not taken account of certain specific circumstances when undertaking the balancing exercise or where the result of that exercise was patently disproportionate (see, for example, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 111-20, ECHR 2004-XI). The Government argued that where the relationship between State and citizen was concerned, a gain of freedom for the individual concerned involved only a loss of competence for the State, whereas in the relationship between two citizens the fact of attaching more weight to the right of one of the persons concerned restricted the right of the others, which was forbidden under Article 53 of the Convention. The scope of the Court's scrutiny was accordingly reduced in such cases.

82. The Government highlighted the margin of appreciation enjoyed by the State in the present case. That margin depended on the nature of the activities in question and the aim pursued by the restrictions. In its recent case-law, the Court had moreover left the State a broad margin of appreciation in cases concerning Article 8 of the Convention (see *A. v. Norway*, no. 28070/06, § 66, 9 April 2009, and *Armonienė v. Lithuania*, no. 36919/02, § 38, 25 November 2008). Generally speaking, the margin enjoyed by the States was broader where there was no European consensus. In the Government's submission, whilst there was admittedly a trend towards harmonisation of the legal systems in Europe, differences nevertheless remained, as evidenced by the failure of the negotiations for the adoption of a regulation of the European Union on conflict-of-law rules regarding non-contractual obligations (Regulation EC No. 864/2007 of 11 July 2007 – Rome II Regulation). The margin of appreciation was also broad where the national authorities had to strike a balance between competing private and public interests or Convention rights (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 78, ECHR 2007-V, and *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I). Moreover, the case-law of the Court of Justice of the European Union apparently took the same approach (cases of *Schmidberger* of 12 June 2003, C-112/00, and *Omega* of 14 October 2004, C-36/02).

(b) The applicants

83. The applicants wished to stress the context of the present applications. Since the first applicant had lost her first husband in a tragic accident in 1985, the media had realised that the story of the widow and her

three young children would sell well and provided a lucrative market. Although it was illegal under the French Civil Code to take or publish such photos in France, the applicants had nonetheless been pursued by paparazzi who could sell the photos in other markets, particularly in Germany. Whereas the public had never heard of the second applicant before, he had also been pursued by paparazzi since his marriage to the first applicant and the birth of their child. In accordance with decisions of the German civil courts, upheld by the Federal Constitutional Court in 1999, the applicants had been able to oppose publication of such photos only where they were in a secluded location, out of public view. The applicants had constantly been aware of being observed, pursued and hounded and had therefore had high hopes after the adoption of the *Von Hannover* judgment, in which the Court had called into question the case-law of the domestic courts. They had accordingly brought six test cases regarding photos comparable to those that had been the subject of the *Von Hannover* judgment. It would appear that the German authorities had not been ready to follow that judgment, however. This was evidenced both by the statements of the Federal Minister of Justice and the German Chancellor at the time, according to which the Court's judgment was not binding on the German courts because the case-law of the Federal Constitutional Court was of higher ranking than the Convention, and by the opinions expressed by the respective reporting judges in the *Caroline von Hannover* cases before the Federal Constitutional Court in an interview and in a legal article published in 2004 and 2009 respectively.

84. Germany had categorically refused until now to execute the *Von Hannover* judgment, in breach of Article 46 of the Convention. Accordingly, in its *Görgülü* judgment the Federal Constitutional Court had observed that a blanket execution of the Court's judgments should be avoided. The Court of Appeal had clearly stated in the present case that the judgment of the Federal Constitutional Court of 1999 took precedence. The Federal Court of Justice and the Federal Constitutional Court, for their part, had circumvented the *Von Hannover* judgment and continued to rely on the concept of figure of contemporary society (*par excellence*) that had been called into question by the Court, by using the terms "prominent persons" or "high-profile persons", and referring – *de facto* – to the spatial-isolation factor by using the expression "moment of relaxation or letting go, freed from the constraints of professional or everyday life". The applicants continued to be the subject of press articles on their daily and private life and to be hounded by paparazzi, with the German courts doing nothing to put a stop to this. As it was impossible for them to know whether they were protected from harassment by paparazzi, they complained of an intolerable situation of legal insecurity and a considerable risk of litigation and costs resulting from that.

85. The applicants argued that none of the photos, whether considered alone or in the context of the written article, contributed to a debate of public interest in a democratic society. They served purely to satisfy the curiosity of a particular readership. How and where the applicants spent their holidays clearly did not concern any matter that materially affected the public. A walk by the applicants during their holiday was not an event of contemporary society, especially as it was not undertaken in the exercise of any official function.

86. The reference to Prince Rainier's long-term illness in the article accompanying the photos in question could not alter that finding. The article was not about whether the prince's illness prevented him from carrying out his sovereign tasks. There were only a few sentences informing the reader about his illness; the article was mainly about the private life of the applicants and other members of the prince's family. The prince's illness had been merely a pretext for extensive coverage of the applicants' private life. It was already doubtful whether publication of the photo of Prince Rainier with his daughter Stéphanie could be justified, so publication of the photo complained of in this case was clearly unjustified. Even if there was information value in the prince's illness, there was no genuine link between the applicants' skiing holiday and that illness. A simple article would, moreover, have sufficed to satisfy the public's interest.

87. The applicants submitted that there had been nothing unusual or reprehensible in their spending a few days on a skiing holiday with their daughter during the prince's illness, just like other families. That information was totally irrelevant to how the Principality of Monaco was governed. It was precisely when a family member was suffering from a long-term illness that the relatives needed special protection during the few days that they could relax. If a relative's poor health were sufficient grounds upon which to publish photos, the Article 8 guarantees would be undermined and the press could permanently report on the applicants' private life. Where the photos showed the applicants visiting the prince, the event of contemporary society would be the visit, and where they were elsewhere the event would be their absence. The German media had fully grasped this: they could enrich their articles with a few sentences to artificially generate information value.

88. The applicants complained of the absence of two important factors in the balancing exercise undertaken by the German courts. They argued that the courts had failed to have regard to the fact that they had never sought to publicise details of their private life in the media, but had always defended themselves against any illegal publication. They thus had a legitimate expectation that their private life would be protected. Moreover, unlike the Court, the German courts had not taken account of the fact that the applicants were being permanently observed and hounded by paparazzi and that the photos had been taken without their knowledge or consent.

Furthermore, the first applicant had not at any time been called to the throne of the Principality of Monaco: her father had still been alive when the photos were taken. On the latter's death, it was her brother Albert who had succeeded him to the throne.

89. The applicants submitted that since the *Von Hannover* judgment, in which the Court had clearly established the criteria that had to be met in cases of illegal publication of photos, the German authorities could no longer rely on a margin of appreciation. In their submission, a European consensus had emerged following the influence of that judgment as illustrated by the adoption of a Resolution by the Parliamentary Assembly in 1998. The differences that remained were merely in the nuances. The *Von Hannover* judgment was part of a line of established case-law and had subsequently been confirmed many times. The applicants expressed surprise, moreover, that the Court, as a supreme European court, should have less extensive powers of scrutiny than those exercised by the Federal Constitutional Court, which, in the proceedings in respect of the photo published in the magazine *7 Tage* (paragraph 40 above), had overridden the opinion of the eleven professional judges who had examined the case and substituted its own opinion down to the last detail.

2. Third parties' observations

(a) Association of German magazine editors

90. The third-party association observed that the *Von Hannover* judgment delivered by the Court had had considerable effects on the freedom of the press in Germany. Following that judgment, the German courts had attached much less weight to the freedom of the press than before. Their decisions had now fallen into line with the Court's case-law, to which they often referred moreover. The association submitted that the press, in its role of "public watchdog", had the task not only of watching over parliaments, governance and other political events, but also of observing public life in general whether in politics, the economy, the arts, the social sphere, sport or any other domain. Like members of other royal families, the first applicant had a function as a role model and was unquestionably a public figure. The third-party association pointed out that, since 2003, the first applicant had been a UNESCO Goodwill Ambassador, a title bestowed on famous persons such as Nelson Mandela, Claudia Cardinale or Pierre Cardin. The Court had, moreover, described the first applicant as a public figure in judgments delivered after the *Von Hannover* judgment. In the association's view, the protection of privacy had already been quite extensive before the *Von Hannover* judgment and that protection had subsequently been further extended. The German courts had not therefore exceeded their margin of appreciation. The standard as it existed in France could not constitute a model for Europe.

(b) Ehrlich & Sohn GmbH & Co KG publishing company

91. The third-party publishing company reiterated the importance of the freedom of the press in Germany, particularly having regard to the country's former National Socialist era. It observed that, in accordance with the settled case-law of the Federal Constitutional Court, the entertainment press also enjoyed the protection of press freedom. Moreover, as the daughter of the late sovereign prince of a European country, sister of the current sovereign prince and wife of the Head of a former German noble dynasty, the first applicant was undeniably a public figure who attracted attention, at least in Europe. The publishing company submitted, lastly, that following the *Von Hannover* judgment delivered by the Court in 2004, the German courts had departed from precedent by restricting the possibility of publishing photographs of persons taken outside official events and without the consent of the interested parties and had thus severely curtailed the freedom of information and of the press.

(c) Media Lawyers Association

92. The third-party association argued that Article 8 of the Convention did not create an image right or, moreover, a right to reputation. Publication of a person's photo did not, of itself, necessarily constitute an interference with the rights guaranteed under that provision. In determining whether there had been an interference, regard had to be had to all the circumstances and a certain level of seriousness was required. It was vital that media reporting upon all matters of public interest was strongly protected. In the Association's submission, whilst the Court had rightly held, in its *Von Hannover* judgment, that regard had to be had to the context in which a photo had been taken, it had gone too far in asserting – in error – that publication of any photo fell within the scope of Article 8. The Court had unfortunately confirmed that position in subsequent judgments. The association maintained that the correct approach was first to examine whether the photo that had been published did or did not fall within the private sphere. In that context consideration had to be given to whether the person concerned, having regard to all the circumstances, had a legitimate expectation of privacy. If not, that was the end of the matter as Article 8 of the Convention did not apply. If yes, the domestic courts had to balance competing rights – of equal status – under Articles 8 and 10 of the Convention, whilst taking account of all the circumstances of the case. The balancing exercise and the outcome were matters that fell within the margin of appreciation of the States. The Court should intervene only where the national authorities had failed to undertake a balancing exercise or where their decisions were unreasonable. Lastly, the decision whether to include a photo in a written report fell within the editor's discretion and judges could not substitute their own opinion.

(d) Joint submissions by the Media Legal Defence Initiative, International Press Institute and World Association of Newspapers and News Publishers

93. The three third-party associations submitted that a broad trend could be observed across the Contracting States towards the assimilation by the national courts of the principles and standards articulated by the Court relating to the balancing of the rights under Article 8 against those under Article 10 of the Convention, even if the individual weight given to a particular factor might vary from one State to another. They invited the Court to grant a broad margin of appreciation to the Contracting States, submitting that such was the thrust of Article 53 of the Convention. They referred to the Court's judgment in *Chassagnou and Others v. France* ([GC], nos. 25088/94, 28331/95 and 28443/95, § 113, ECHR 1999-III), submitting that the Court had indicated that it would allow the Contracting States a wide margin of appreciation in situations of competing interests. The Contracting States were likewise generally granted a wider margin in respect of positive obligations in relationships between private parties or other areas in which opinions within a democratic society might reasonably differ significantly (see *Fretté v. France*, no. 36515/97, § 41, ECHR 2002-I). The Court had, moreover, already allowed the Contracting States a broad margin of appreciation in a case concerning a balancing exercise in respect of rights under Articles 8 and 10 of the Convention (see *A. v. Norway*, cited above, § 66). Its role was precisely to confirm that the Contracting States had put in place a mechanism for the determination of a fair balance and whether particular factors taken into account by the national courts in striking such a balance were consistent with the Convention and its case-law. It should only intervene where the domestic courts had considered irrelevant factors to be significant or where the conclusions reached by the domestic courts were clearly arbitrary or summarily dismissive of the privacy or reputational interests at stake. Otherwise, it ran the risk of becoming a court of appeal for such cases.

3. The Court's assessment

(a) Scope of the application

94. The Court observes at the outset that it is not its task in the present case to examine whether Germany has satisfied its obligations under Article 46 of the Convention regarding execution of the *Von Hannover* judgment it delivered in 2004, as that task is the responsibility of the Committee of Ministers (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 61, ECHR 2009, and *Öcalan v. Turkey* (dec.), no. 5980/07, 6 July 2010). The present applications concern only new proceedings instituted by the applicants following the *Von*

Hannover judgment and relating to the publication of other photos of them (see paragraphs 15-20 above).

(b) General principles

(i) Concerning private life

95. The Court reiterates that the concept of private life extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral 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. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life. Publication of a photo may thus intrude upon a person's private life even where that person is a public figure (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002; *Von Hannover v. Germany*, no. 59320/00, §§ 50 and 53, ECHR 2004-VI; *Sciacca*, cited above, § 29; and *Petrina v. Romania*, no. 78060/01, § 27, 14 October 2008).

96. Regarding photos, the Court has stated that a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development. It mainly presupposes the individual's right to control the use of that image, including the right to refuse publication thereof (see *Reklos and Davourlis v. Greece*, cited above, § 40).

97. The Court also reiterates that, in certain circumstances, even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of and respect for his or her private life (see *Von Hannover*, cited above, § 51; *Leempoel & S.A. ED. Ciné Revue v. Belgium*, no. 64772/01, § 78, 9 November 2006; *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05, § 48, 4 June 2009; and *Hachette Filipacchi Associés (*ICI PARIS*) v. France*, no. 12268/03, § 53, 23 July 2009).

98. In cases of the type being examined here, what is in issue is not an act by the State but the alleged inadequacy of the protection afforded by the domestic courts to the applicants' private life. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91, and *Armonienė*, cited above, § 36). That also applies to the

protection of a person's picture against abuse by others (see *Schüssel*, cited above; *Von Hannover*, cited above, § 57; and *Reklos and Davourlis*, cited above, § 35).

99. The boundary between the State's positive and negative obligations under Article 8 does not lend itself to precise definition; the applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the relevant competing interests (see *White v. Sweden*, no. 42435/02, § 20, 19 September 2006, and *Gurguenidze*, cited above, § 38).

(ii) Concerning freedom of expression

100. The present applications require an examination of the fair balance that has to be struck between the applicants' right to respect for their private life and the right of the publishing company to freedom of expression guaranteed under Article 10 of the Convention. The Court therefore considers it useful to reiterate the general principles relating to the application of that provision as well.

101. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV; and *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

102. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 71, ECHR 2004-XI).

Furthermore, is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what

techniques of reporting should be adopted in a particular case (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Stoll v. Switzerland* [GC], no. 69698/01, § 146, ECHR 2007-V).

103. The Court reiterates, lastly, that freedom of expression includes the publication of photos (see *Österreichischer Rundfunk v. Austria* (dec.), no. 57597/00, 25 May 2004, and *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, §§ 29 and 40, 14 December 2006). This is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photos may contain very personal or even intimate information about an individual or his or her family (see *Von Hannover*, cited above, § 59; *Hachette Filipacchi Associés v. France*, no. 71111/01, § 42, 14 June 2007; and *Eerikäinen and Others v. Finland*, no. 3514/02, § 70, 10 February 2009).

Moreover, photos appearing in the "sensationalist" press or in "romance" magazines, which generally aim to satisfy the public's curiosity regarding the details of a person's strictly private life (see *Société Prisma Presse v. France* (dec.), nos. 66910/01 and 71612/01, 1 July 2003, and *Hachette Filipacchi Associés (*ICI PARIS*)*, cited above, § 40), are often taken in a climate of continual harassment which may induce in the person concerned a very strong sense of intrusion into their private life or even of persecution (see *Von Hannover*, cited above, § 59, and *Gurguenidze*, cited above, § 59).

(iii) Concerning the margin of appreciation

104. The Court reiterates that the choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation, whether the obligations on the State are positive or negative. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *X and Y v. the Netherlands*, cited above, § 24, and *Odièvre v. France* [GC], no. 42326/98, § 46, ECHR 2003-III).

Likewise, under Article 10 of the Convention, the Contracting States have a certain margin of appreciation in assessing whether and to what extent an interference with the freedom of expression protected by this provision is necessary (see *Tammer v. Estonia*, no. 41205/98, § 60, ECHR 2001-I, and *Pedersen and Baadsgaard*, cited above, § 68).

105. However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court (see, *mutatis mutandis*, *Peck v. the United Kingdom*, no. 44647/98, § 77, ECHR 2003-I, and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 38, ECHR 2004-X). In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole,

whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see *Petrenco v. Moldova*, no. 20928/05, § 54, 30 March 2010; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 41, 21 September 2010; and *Petrov v. Bulgaria* (dec.), no. 27103/04, 2 November 2010).

106. In cases such as the present one, which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the article, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect (see *Hachette Filipacchi Associés (*ICI PARIS*)*, cited above, § 41; *Timciuc v. Romania* (dec.), no. 28999/03, § 144, 12 October 2010; and *Mosley v. the United Kingdom*, no. 48009/08, § 111, 10 May 2011; see also point 11 of the Resolution of the Parliamentary Assembly – paragraph 71 above). Accordingly, the margin of appreciation should in theory be the same in both cases.

107. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, ECHR 2011).

(iv) The criteria relevant for the balancing exercise

108. Where the right to freedom of expression is being balanced against the right to respect for private life, the criteria laid down in the case-law that are relevant to the present case are set out below.

(α) Contribution to a debate of general interest

109. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest (see *Von Hannover*, cited above, § 60; *Leempoel & S.A. ED. Ciné Revue*, cited above, § 68; and *Standard Verlags GmbH*, cited above, § 46). The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes (see *White*, cited above, § 29; *Egeland and Hanseid v. Norway*, no. 34438/04, § 58, 16 April 2009; and *Leempoel & S.A. ED. Ciné Revue*, cited above, § 72), but also where it concerned sporting issues or performing artists (see *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, § 25, 22 February 2007; *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*,

nos. 11182/03 and 11319/03, § 28, 26 April 2007; and *Sapan v. Turkey*, no. 44102/04, § 34, 8 June 2010). However, the rumoured marital difficulties of the President of a country or the financial difficulties of a famous singer were not deemed to be matters of general interest (see *Standard Verlags GmbH*, cited above, § 52, and *Hachette Filipacchi Associés (*ICI PARIS*)*, cited above, § 43).

(β) How well known is the person concerned and what is the subject of the report?

110. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures (see *Minelli v. Switzerland* (dec.), no. 14991/02, 14 June 2005, and *Petrenco*, cited above, § 55). A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions (see *Von Hannover*, cited above, § 63, and *Standard Verlags GmbH*, cited above, § 47).

While in the former case the press exercises its role of "public watchdog" in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public's right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – despite the person concerned being well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person's private life and have the sole aim of satisfying public curiosity in that respect (see *Von Hannover*, cited above, § 65 with the references cited therein, and *Standard Verlags GmbH*, cited above, § 53; see also point 8 of the Resolution of the Parliamentary Assembly – paragraph 71 above). In the latter case, freedom of expression calls for a narrower interpretation (see *Von Hannover*, cited above, § 66; *Hachette Filipacchi Associés (*ICI PARIS*)*, cited above, § 40; and *MGN Limited*, cited above, § 143).

(γ) Prior conduct of the person concerned

111. The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration (see *Hachette Filipacchi Associés (*ICI PARIS*)*, cited above,

§§ 52-53, and *Sapan*, cited above, § 34). However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the photo at issue (see *Egeland and Hanseid*, cited above, § 62).

(δ) Content, form and consequences of the publication

112. The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration (see *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. v. Austria (no. 3)*, nos. 66298/01 and 15653/02, § 47, 13 December 2005; *Reklos and Davourlis*, cited above, § 42; and *Jokitaipale and Others v. Finland*, no. 43349/05, § 68, 6 April 2010). The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation (see *Karhuvaara and Iltalehti*, cited above, § 47, and *Gurguenidze*, cited above, § 55).

(ε) Circumstances in which the photos were taken

113. Lastly, the Court has already held that the context and circumstances in which the published photos were taken cannot be disregarded. In that connection regard must be had to whether the person photographed gave their consent to the taking of the photos and their publication (see *Gurguenidze*, cited above, § 56, and *Reklos and Davourlis*, cited above, § 41) or whether this was done without their knowledge or by subterfuge or other illicit means (see *Hachette Filipacchi Associés (*ICI PARIS*)*, cited above, § 47, and *Flinkkilä and Others v. Finland*, no. 25576/04, § 81, 6 April 2010). Regard must also be had to the nature or seriousness of the intrusion and the consequences of publication of the photo for the person concerned (see *Egeland and Hanseid*, cited above, § 61, and *Timciuc*, cited above, § 150). For a private individual, unknown to the public, the publication of a photo may amount to a more substantial interference than a written article (see *Eerikäinen and Others*, cited above, § 70, and *A. v. Norway*, cited above, § 72).

(c) Application of the principles to the present case

114. The Court takes note of the changes made by the Federal Court of Justice to its earlier case-law following the *Von Hannover* judgment. That court stated, *inter alia*, that in future importance had to be attached to whether the report in question contributed to a factual debate and whether its contents went beyond a mere desire to satisfy public curiosity. It observed in that connection 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 vice versa. Whilst pointing out that the freedom of expression also included the entertainment press, it stated that the reader's interest in being entertained generally carried less weight than the interest in protecting the private sphere.

115. The Federal Constitutional Court confirmed that approach, stating that whilst it had not, in its judgment of 15 December 1999, called into question the former case-law of the Federal Court of Justice, that did not mean that another concept of protection – giving greater weight to balancing the conflicting interests at stake when examining the question whether a photo could be regarded as an aspect of contemporary society and could accordingly be published without the consent of the person concerned – could not be in conformity with the Basic Law.

116. In so far as the applicants alleged that the new approach of the Federal Court of Justice and the Federal Constitutional Court merely reproduced the reasoning of the former case-law using different terms, the Court reiterates that its task is not to review the relevant domestic law and practice *in abstracto*, but to determine whether the manner in which they were applied to the applicants has infringed Article 8 of the Convention (see *Karhuvaara and Iltalehti*, cited above, § 49).

117. The Court observes that in applying its new approach the Federal Court of Justice found that as neither the part of the article accompanying the photos of the applicants' skiing holiday nor the photos themselves contained information related to an event of contemporary society, they did not contribute to a debate of general interest. The Federal Court of Justice found that the same could not be said, however, with regard to the information in the articles about the illness affecting Prince Rainier III, the reigning sovereign of the Principality of Monaco at the time, and the conduct of the members of his family during that illness. In the Federal Court of Justice's opinion, that subject qualified as an event of contemporary society on which the magazines were entitled to report, and which entitled them to include the photos in question in that report as these supported and illustrated the information being conveyed.

The Federal Constitutional Court, for its part, observed that the Federal Court of Justice had accepted that the reigning Prince of Monaco's illness could be regarded as a matter of general interest and that the press was therefore entitled to report on how the prince's children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to go on holiday. It also confirmed that there was a sufficiently close link between the photo and the event described in the article.

118. The Court observes that the fact that the Federal Court of Justice assessed the information value of the photo in question in the light of the accompanying article cannot be criticised under the Convention (see, *mutatis mutandis*, *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04,

§ 87, 1 March 2007, and *Österreichischer Rundfunk v. Austria*, no. 35841/02, §§ 68-69, 7 December 2006). Regarding the characterisation of Prince Rainier's illness as an event of contemporary society, the Court is of the opinion that, having regard to the reasons advanced by the German courts, that interpretation cannot be considered unreasonable (see, *mutatis mutandis*, *Editions Plon*, cited above, §§ 46-57). It is worth mentioning in this connection that the Federal Court of Justice upheld the injunction forbidding publication of two other photos showing the applicants in similar circumstances, precisely on the grounds that they were being published for entertainment purposes alone (see paragraphs 36-37 above). The Court can therefore accept that the photos in question, considered in the light of the accompanying articles, did contribute, at least to some degree, to a debate of general interest. It would reiterate, on this point, that not only does the press have the task of imparting information and ideas on all matters of public interest, the public also has a right to receive them (see paragraph 102 above).

119. In so far as the applicants complained of a risk that the media would circumvent the conditions laid down by the Federal Court of Justice by using any event of contemporary society as a pretext to justify the publication of photos of them, the Court notes that it is not its task, in the context of the present applications, to rule on the conformity with the Convention of any future publication of photos of the applicants. Should that happen, it will be open to them to bring proceedings in the appropriate national courts. The Court also observes that the Federal Constitutional Court stated in its judgment that where an article was merely a pretext for publishing a photo of a prominent person, no contribution was thereby made to the formation of public opinion and there were therefore no grounds for allowing the interest in publication to prevail over the protection of personality rights.

120. Admittedly, the Federal Court of Justice based its reasoning on the premise that the applicants were well-known public figures who particularly attracted public attention, without going into their reasons for reaching that conclusion. The Court considers, nonetheless, that irrespective of the question whether and to what extent the first applicant assumes official functions on behalf of the Principality of Monaco, it cannot be claimed that the applicants, who are undeniably very well known, are ordinary private individuals. They must, on the contrary, be regarded as public figures (see *Gurguenidze*, cited above, § 40; *Sciacca*, cited above, § 27; *Reklos and Davourlis*, cited above, § 38; and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 123, 13 January 2009).

121. The Federal Court of Justice then examined the question whether the photos had been taken in circumstances unfavourable to the applicants. The Government submitted that the fact that the photos had been taken without the applicants' knowledge did not necessarily mean that they had

been taken surreptitiously in conditions unfavourable to the applicants. The latter, for their part, alleged that the photos had been taken in a climate of general harassment with which they were constantly confronted.

122. The Court observes that the Federal Court of Justice concluded that the applicants had not adduced evidence of unfavourable circumstances in that connection and that there was nothing to indicate that the photos had been taken surreptitiously or by equivalent secret means such as to render their publication illegal. The Federal Constitutional Court, for its part, stated that the publishing company concerned had provided details of how the photo that had appeared in the *Frau im Spiegel* magazine had been taken, but that the first applicant had neither complained before the civil courts that those details were inadequate nor submitted that the photo in question had been taken in conditions that were unfavourable to her.

123. The Court observes that, according to the case-law of the German courts, the circumstances in which photos have been taken constitutes one of the factors that are normally examined when the competing interests are balanced against each other. In the present case it can be seen from the decisions of the national courts that this factor did not require a more thorough examination as the applicants did not put forward any relevant arguments and there were no particular circumstances justifying an injunction against publishing the photos. The Court notes, moreover, as pointed out by the Federal Court of Justice, that the photos of the applicants in the middle of a street in St Moritz in winter were not in themselves offensive to the point of justifying their prohibition.

(d) Conclusion

124. The Court observes that, in accordance with their case-law, the national courts carefully balanced the right of the publishing companies to freedom of expression against the right of the applicants to respect for their private life. In doing so, they attached fundamental importance to the question whether the photos, considered in the light of the accompanying articles, had contributed to a debate of general interest. They also examined the circumstances in which the photos had been taken.

125. The Court also observes that the national courts explicitly took account of the Court's relevant case-law. Whilst the Federal Court of Justice had changed its approach following the *Von Hannover* judgment, the Federal Constitutional Court, for its part, had not only confirmed that approach, but also undertaken a detailed analysis of the Court's case-law in response to the applicants' complaints that the Federal Court of Justice had disregarded the Convention and the Court's case-law.

126. In those circumstances, and having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, the Court concludes that the latter have not failed to comply with

their positive obligations under Article 8 of the Convention. Accordingly, there has not been a violation of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Disjoins* the application in the case of *Axel Springer AG v. Germany* (no. 39954/08) from the present applications;

2. *Declares* the present applications admissible;

3. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 February 2012.

Michael O'Boyle	Nicolas Bratza
Deputy Registrar	President