



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

FIFTH SECTION

DECISION

Applications nos. 68273/10 and 34194/11
Dorothea SIHLER-JAUCH against Germany
and Günther JAUCH against Germany

The European Court of Human Rights (Fifth Section), sitting on 24 May 2016 as a Chamber composed of:

Ganna Yudkivska, *President*,

Angelika Nußberger,

Erik Møse,

Faris Vehabović,

Yonko Grozev,

Síofra O'Leary,

Mārtiņš Mits, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above applications lodged on 16 November 2010 and 26 May 2011 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Ms Dorothea Sihler-Jauch, is a German national who was born in 1958. The applicant in the second case, Mr Günther Jauch, is a German national who was born in 1956. Both applicants live in Potsdam and were represented before the Court by Ms K. Schmitt, a lawyer practising in Berlin.

2. The second applicant is a well-known journalist, producer and television presenter. The television shows he was presenting at the relevant time included a political talk show and a news magazine.

A. The circumstances of the case

3. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background to the case

4. The applicants married in July 2006. The wedding reception was held in the Belvedere, an ancient palace surrounded by an English garden in Potsdam. The wedding ceremony took place in the Friedenskirche, also in Potsdam. Both locations are well-known tourist attractions and are generally open to the public.

5. Among the 180 wedding guests were well-known journalists, television presenters and sports personalities. The mayor of Berlin also attended the wedding.

6. Due to the anticipated media interest in the wedding, the applicants' legal representative had informed the relevant newspapers beforehand that the applicants did not wish any reports to appear containing details of the wedding. In addition, both locations were closed to the public and only invited guests were allowed inside.

7. On 13 July 2006 the magazine *Bunte*, a so-called "people's magazine" with a circulation of approximately 650,000, published an article about the wedding. The article was announced on the cover of the magazine and illustrated with several photographs. Besides photographs of wedding guests and old photographs of the applicants, one photograph showed the first applicant on her wedding day, taken before the wedding ceremony inside the restricted area. It was (erroneously) captioned "NEWLY WED Thea Sihler after the wedding vows" (*FRISCH GETRAUT Thea Sihler nach dem Jawort*). During the subsequent civil proceedings, the question of where the photograph of the first applicant had been taken from was a matter of contention. While the applicants asserted that it had been taken from outside the restricted area, through a hole in the wall – using a strong telephoto lens – the magazine maintained that they had no information regarding the photograph's provenance since it had been purchased from a stock photographic agency. They speculated, however, that it could just as easily have come from one of the accredited photographers, or from an invited guest, or from a member of staff.

8. The article itself informed the reader about the precautions taken by the applicants to prevent press coverage but also gave details about the wedding, including the nature of the catering, the drinks, the applicants' outfits, the music and the decoration of the church. The article also included quotes from the address given by the priest, and from the speeches of the second applicant and the first applicant's father, as well as an excerpt from an intercessory prayer recited by one of the applicants' children.

9. After publication of the article and at the request of the applicants, the magazine signed a cease and desist declaration regarding the further publication of a number of statements from the article outlining the details of the wedding. The magazine refused to sign such a declaration in respect of the above-mentioned photograph of the first applicant.

2. Proceedings instituted by the first applicant

10. On 1 August 2006 the Berlin Regional Court issued a cease and desist order in respect of further publication of the photograph of the first applicant on her wedding day.

11. The first applicant brought proceedings against the magazine, claiming EUR 250,000 as a notional licence fee, EUR 75,000 in damages and EUR 997.37 of pre-trial expenses for the cease and desist declaration.

12. On 11 January 2008 the Hamburg Regional Court reaffirmed the cease and desist order, awarded the applicant EUR 25,000 in damages and ordered the magazine to reimburse the pre-trial expenses.

13. The court held that the article concerned an event of public interest because the second applicant was one of the most famous and popular television presenters in Germany, who had a strong influence on shaping public opinion. His wedding was therefore anyway of public interest and even more especially so since the public were interested in knowing who had a sufficiently close relationship with him to be invited to attend his wedding. The latter point was of particular importance in terms of enabling the public to judge the second applicant's journalistic independence. The court also found that the chosen wedding locations increased the level of public interest in the wedding, since the two places were amongst Germany's most popular tourist attractions. The court found that neither the article nor the photograph showed the applicants in a negative light, nor were they in any way derogatory. Nor did the photograph touch on the core of the applicants' privacy, as it did not show the wedding ceremony itself. Nonetheless, the court found that publication thereof had not been justified by a legitimate interest as the first applicant had chosen to retreat to a secluded place, away from the public eye. Furthermore, the applicants had made clear their intention to prevent press coverage of their wedding by asking the press to refrain from reporting it and taking precautions to create a degree of seclusion by restricting access to the wedding location(s).

14. However, the court held that publication of the article alone – regardless of the accompanying photograph – constituted a serious enough violation of the first applicant's personality rights to justify damages. In particular the publication of core details of the wedding party and ceremony – such as quotes from the speeches, the range of drinks and food offered during the wedding and the choice of music – could not be justified by any public interest but rather constituted a voyeuristic intrusion into the applicants' privacy. Concerning the notional licence fee, the court held that

it could not be considered normal commercial practice to pay royalties to the subjects of a news report. Consequently the magazine had not saved royalties which they would normally have had to pay to the first applicant for publishing the report and the photograph.

15. On 21 October 2008 the Hamburg Court of Appeal set the Regional Court's judgment aside and dismissed the first applicant's action in its entirety. It confirmed the Regional Court's reasoning regarding public interest on the basis of the popularity of the wedding locations. It furthermore, and in particular, emphasised that, owing to the influence of the second applicant on public opinion and his role in presenting political television shows, the public had a legitimate interest in knowing who was invited to his wedding – including the mayor of Berlin – and to judge whether the public opinion presented by him was consistent with or contradictory to his real life. As the wedding was a shared event in the life of both the applicants, the first applicant was obliged to accept the public's interest in the life of the second applicant.

16. However, the court disagreed with the findings of the Regional Court concerning the level of interference with the first applicant's personality rights. It held that the details published about the wedding, such as information regarding drinks, food and music, were not core private issues but constituted information that was generally discussed and of interest in the context of a wedding. Furthermore, the court pointed out that it was normal practice and to be expected that, in the context of a wedding, photos would be taken by different people, whether invited guests or not. As the photo of the first applicant did not show her in a negative light and was not published on the front page of the magazine, its publication could be justified by public interest. Lastly, the Court of Appeal gave special consideration to the publication of quotes from the priest's address, the speeches of the second applicant and the first applicant's father, and an excerpt from an intercessory prayer recited by one of the applicants' children. It reasoned that this information was more intrusive than the rest of the published details. Nonetheless, even though the wedding was not open to the general public, around 180 guests had been invited, and they were not bound to confidentiality. As these guests were not all part of the core family, the speakers and the applicant had to accept that certain information would be communicated to persons who were not invited and to the general public. In conclusion it reasoned that the mere desire on the part of the applicants to have no press coverage could not outweigh the legitimate public interest in the wedding, the published details and the photograph.

17. The first applicant's complaint against the refusal of leave to appeal on points of law was rejected.

18. On 12 May 2010 the Federal Constitutional Court declined to admit the applicant's constitutional complaint, without providing reasons (1 BvR 760/10).

3. *Proceedings instituted by the second applicant*

19. The second applicant also brought proceedings against the magazine, claiming damages of at least EUR 25,000 and EUR 1057.69 in pre-trial expenses for the cease and desist declaration.

20. On 24 April 2009 the Hamburg Regional Court dismissed the second applicant's action. It endorsed the reasoning of the Hamburg Court of Appeal and quoted its judgment of 21 October 2008 at length.

21. The applicant's appeal and complaint against the denial of leave to appeal on points of law were rejected.

B. Relevant domestic law

22. Article 5 §§ 1 and 2 of the Basic Law (*Grundgesetz*) guarantee freedom of expression and the freedom of the press and provide that these freedoms are subject to the limitations laid down in the provisions of the general laws and in the statutory provisions for the protection of young people and are also subject to the obligation to respect personal honour (*Recht der persönlichen Ehre*).

23. 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 in cases where the images portray an aspect of contemporary society (*Bildnisse aus dem Bereich der Zeitgeschichte*) as long as publication does not interfere with a legitimate interest of the person concerned (section 23 § 2).

24. Article 823 § 1 of the Civil Code (*Bürgerliches Gesetzbuch*) provides that anyone who, intentionally or negligently, unlawfully infringes another's right to life, physical integrity, health, freedom, property or other similar right, shall be liable to furnish compensation for the resulting damage. Article 253 of the Civil Code stipulates that monetary compensation may be demanded in respect of non-pecuniary damage only in the circumstances provided for by law. These include an injury to a person's body, health, freedom or sexual self-determination.

COMPLAINTS

25. The applicants complained under Article 8 of the Convention that their privacy had been insufficiently protected by the domestic courts because their claims for damages had been denied.

26. The applicants also complained under Article 1 of Protocol No. 1 that they had not been paid a notional licence fee for the report of their wedding.

THE LAW

A. Joinder of the Applications

27. Having regard to the similar subject matter and factual background of the two applications, the Court finds it appropriate to examine them, in accordance with Rule 42 § 1 of the Rules of Court, jointly in a single decision.

B. Article 8

28. The applicants complained that the court's refusal to award damages violated their right to respect for private life. They relied on Article 8 of the Convention, the relevant parts of which provide:

Article 8

“Everyone has the right to respect for his private (...) life (...).

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 (...) for the protection of the rights and freedoms of others.”

29. The applicants argued in particular that by denying the applicants' claims for damages, the domestic courts had implicitly approved the article about their wedding. In acting thus, they had failed to fulfil their positive obligation to protect the applicants' privacy, since the balance struck by them had disproportionately favoured the press.

30. The Court firstly notes that in cases as the present one, 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. It reiterates that the positive obligation inherent to Article 8 may oblige the State to adopt measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The applicable principles are, nonetheless, similar and regard must be had to the fair balance that has to be struck between the relevant competing interests (see *Von Hannover*

v. *Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 98, 99, 7 February 2012, with further references).

31. Therefore, the Court considers that the present case requires an examination of the question of whether a fair balance has been struck between the applicants' right to the protection of their private life under Article 8 of the Convention and the magazine's right to freedom of expression as guaranteed by Article 10. Having considered on numerous previous occasions similar disputes requiring an examination of the issue of a fair balance, the Court refers to the general principles relating to each of the rights in question that have been established in its case-law (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83-92, 10 November 2015; *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-88, 7 February 2012; and *Von Hannover* (no. 2), cited above, §§ 95-107, 7 February 2012).

32. In cases such as the present one, where the national authorities had to balance two conflicting interests, and where the exercise of striking a balance between those two rights was undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court requires 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 *Von Hannover* (no. 2), cited above, § 107).

33. The Court has identified the following relevant criteria in the context of balancing competing rights: contribution to a debate of public interest, the degree to which the person affected is well-known, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication and, where appropriate, the circumstances in which the photographs were taken (see *Couderc and Hachette Filipacchi Associés*, § 93; *Axel Springer AG*, §§ 90-95; and *Von Hannover* (no. 2), §§ 109-113, all cited above).

34. Turning to the facts of the present case and applying the relevant criteria mentioned above, the Court finds that in the present case the criteria of contribution to a debate of general interest, the degree to which the person affected is well-known, and the subject of the article are all closely connected.

35. Regarding the degree to which the person concerned is well-known, the Court has previously stated that it is, in principle, primarily for the domestic courts to assess how well-known a person is, especially in cases where he or she is known primarily at national level (see *Axel Springer AG*, cited above, § 98). The Regional Court and the Court of Appeal stated in detail how well-known the second applicant was and for which different TV shows he was known. They also held that, since the wedding of the two applicants was a shared event, the degree to which the first applicant was well-known was derived from her partner in connection with this special occasion. Given the special circumstances of the case and the degree to

which the second applicant is well-known, the Court finds that there is nothing unreasonable about the domestic courts' findings in relation to both applicants.

36. The Court furthermore observes that the subject of the article was the applicants' wedding and readers were provided with a detailed description thereof. It notes that the domestic courts held that there existed a general public interest in the wedding itself and the associated detail, in particular the names of those who attended it, owing to the celebrity guest-list including the mayor of Berlin, the role of the second applicant in shaping public opinion, and the well-known wedding locations. The Court considers it useful to point out in this context that it has previously recognised the existence of a general public interest not only where the published item in question concerned a political issue or a crime, but also a sporting issue or a performing artist (see *Von Hannover (no. 2)*, cited above, § 109, with further references). Moreover, the Court has previously agreed that a wedding has a public side and an article about it may not have the sole aim of satisfying public curiosity (see *Lillo-Stenberg and Sæther v. Norway*, no. 13258/09, § 37, 16 January 2014). The Court therefore accepts that the wedding was of general interest and that the report contributed to a debate that was of public interest.

37. Concerning the prior conduct of the person concerned, the Court points out that the second applicant, who was himself a journalist and a television presenter, has already revealed aspects of himself to the public to a certain degree. However, the Court also observes that the applicants had asked the press beforehand not to report on the wedding and took precautions to prevent press coverage.

38. As far as the content and form of the published article is concerned, the Court observes that the magazine published information about the catering, the drinks, the applicants' outfits, the music, and the decoration of the church and also included quotes from speeches made by different individuals during the ceremony. However, the Court also notes that the applicants did not challenge the veracity of the information in the article, with the exception of the caption of the photograph of the first applicant that was published. Furthermore, the article did not portray the applicants in a negative light or contain anything unfavourable about them which could have damaged their reputation (compare *Lillo-Stenberg and Sæther*, cited above, § 41). Lastly, the Court observes that in the domestic proceedings it was unclear where the photograph of the first applicant originated. While the applicants maintained that it had been taken from outside the restricted area through a hole in the wall – using a powerful telephoto lens – the magazine stated that they had no information regarding the provenance of the photograph since it had been bought from a stock photographic agency. They speculated, however, that it could just as easily have come from one of the accredited photographers, or from an invited guest, or from a member of

staff. The domestic courts, however, did not determine this issue, since the photograph did not touch on the core of the applicants' privacy.

39. In conclusion, the Court finds that the national courts carefully balanced the applicants' right to respect for their private life with the magazine's right to freedom of expression and acknowledged the fundamental importance of the degree to which the second applicant was well-known, the level of interference, and the general public interest in the wedding. Having regard to the margin of appreciation enjoyed by the national courts, the Court concludes that there are no strong reasons to substitute its view for that of the domestic courts, and that, in denying the applicants' claims for damages, the latter did not fail to comply with their obligation to protect the applicants' right to respect for private life.

40. It follows that there is no appearance of a violation of Article 8 of the Convention. This part of the application is therefore inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

C. Article 1 of Protocol No. 1

41. The applicants also complained under Article 1 of Protocol No. 1 that the German courts had not protected their possessions since they had failed to award the applicants a notional licence fee for the report of their wedding.

42. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

43. It follows that this part of the applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 16 June 2016.

Claudia Westerdiek
Registrar

Ganna Yudkivska
President