

IRIS 2014-9/3

## European Court of Human Rights: Axel Springer AG v. Germany (No. 2)

In a judgment of 10 July 2014, the European Court found that the publication by the daily newspaper *Bild* of suspicions concerning the former German Chancellor, Gerhard Schröder, was covered by journalistic freedom. In Strasbourg, the publisher of *Bild*, Axel Springer AG, had lodged a complaint arguing that the German courts had interfered with the right to freedom of expression and critical press reporting in a way that violated Article 10 of the Convention.

An article in *Bild* had repeated a series of suspicions and doubts on the part of Mr Thiele – the deputy president of the Liberal Democratic Party's (FDP) parliamentary group – with regard to Schröder's appointment as chairman of the supervisory board of the German-Russian consortium Konsortium Nordeuropäische Gaspipeline (NEGP). Thiele had insinuated that Mr Schröder had resigned from his political functions because he had been offered a lucrative post in the consortium headed by the Russian company Gazprom. In this regard, references were made to an agreement on construction of a pipeline that was signed in April 2005, in the presence of Mr Schröder and the Russian President Vladimir Putin. Having complained to the German courts, Mr Schröder obtained an order banning further publication of the passage, which reported Mr Thiele's comments and insinuations of corruption.

The European Court sharply disagrees with the reasoning and findings of the German courts. The Court refers to the relevant criteria it has taken into consideration in earlier cases (see *Von Hannover v. Germany* (No. 2) and *Axel Springer AG v. Germany* (No. 1), (see IRIS 2012-3/1) when dealing with the conflicting rights of freedom of expression guaranteed by Article 10 and the right to protection of one's reputation under Article 8 of the Convention as part of the right to private life.

First the Court notes that the article in *Bild* did not recount details of Mr Schröder's private life with the aim of satisfying public curiosity, but related to Mr Schröder's conduct in the exercise of his term of office as Federal Chancellor and his controversial appointment to a German-Russian gas consortium shortly after he ceased to hold office as Chancellor. Furthermore, there were sufficient facts, which could justify suspicions with regard to Mr Schröder's conduct. Such suspicions amounted to the expression of a value judgment, without concrete allegations of Schröder having committed criminal offences. The Court also observes that Mr Thiele's questions were not the only comments to be reproduced in the *Bild* article, but supplemented a series of statements made by different political figures from various political parties.

As well as this, the Court could not subscribe to the German court's opinion that the article in *Bild* should have also contained elements in favour of the former Chancellor. The former Chancellor had a duty to show a much greater degree of tolerance than a private citizen. In the political arena, freedom of expression is of the utmost importance and the press has a vital role as public "watchdog". The punishment of a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to discussions of matters of public interest. The Court also considers that a newspaper cannot be required to systematically verify the merits of every comment made by one politician about another, when such comments are made in the context of a current political debate. As to the severity of the measure imposed, the Court notes that although only a civil-law ban on further publication of the impugned passage in the *Bild* article had been imposed, it nonetheless considers that this prohibition could have had a chilling effect on the newspaper's freedom of expression.

The Court concludes unanimously that *Bild* has not exceeded the limits of journalistic freedom in publishing the disputed passage. The German courts have not convincingly established the existence of any pressing social need for placing the protection of Mr Schröder's reputation above the newspaper's right to freedom of expression and the general interest in promoting this freedom where issues of public interest were concerned. There had therefore been a violation of Article 10 of the Convention.

• *Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire Axel Springer AG c. Allemagne (n°2), requête n°48311/10 du 10 juillet 2014* (Judgment by the European Court of Human Rights (Fifth Section), case of Axel Springer AG v. Germany (No. 2), Appl. No. 48311/10 of 10 July 2014)

<http://merlin.obs.coe.int/redirect.php?id=17202>

FR

**Dirk Voorhoof**

*Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media*

The objective of IRIS is to publish information on legal and law-related policy developments that are relevant to the European audiovisual sector. Despite our efforts to ensure the accuracy of the content, the ultimate responsibility for the truthfulness of the facts on which we report is with the authors of the articles. Any opinions expressed in the articles are personal and should in no way be interpreted as representing the views of any organisations represented in its editorial board.

© European Audiovisual Observatory, Strasbourg (France)