



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

FOURTH SECTION

CASE OF BILD GMBH & CO. KG v. GERMANY

(Application no. 9602/18)

JUDGMENT

Art 10 • Freedom of expression • Injunction ordering news website company to cease publication of CCTV footage of a police arrest without blurring one of the faces of the police officers • Injunction related to two publications but also to any future publication of unedited footage regardless of accompanying coverage • Civil servants, including police officers, in absence of allegations of prior misconduct, not deprived of a legitimate interest in protecting their private life against, *inter alia*, falsely being portrayed as abusing their office • Albeit no general rule under Art 8 that police officers should generally not be recognisable in press publications, circumstances may exist in which the interest in the protection of an individual officer's private life prevailed • Domestic courts' balancing of competing Art 8 and 10 rights sufficient in respect of the first publication but not the second and any future publication • Particular significance attached to editorial presentation of the first publication • Failure to evaluate to what extent the image's publication could contribute to a public debate • General reasoning that any unpixellated coverage would be unlawful even if reflecting the police intervention's actual circumstances without depicting the police officer negatively, could lead to an unacceptable ban of any non-consensual future publication, of unedited images of police officers performing duties irrespective of public interest in use of force by police • Interference not "necessary in a democratic society"

STRASBOURG

31 October 2023

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

In the case of Bild GmbH & Co. KG v. Germany,

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

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Branko Lubarda,

Armen Harutyunyan,

Anja Seibert-Fohr,

Anne Louise Bormann, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 9602/18) 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 Bild GmbH & Co. KG, a limited liability company registered in Germany (“the applicant company”), on 16 February 2018;

the decision to give notice to the German Government (“the Government”) of the complaint under Article 10 of the Convention;

the observations submitted by the Government and the observations in reply submitted by the applicant company;

the comments submitted by the Helsinki Foundation for Human Rights, which was granted leave to intervene by the Vice-President of the Section;

Having deliberated in private on 10 October 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a court ruling ordering the applicant company to cease publication of CCTV footage of a police arrest without the face of one of the police officers involved being blurred. The applicant company complained under Article 10 of the Convention.

THE FACTS

2. The applicant company is a limited liability company with its registered office in Berlin. It was represented by Mr S. Aroukatos, a lawyer practising in Dresden.

3. The Government were represented by one of their Agents, Mr H.J. Behrens, of the Federal Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicant company owns and operates the news website bild.de. On 10 July 2013 an article was published on the website with the headline “Here the police beat up D. (28)”. The article referred to a police intervention

at a nightclub in Bremen on 23 June 2013. The police had been called because a customer, D., had been behaving aggressively towards a staff member.

6. Together with the article, the applicant company published CCTV footage it had obtained from the club owner. The video showed several police officers standing around D. and bringing him down to the ground by force. One of the officers could be seen hitting D. with a police baton and kicking him while he was already immobilised on the floor. The video featured a voice-over, which included the following:

“Shocking footage from a security camera. Four police officers force D. to the ground at the Bremen nightclub Gleis 9. The man is defenceless. Yet for one officer that clearly isn’t enough. He kicks the family man several times and hits him with his baton, again and again. This CCTV footage shows clearly how brutally the Bremen police deal with a supposed troublemaker. D. had allegedly been causing trouble and swearing. ...”

7. On 12 July 2013 the applicant company published a second article with the headline “How the night of the beating unfolded (*Protokoll der Prügel-Nacht*)”. Together with the article the applicant company published additional CCTV footage, depicting D.’s actions before the arrival of the police. The video shows D. throwing flyers at a staff member and making an aggressive gesture.

8. Subsequently, the story was picked up by several national newspapers.

9. P. was one of the police officers involved in D.’s arrest. The CCTV footage showed him assisting his fellow officers in bringing D. down to the ground. His face was clearly visible for several seconds. However, the video gave no indication that P. had used excessive force during the arrest.

10. On 18 July 2013 P.’s lawyer requested that the applicant company cease publication of the CCTV footage without his client’s face being blurred. When the applicant company refused, P. lodged a claim with the Oldenburg Regional Court. In addition to the injunction to cease publication of the unpixelated surveillance video, P. requested that the court find that the applicant company had to reimburse him for all damage he had sustained and might sustain in the future as a result of the publications. At the request of the court, he expanded on his submission, stating that on several occasions he had been confronted with critical comments about the documented incident by members of the public and by his children. A hearing was held on 12 March 2014.

11. On 14 May 2014 the Regional Court ordered the applicant company to cease publication of the CCTV footage without P.’s face being blurred, while dismissing the remainder of P.’s claim. Referring to Articles 823 and 1004 of the Civil Code and sections 22(1) and 23 of the Copyright (Arts Domain) Act (see paragraphs 15-19 below), the court found, at the outset, that the CCTV footage showed P. in his official capacity as a police officer using force and thus portrayed an aspect of contemporary society (*Bildnis aus dem Bereich der Zeitgeschichte*). It further pointed out that the authenticity of the footage had never been questioned. The Regional Court emphasised

that the publications concerned the State's monopoly on the use of force, a subject of fundamental importance to public discourse. However, in balancing the competing rights, the court considered that the publications violated P.'s personality rights. Referring to the Court's case-law, it observed that P. had not sought public attention and had been unknown to the public prior to the police intervention. While he had been aware of the surveillance cameras, the recording had been made without his consent during the performance of his professional duties. The court further referred to P.'s statement regarding the consequences of the publications (see paragraph 10 above). Furthermore, it noted that the public interest primarily concerned the actions of the police as an institution and not P. as an individual. Regarding the editorial presentation, the court found that the voice-over (see paragraph 6 above) further aggravated the infringement of P.'s rights and had the effect of depicting him as a violent thug. In addition, the court placed particular emphasis on the fact that the first video published by the applicant company had only shown the arrest itself, while omitting D.'s prior actions which had led to the police intervention. The court considered that the applicant company had deliberately omitted this part of the CCTV footage, since it did not fit with its preferred interpretation of the event.

12. The applicant company appealed against the Regional Court's decision. On 27 May 2015 the Oldenburg Court of Appeal stated that it intended to dismiss the appeal without a hearing on the grounds that it lacked any prospect of success. It confirmed the Regional Court's finding that the footage portrayed an aspect of contemporary society, but similarly found that the use of the unpixelated image of P. had violated his personality rights. In that connection, the court found that the presumption of innocence demanded a cautious or at the very least balanced coverage of the events in question. It further confirmed the first-instance court's argument that the applicant company had initially released footage that had solely depicted the police intervention and not D.'s prior actions and emphasised that the CCTV footage had to be examined within the context of the accompanying commentary.

13. After affording the parties an opportunity to provide their comments, on 21 July 2015 the Court of Appeal dismissed the applicant company's appeal. It further expounded its position that publication of the unedited CCTV footage without P.'s consent would violate his rights, stating:

“In other words, any unpixelated depiction was unlawful; the accompanying textual coverage might change the context, but was not decisive in the present case.

If future reporting were to portray the claimant in a negative light, suggesting criminal responsibility, pixelation would be necessary for the reasons put forward by the Regional Court. Similarly, if the coverage were to be positive from the claimant's perspective – that is, reflecting the actual circumstances – pixelation would also be necessary, since the footage could no longer be considered to be portraying an aspect of contemporary society but only a routine and everyday police intervention.”

14. By a decision of 3 August 2017, the Federal Constitutional Court declined to accept a constitutional complaint by the applicant company for adjudication, without providing reasons.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CIVIL CODE

15. Article 823 § 1 of the Civil Code (*Bürgerliches Gesetzbuch*) provides that anyone who, acting intentionally or negligently, unlawfully violates the life, physical integrity, health, liberty, property or similar rights of others is required to afford redress for any damage arising in consequence.

16. Under Article 1004 of the Civil Code, where another person's property is damaged otherwise than by removal or illegal retention, the owner may require the perpetrator to cease the interference. If there are reasonable fears that further damage will be inflicted, the owner may seek an injunction.

17. A person's personality rights enjoy the protection of Article 2 § 1 and Article 1 § 1 of the Basic Law (*Grundgesetz*), and are therefore recognised as "another similar right" within the meaning of Article 823 § 1 of the Civil Code (see Federal Court of Justice, no. I ZR 211/53, judgment of 25 May 1954). Furthermore, the scope of Article 1004 of the Civil Code has been extended by the Federal Court of Justice and the provision is applicable to violations of other rights protected by Article 823 of the Civil Code. Thus, it also protects a person's right to reputation and to protection of his personality (see, for example, Federal Court of Justice, no. VI ZR 340/14, judgment of 28 July 2015).

II. THE COPYRIGHT (ARTS DOMAIN) ACT

18. 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, on condition that publication does not interfere with a legitimate interest of the person concerned (section 23(2)).

19. According to the established case-law of the Federal Court of Justice, images portraying an aspect of contemporary society are not limited to events of historical-political importance, but rather encompass all sorts of current affairs and thus all questions of general public interest (see, for example, Federal Court of Justice, no. VI ZR 67/08, judgment of 1 July 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant company complained that the injunction to cease publication of the CCTV footage without P.'s face being pixelated had violated its freedom of expression under Article 10 of the Convention, the relevant parts of which read:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ... or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

22. The applicant company rejected the domestic courts' argument that showing P.'s likeness had not been necessary in order to inform the public. It argued that the way in which the CCTV footage had been published concerned an editorial choice which fell to itself. It further criticised the Court of Appeal's position (see paragraph 13 above) that critical coverage of the police intervention required pixelating P.'s face owing to the negative impact it might have on his reputation, whereas positive coverage meant that the video-footage only depicted an everyday occurrence and could only be published with P.'s consent. In the applicant company's view, this meant that any publication showing photographs of police officers in the performance of their duties risked being subject to a ban. The courts had thus in a general manner given precedence to the police officers' personality rights over the right to freedom of expression of the press and the public's right to be informed. Lastly, the applicant company stressed that while P. had been identifiable on the basis of the CCTV footage, his identity had never been divulged to the public.

(b) The Government

23. The Government argued that disclosing P.'s identity had not been necessary in order to attain the relevant journalistic goals. Using the unpixelated footage had not lent additional credibility to the applicant company's coverage of the police intervention or provided any relevant additional information to the public. Furthermore, the domestic courts had correctly pointed out that the first video the applicant company had published had provided the public with an incomplete version of events at the nightclub. The Government further confirmed the Court of Appeal's legal standpoint that, owing to the nature of the video material, publication of the CCTV footage without P.'s face being pixelated would violate his personality rights regardless of the accompanying coverage. It found that P. could not be expected to constantly monitor whether the applicant company had republished the video material and then initiate a new set of court proceedings if the coverage was slightly different. Lastly, with regard to the severity of the sanction, the Government emphasised that the domestic courts' decisions had not resulted in a general prohibition on publishing the CCTV footage, but had only ordered that publication without P.'s face being blurred should cease.

2. The third-party intervener's submissions

24. The Helsinki Foundation for Human Rights argued that law-enforcement officers who were involved in alleged malpractice while exercising their official functions in public places should be regarded as "persons acting in a public context" or "newsworthy figures" within the meaning of the Court's case-law. Since their particular powers were inherently linked to a risk of abuse, the filming of law-enforcement officers acting in their official capacity and the publication of the footage of the alleged malpractice, with images of recognisable officers involved in such actions, constituted a vital element of the system of adequate safeguards against arbitrariness and abuse of force.

3. The Court's assessment

25. Neither party disputed that the domestic courts' order that publication of the unedited CCTV footage should cease constituted an interference by the State with the applicant company's right to freedom of expression. The Court further notes that the interference was prescribed by law – namely, by Articles 823 and 1004 of the Civil Code (see paragraphs 15-17 above) – and that it pursued the legitimate aim of protecting the rights of others.

26. It therefore remains to be determined whether the interference was "necessary in a democratic society".

(a) General principles

27. The general principles concerning the question whether an interference is “necessary in a democratic society” are well established in the Court’s case-law and have recently been summarised in *NIT S.R.L. v. the Republic of Moldova* ([GC], no. 28470/12, § 177, 5 April 2022). The general principles applicable to cases in which the right to freedom of expression under Article 10 of the Convention has to be balanced against the right to respect for private life under Article 8 of the Convention were set out by the Grand Chamber in *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 78-95, ECHR 2012) and *Von Hannover v. Germany (no. 2)* ([GC], nos. 40660/08 and 60641/08, §§ 95-113, ECHR 2012). Notably, the Court has identified a number of criteria, including: contribution to a debate of public interest, how well known the person affected is, the prior conduct of the person concerned, and the content, form and consequences of the publication. Where it examines an application lodged under Article 10, the Court will also examine the way in which the information was obtained and its veracity, and the gravity of the penalty imposed on the journalists or publishers. 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 *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 92-93, ECHR 2015 (extracts), with further references).

28. With respect to audiovisual media, the Court has held that the task of service providers to impart information necessarily includes “duties and responsibilities”, as well as limits which the media must impose on itself spontaneously, and that wherever information bringing into play the image of a person is at stake, journalists are required to take into account, in so far as possible, the impact of the information, pictures or video recordings to be published prior to their dissemination (see *I.V.Ț. v. Romania*, no. 35582/15, § 48, 1 March 2022, with further reference). Where the “duties and responsibilities” of journalists are concerned, the potential impact of the medium of expression involved is an important factor in assessing the proportionality of the interference. In this context, the Court has acknowledged that account must be taken of the fact that the audiovisual media have a more immediate and powerful effect than the print media. The former have means of conveying through images meanings which the print media are not able to impart (see *NIT S.R.L.*, cited above, § 182, with further references). This applies *a fortiori* to publications on the Internet, since the capacity to store and transmit information, and the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms – particularly the right to respect for private life – is certainly higher than that posed by the press (see, for instance,

M.L. and W.W. v. Germany, nos. 60798/10 and 65599/10, § 91, 28 June 2018, and the cases cited therein).

29. The concept of private life includes elements relating to a person's right to his or her image, and the publication of a photograph falls within the scope of private life. 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 of each person to the protection of his or her image is thus one of the essential components of personal development and presupposes the right to control the use of that image. Whilst in most cases the right to control such use involves the possibility for an individual to refuse publication of his or her image, it also covers the individual's right to object to the recording, conservation and reproduction of the image by another person (see, for instance, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 89, 17 October 2019, with further references).

30. In assessing the relevance and sufficiency of the national courts' findings, the Court, in accordance with the principle of subsidiarity, takes into account the extent to which those courts balanced the conflicting rights involved in the case, in the light of the Court's established case-law in the relevant area. The Court emphasises that the quality of the judicial examination regarding the necessity of the measure is of particular importance in the context of assessing the proportionality under Article 10 of the Convention. Thus, the absence of an effective judicial review may justify a finding of a violation of Article 10 (see *Pretorian v. Romania*, no. 45014/16, § 60, 24 May 2022, with further references).

(b) Application of these principles to the present case

(i) Contribution of the publications to a debate of public interest

31. The Court notes that the Regional Court found that the CCTV footage portrayed an aspect of contemporary society and expressly acknowledged the importance of the news media in covering the use of force by police officers (see paragraph 11 above). It recognised that the use of force by State agents was inherently a matter of public interest (see paragraph 11 above). The Court of Appeal confirmed that finding, stating that the footage portrayed an aspect of contemporary society (see paragraph 12 above). In balancing the competing interests regarding the recognisability of P. in the video-footage, the Regional Court noted that the public interest primarily concerned the actions of the police as an institution and not P. as an individual (see paragraph 11 above). Taking into account that the court's decision related specifically to the blurring of P.'s face (compare *Bremner v. Turkey*, no. 37428/06, §§ 80-81, 13 October 2015) and that he had not been alleged to have abused his powers or otherwise to have engaged in illegal misconduct, the Court accepts the Regional Court's findings in this respect.

(ii) How well known the person concerned was and his prior conduct

32. With regard to how well known P. was and his prior conduct, the domestic courts noted that he was not a public figure and had never sought public attention (see paragraph 11 above). In this connection, the Court reiterates that a distinction has to be made between persons acting in a public context, as political or public figures, and a private individual unknown to the public who may claim particular protection of his or her right to private life (see *Von Hannover (no. 2)*, cited above, § 110). Beyond political figures, the status of public figure may be applied to any persons who, through their acts or their position, have entered the public arena (see *Kapsis and Danikas v. Greece*, no. 52137/12, § 35, 19 January 2017, with further references). Since P. acted in his capacity as a police officer, not seeking public attention, there is no indication that he could be considered a public figure in this sense.

33. Turning to the argument put forward by the third party regarding law-enforcement officers exercising their official functions (see paragraph 24 above), the Court would reiterate that it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions (see *Milosavljević v. Serbia*, no. 57574/14, § 60, 25 May 2021, and *Stancu and Others v. Romania*, no. 22953/16, § 116, 18 October 2022, the latter concerning criticism levelled against a public prosecutor). Nevertheless, the Court has recognised that in some circumstances, civil servants, when acting in an official capacity, are subject to wider limits of acceptable criticism than private individuals (see *Stancu and Others*, §§ 114-15, cited above; see also *Chkhartishvili v. Georgia*, no. 31349/20, § 56, 11 May 2023). This is the case, for example, in the case of alleged misconduct.

34. Turning to the present case, the Court observes that the CCTV footage published by the applicant company showed P. in his official capacity as a police officer during a police intervention which involved the use of force (see paragraphs 6 and 9 above). While the Court is mindful that police brutality is a matter of serious public concern and that the press has a vital interest in bringing such allegations to the public's attention (see *Dyundin v. Russia*, no. 37406/03, § 33, 14 October 2008; for the relevance of the presumption of innocence when determining the necessity of an interference with the exercise of freedom of expression, see *Axel Springer SE and RTL Television GmbH v. Germany*, no. 51405/12, § 42, 21 September 2017), the Court notes that in the present case the applicant company did not argue that P. had been involved in any kind of misconduct.

35. The Court considers that, while in some circumstances civil servants may be subject to wider limits of acceptable criticism than ordinary citizens, in the absence of allegations of prior misconduct they are not deprived of a legitimate interest in protecting their private life against, *inter alia*, falsely being portrayed as abusing their office. This also applies to police officers.

Moreover, the Court observes that, whereas there is no general rule under Article 8 of the Convention requiring that police officers should generally not be recognisable in press publications, there may be circumstances in which the interest of the individual officer in the protection of his or her private life prevails. This would be the case, for example, if publication of the image of a recognisable officer, irrespective of any misconduct, is likely to lead to specific adverse consequences in his or her private or family life. Therefore, domestic courts are called upon to balance the competing rights, taking into account the circumstances of the individual case, including the content of the coverage and its consequences for the person concerned (see paragraphs 36 et seq. below).

(iii) Method of obtaining the information and its veracity

36. The applicant company had obtained the CCTV footage from the owner of the nightclub (see paragraph 6 above). As set out by the Regional Court, the material was filmed in a public place and its authenticity had never been questioned (see paragraph 11 above). In addition, while P. did not choose to be recorded, the Court notes that the present case does not concern the use of hidden cameras (compare and contrast *Bremner*, cited above, § 76, and *Alpha Doryforiki Tilerasi Anonymi Etairia v. Greece*, no. 72562/10, §§ 59-69, 22 February 2018).

(iv) Content and form of the publication

37. In their decisions, the domestic courts attached particular significance to the editorial presentation of the video-footage. In this connection, the Regional Court emphasised that the commentary portrayed P. as a violent thug in the eyes of the public (see paragraph 11 above) and the Court of Appeal pointed out that the publication of the CCTV footage had to be seen in the context with the accompanying voice-over (see paragraph 12 above). Furthermore, the domestic courts emphasised that the video which the applicant company had first published had only shown the police intervention but had omitted D.'s actions which had led to the police being called and that this had been done with the intention of amplifying the impression of an unnecessary use of force by the police in the viewers' mind (see paragraphs 11-12 above).

38. The Court would begin by observing that the scope of coverage and the technique of reporting a given subject is a matter of journalistic freedom. It is neither for the Court nor for the domestic courts to substitute their own views for those of the press in this area. This freedom, however, is not devoid of responsibilities. The choices that journalists make in this regard must be based on their profession's ethical rules and codes of conduct (see *Couderc and Hachette Filipacchi Associés*, cited above, §§ 138-39, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 186,

27 June 2017). Furthermore, the Court does not fail to recognise that the right to private life, as protected under Article 8 of the Convention, may make it necessary to impose on press organs an obligation to blur the image of an individual depicted in its publication (see, for example, *Bremner*, cited above, §§ 80-85, and, *mutatis mutandis*, *Haldimann and Others v. Switzerland*, no. 21830/09, §§ 65-66, ECHR 2015).

39. That being said, the Court can agree with the domestic courts' starting-point that the omission of certain parts of the CCTV footage and the content of the voice-over accompanying the video were factors to be taken into consideration when balancing the competing rights of the applicant company and P. (compare *Axel Springer AG*, cited above, § 94, and *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria (no. 3)*, nos. 66298/01 and 15653/02, §§ 46-47, 13 December 2005).

40. However, the argument regarding the shortened version of the video-footage applies only to the first publication. The video-footage published with the second article two days later was longer and did depict D.'s aggressive behaviour towards the staff at the nightclub (see paragraph 7 above).

41. Crucially, the Court notes that, on the one hand, not only was the injunction related to both previous publications but also to any future publication of the unpixelated CCTV footage and, on the other hand, the arguments linked to the voice-over are not such as to support the domestic courts' decisions ordering the applicant company to cease publication of the unedited video-footage, regardless of the accompanying coverage.

42. The Court observes in this connection that the Court of Appeal explained the injunction against any future unedited CCTV footage by referring to the need for P.'s prior consent under section 22(1) of the Copyright (Arts Domain) Act (see paragraph 18 above), even if he were to be portrayed in a more positive light than in the previous publication. With positive coverage, the footage could no longer be considered to be portraying an aspect of contemporary society (see paragraph 13 above). The Court cannot accept such general reasoning. The mere fact that the use of force by the police is not portrayed in a negative way does not mean that its coverage in the media should cease to enjoy any protection. Taking into account the public interest in the coverage of the use of force by State agents (see paragraph 31 above and the case-law quoted in paragraph 34 above) and the potentially dissuasive effect that the obligation to blur the images of police officers involved in an operation would have on the exercise of the applicant company's right to freedom of expression (see paragraph 44 below), there is a need to balance the competing rights involved (see paragraph 35 above), which in the present case the domestic courts failed to do in respect of any future unedited CCTV footage.

(v) Consequences of the publication

43. The Court reiterates that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see, for instance, *M.L. and W.W. v. Germany*, cited above, § 91, and the cases cited therein). The Court notes in this connection that the Regional Court further justified the injunction against publication of the unedited CCTV footage on the basis of the personal consequences of the publications as put forward by P. (see paragraphs 10 and 11 above). The Court recognises that P., when requested by that court to expand on his submission, stated that he had been confronted with critical comments about the documented incident by members of the public and by his children. While this concerned the previous publications, the domestic courts, however, failed to examine to what extent any future publication of the unedited CCTV footage – regardless of the accompanying coverage – would lead to similarly negative consequences justifying an obligation to pixelate P.'s image.

(vi) Severity of the restriction imposed

44. Regarding the severity of the order imposed on the applicant company, the Court notes that the applicant company was not prohibited from reporting on the police intervention in question and, provided it adhered to the domestic courts' rulings, could still make use of the edited CCTV footage to illustrate its reporting (see paragraph 11 above). While the order did not constitute a particularly severe restriction (see, *mutatis mutandis*, *Axel Springer SE and RTL Television GmbH*, cited above, § 56), the Court is nevertheless of the opinion that it cannot be considered justified, since, in the circumstances of the present case and for the reasons exposed above, its infliction lacked the necessary balancing of the competing interests with respect to the second publication and any future publication of the unedited CCTV footage.

(c) Conclusion

45. In the light of the above, the Court considers that the national courts – and especially the Regional Court – duly took into account the criteria set out in its case-law in the context of balancing the competing rights under Articles 8 and 10 of the Convention in respect of the first publication (notably, the contribution to a debate of public interest, how well known the person concerned was and his prior conduct, the method of obtaining the information and its veracity, the content and form of the publication, its consequences and the severity of the restriction imposed). The Court does not see any reasons to substitute its view for that of the domestic courts in these respects (see the case-law quoted in paragraph 29 above). However, the

domestic courts' balancing with respect to the second and any future publication was insufficient in relation to two points. First, the primary consideration of the Regional Court was concerned only with the editorial presentation of the first publication (see paragraphs 37-41 above). Second, and what is more, the Court of Appeal failed to engage in any balancing exercise of the competing interests in respect of any future publication. Without evaluating to what extent the publication of the image was capable of contributing to a public debate, it stated in a general reasoning that even an unpixelated coverage reflecting the actual circumstances of the police intervention without depicting the police officer in a negative way could not be considered to be portraying an aspect of contemporary society and thus would be unlawful (see paragraph 13 above). This could lead to the ban – unacceptable in such general terms irrespective of the public interest in the use of force by the police – of any future publication, without the consent of the persons concerned, of unedited images of police officers performing their duties (see paragraph 42 above). On these two points, the national courts' decisions failed to conduct the necessary balancing exercise to justify the “necessity”, under Article 10 § 2 of the Convention, of the restriction on the applicant company's freedom of expression with respect to the second and any future publication of the unedited CCTV footage. The Court can therefore not accept that the interference was necessary in a democratic society within the meaning of Article 10 of the Convention. There has accordingly been a violation of that Article.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

47. The applicant company did not claim any sum in respect of pecuniary and/or non-pecuniary damage. The Court is therefore not called upon to make any award under these heads.

B. Costs and expenses

48. The applicant company claimed 10,426.40 euros (EUR) for the costs and expenses incurred before the domestic courts and EUR 9,594.60 for those incurred before the Court. Those sums did not include value added tax.

49. The Government submitted that those claims were excessive, arguing that the costs were based on a fee agreement and were considerably higher

than the costs which would have been owed under the domestic provisions governing legal fees.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers reasonable the sum of EUR 10,000 for costs and expenses incurred in the domestic proceedings and EUR 2,000 for the proceedings before the Court. It therefore awards the applicant company the total sum of EUR 12,000, plus any tax that may be chargeable to it.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 31 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President