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This factsheet does not bind the Court and is not exhaustive

## Right to the protection of one's image

"[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 ..." (*von Hannover v. Germany (no. 2)*, Grand Chamber judgment of 7 February 2012, § 96).

"[F]reedom of expression includes the publication of photos ... 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 ..." (*von Hannover v. Germany (no. 2)*, Grand Chamber judgment of 7 February 2012, § 103).

### Public or political figures

#### **[von Hannover v. Germany \(application no. 59320/00\)](#)**

24 June 2004

The applicant, Princess Caroline von Hannover, had applied to the German courts for an injunction preventing any further publication of two series of photographs relating to her private life which had appeared in German magazines, on the ground that they infringed her right to protection of her private life and of her own image. The photographs were the subject of three sets of proceedings before the German courts, resulting in particular in landmark judgments delivered by the Federal Court of Justice in 1995 and by the Federal Constitutional Court in 1999 in which the applicant's claims were dismissed. The applicant alleged before the European Court of Human Rights that those decisions had infringed her right to respect for her private life as they had failed to afford her adequate protection from the publication of photographs taken without her knowledge by paparazzi on the ground that, in view of her origins, she was a figure of contemporary society "par excellence".

The European Court of Human Rights held that there had been a **violation of Article 8** (right to respect for private life) of the [European Convention on Human Rights](#), finding that the German courts had not, in the present case, struck a fair balance between the interests at stake. It observed in particular that, while the general public might have a right to information, including, in special circumstances, on the private life of public figures, they did not have such a right in this instance. The Court considered that the general public did not have a legitimate interest in knowing the applicant's whereabouts or how she behaved generally in her private life even if she appeared in places that could not always be described as secluded and was well known to the public. Even if such a public interest existed, just as there existed a commercial interest for the magazines to publish the photographs and articles, those interests had, in the Court's view, to yield to the applicant's right to the effective protection of her private life. Hence everyone, including people known to the public, had to have a "legitimate expectation" that his or her private life would be protected. In the Court's view, the criteria that had been established by the domestic courts for distinguishing a figure of contemporary society "par excellence" from a relatively public figure were not sufficient to ensure the effective

protection of the applicant’s private life and she should, in the circumstances of the case, have had a “legitimate expectation” that her private life would be protected.

### **von Hannover v. Germany (no. 2) (nos. 40660/08 and 60641/08)**

7 February 2012

The applicants, Princess Caroline von Hannover and her husband Prince Ernst August von Hannover, complained of the German courts’ refusal to prohibit any further publication of two photographs which had been taken during their holiday without their knowledge and which had appeared in two German magazines. They alleged in particular that the domestic courts had not taken sufficient account of the European Court’s 2004 judgment in *von Hannover v. Germany* (see above).

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, noting in particular that the German courts had 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 had attached fundamental importance to the question whether the photographs, considered in the light of the accompanying articles, had contributed to a debate of general interest. They had also examined the circumstances in which the photographs had been taken. The Federal Court of Justice had changed its approach following the first European Court’s *von Hannover* judgment in 2004 (see above), while the Federal Constitutional Court, for its part, had not only confirmed that approach, but had also undertaken a detailed analysis of the European Court’s case-law in response to the applicants’ complaints that the Federal Court of Justice had disregarded the Convention and the European Court’s case-law. In those circumstances, and having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, the Court concluded that the latter had not failed to comply with their positive obligations under Article 8 of the Convention in the present case.

### **von Hannover (no. 3) v. Germany (n° 8772/10)**

19 September 2013

This case concerned a complaint lodged by Princess Caroline von Hannover relating to the refusal of the German courts to grant an injunction prohibiting any further publication of a photograph of her and her husband taken without their knowledge while they were on holiday. The photograph was accompanied by an article about the trend amongst the very wealthy towards letting out their holiday homes.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that the German courts had taken into consideration the essential criteria and the Court’s case-law in balancing the different interests at stake in the case. It observed in particular that it could not be asserted that the article in question had merely been a pretext for publishing the photograph in issue or that the connection between the article and the photograph had been purely contrived. The characterisation of the subject of the article as an event of general interest, first by the Federal Constitutional Court and then by the Federal Court of Justice, could not be considered unreasonable. The Court could therefore accept that the photograph in question had made a contribution to a debate of general interest.

### **Schüssel v. Austria**

21 February 2002 (decision on admissibility)

Relying on Article 8 (right to respect for private life) of the Convention, the applicant, the Deputy Prime Minister of Austria, complained in particular about the use of his picture on stickers, half-overlapped by the face of the right-wing politician Jörg Haider and with the following slogan: “The social security slashers and the education snatchers share a common face”.

The Court declared the application **inadmissible** (manifestly ill-founded). It found that the Austrian Supreme Court had correctly weighed the general interest in an open political debate as protected by Article 10 (freedom of expression) of the Convention against the applicant’s interest in protection against the publication of his picture.

The limits of acceptable criticism were wider with regard to a politician than with regard to a private individual.

### **Hachette Filipacchi Associés v. France**

14 June 2007

A few days after the murder of a French prefect, the weekly magazine *Paris Match* published an article entitled “La République assassinée” (The Murdered Republic). A two-page colour photograph taken moments after the murder showed the prefect’s lifeless body lying on the ground in a pool of blood, facing the camera. The prefect’s widow and children, relying on their right to respect for their private life, lodged an urgent application with the courts seeking the seizure of the copies of any magazines in which the photograph appeared and prohibition of their sale on penalty of fines. The applicant company complained of the order requiring it, subject to a penalty for non-compliance, to publish a statement that the photograph of the prefect had been published without his family’s consent.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, considering that the order requiring *Paris Match* to publish a statement, for which the French courts had given reasons which were both relevant and sufficient, had been proportionate to the legitimate aim it pursued – to protect of the rights of others –, and therefore necessary in a democratic society. The Court observed in particular that the result of publication of the photograph in question, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim’s close relatives, so they were justified in arguing that there had been an infringement of their right to respect for their private life. Then examining to what extent the punishment might have a dissuasive effect on exercise of freedom of the press, the Court noted that the French courts had refused to order the seizure of the offending publications and found that, of all the sanctions permitted, the order to publish the statement was that which, both in principle and as regards its content, least restricted the exercise of the applicant company’s rights.

### **Flinkkilä and Others v. Finland**

6 April 2010

This case concerned the conviction of the applicants, who worked for two nationwide magazines, for publishing information concerning the girlfriend of the National Conciliator at the time. The impugned articles focused primarily on the private and professional consequences for the National Conciliator of an altercation that had taken place outside his home between himself, his wife and his girlfriend. One article in particular contained an interview with him concerning the incident and his subsequent conviction and dismissal, and was illustrated by a photograph of his girlfriend, whose name was given in full.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. While it was true that the National Conciliator’s girlfriend was not herself a public figure, she had been involved in an incident outside the home of a public figure which had received widespread media coverage. As a result, she had inevitably entered the public domain. In the circumstances of the case, and notwithstanding the fact that the incident might have been presented in a somewhat colourful manner to boost the sales of the magazines, the Court found that the facts were not sufficient in themselves to justify the applicants’ conviction. Lastly, in view of the fact that the National Conciliator’s girlfriend had already been paid sums for damages because of the disclosure of her identity in a television programme and articles published in other magazines concerning the same incident, the penalties imposed on the applicants had been disproportionate.

### **Sapan v. Turkey**

8 June 2010

The applicant owned a publishing house which in 2001 published a book analysing the emergence of stardom as a phenomenon in Turkey and studying the case of a very

well-known singer there. The applicant complained of an order for seizure of the book which was applied for almost two years and eight months on the basis of judicial decisions for which no reasons were given. The seizure order had been requested by the singer who, citing in particular the fact that the title of the book included his name and that the book contained photographs featuring him, contended that its publication had infringed his right to protection of his own image and his personality rights.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the impugned seizure could not be considered to have been necessary in a democratic society as it had not been based on relevant and sufficient reasons. In particular, as the author had analysed the phenomenon of stardom and its emergence in Turkey through the singer and using scientific methods, the book could not be equated with publications of the tabloid press or gossip columns, whose role was generally to satisfy the curiosity of a certain type of reader about details of celebrities’ private lives. Furthermore, the photographs illustrating the book were all pictures for which the singer had posed and which had already been published. The domestic courts could therefore not be said to have examined in detail the criteria to be taken into consideration for a fair assessment of the rights at stake, namely the freedom to impart information and the protection of the rights of others.

### **Mgn Limited v. the United Kingdom**

18 January 2011

The applicant was the publisher of a national daily newspaper which published an article giving details of the drug-addiction treatment of a very well-known model. The article was accompanied by photographs, one of them taken secretly near the Narcotics Anonymous centre she was attending at the time. When the model’s lawyer wrote to the applicant complaining of a breach of his client’s privacy, the same newspaper published a further two articles, accompanied by a similar picture, in which it criticised the model’s lifestyle and claim to privacy. The applicant company alleged an infringement of its right to freedom of expression on account of the judgment of the House of Lords finding that it had breached the model’s privacy by publishing the impugned articles and pictures. It further complained of the requirement for it to pay the “success fees” agreed between the model and her lawyers in the same proceedings.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention with regard to the order requiring the applicant company to pay damages for breach of confidence. It considered that the House of Lords had given convincing reasons for its decision. In particular, the photographs, which were clearly distressing, had been taken covertly. In addition, they had not been necessary to ensure the credibility of the story, while the public interest had been satisfied by the publication of the core facts of the claimant’s addiction and treatment. The Court further held that there had been a **violation of Article 10** of the Convention with regard to the order requiring the newspaper to pay the “success fees” sought by the opposing party’s lawyers. The interference with the exercise by the applicant company of its right to freedom of expression had been prescribed by law and pursued the legitimate aim of ensuring the widest possible public access to legal services for civil litigation funded by the private sector and thus the protection of the rights of others. Nevertheless, the claimant was wealthy and thus not at risk of being excluded from access to justice for financial reasons; moreover, the applicant’s case had not been without merit, as demonstrated by the difference of opinion between the domestic courts. The order to pay “success fees” to the claimant had therefore been disproportionate having regard to the legitimate aim sought to be achieved, and exceeded even the broad margin of appreciation accorded to the State in such matters.

### **Mosley v. the United Kingdom**

10 May 2011

A national weekly newspaper published a front-page article, including intimate photographs taken from secretly recorded video footage, about the alleged “Nazi” sexual activities of the applicant, a well-known figure in the International Automobile Federation

and Formula One. An extract of the video and some still images were published on the newspaper’s website and reproduced elsewhere on the Internet. The applicant sued the publisher for breach of confidence and invasion of privacy and claimed damages. In addition, he sought an injunction to restrain the newspaper from making the edited video footage available on its website. The applicant complained of the absence of any legal requirement for a newspaper to give individuals advance notice of the publication of material concerning their private life in order to give them an opportunity to prevent publication by seeking an interim court injunction.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It considered that, although the disclosure of information on the private lives of those in the public eye was generally for the purposes of entertainment rather than education, it undoubtedly benefited from the protection of Article 10 (freedom of expression) of the Convention. The Article 10 protection afforded to publications might cede to the requirements of Article 8 where the information was of a private and intimate nature and there was no public interest in its disclosure. However, having regard to the chilling effect to which a pre-notification requirement risked giving rise, to the doubts about its effectiveness and to the wide margin of appreciation afforded to the United Kingdom in that area, the Court concluded that Article 8 of the Convention did not require a legally binding pre-notification requirement.

### **Lillo-Stenberg and Saether v. Norway**

16 January 2014

The applicants, a well-known musician and actress in Norway, complained about press invasion of their privacy during their wedding in August 2005. The wedding took place outdoors on an islet in the Oslo fjord accessible to the public. Without the couple’s consent, the weekly magazine *Se og Hør* subsequently published a two-page article about the wedding accompanied by six photographs. They showed the bride, her father and bridesmaids arriving at the islet in a small rowing boat, the bride being brought to the groom by her father and the bride and groom returning to the mainland on foot by crossing the lake on stepping stones. The couple brought compensation proceedings against the magazine and won before the first two instances. However, in September 2008 the Supreme Court found against the couple. It considered that they had married in a place which was accessible to the public and that the article was neither offensive nor negative. The applicants complained that their right to respect for private life had been breached by the Supreme Court’s judgment.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. Having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, it found that the Supreme Court had not failed to comply with its obligations under Article 8 of the Convention.

### **Couderc and Hachette Filipacchi Associés v. France**

10 November 2015 (Grand Chamber)

This case concerned the conviction of the applicants – the publication director and publisher of the weekly magazine *Paris Match* – following the publication in May 2005 of a ten-page article, announced on the magazine cover under the headline “Albert of Monaco: A., the secret child” and containing several photographs. The applicants alleged that the judgment against them had amounted to unjustified interference with the exercise of their right to freedom of information.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the arguments advanced by the French Government with regard to the protection of Prince Albert’s private life and of his right to his own image could not be regarded as sufficient to justify interfering with the judgment in question, and that the domestic courts had not given due consideration to the principles and criteria for balancing the right to respect for private life and the right to freedom of expression. The Court considered in particular that, given the nature of the information in question, the applicants could be understood as having contributed to the coverage of a subject of public interest. It further observed that the disputed publication admittedly



concerned the sphere of Prince Albert’s private life, but found that the essential element of the information contained in the article – the child’s existence – went beyond the private sphere, given the hereditary nature of the Prince’s functions as the Monegasque Head of State.

### **Kahn v. Germany**

17 March 2016

The two applicants were minors, children of a famous football player. The case concerned the repeated publication of photos of them in two magazines aimed at the general public, in spite of a blanket ban on publication ordered by a court. The applicants contended that the circumstances of the case disclosed a failure on the part of Germany to respect their right to respect for their private life. They criticised in particular the domestic courts’ rejection of their compensation claim.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that the German authorities had not failed in their positive obligation towards the applicants and had afforded them sufficient protection. The Court noted in particular that, as a result of the actions brought by the applicants, the publisher had been ordered to pay fines totalling approximately 68% of the amount they had claimed. The Federal Court of Justice had found that the applicants – whose faces had not been visible or had been pixelated – could only be identified on the photos through the presence of their parents and the accompanying text and had not been the main subject of the reports, which had focused on their parents’ relationship following their divorce. The Court therefore accepted the finding of the German courts that, in view of the nature of the photos, there had been no call to award additional compensation as the applicants had requested.

### **Sihler-Jauch and Jauch v. Germany**

24 May 2016 (decision on the admissibility)

This case concerned the publication in the German weekly magazine *Bunte* of an article illustrated by several photographs about the wedding of a well-known TV presenter, and his and his wife’s unsuccessful attempts before the German courts to obtain damages. The applicants alleged in particular that their privacy had been insufficiently protected by the domestic courts.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found in particular that the German courts had carefully balanced the applicants’ right to respect for their private life with the magazine’s right to freedom of expression. The domestic courts had acknowledged the fundamental importance of the degree to which the second applicant was well-known, the level of interference with the applicants’ rights, and the general public’s interest in the wedding.

## Professionals (lawyers, journalists, etc.)

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### **Minelli v. Switzerland**

14 June 2005 (decision on admissibility)

The applicant, a well-known lawyer and journalist who had frequently taken part in public debates on topical issues, alleged a breach of his privacy because of the use of the term “poacher” in a profile of him published in a magazine. He also complained of the publication of his photograph alongside the article.

The Court declared the complaint **inadmissible** (manifestly ill-founded), endorsing the view of the Swiss Federal Court that the applicant could not claim absolute protection of his personality rights after having placed himself in the public eye. The same applied to his right to protection of his own image in relation to the photograph published alongside the article, which had been taken at a televised event in which the applicant had taken part.

## Private persons

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### Peck v. the United Kingdom

28 January 2003

In this case the applicant, who was suffering from depression, complained about the disclosure in the media of footage from a closed-circuit television (CCTV) camera mounted in the street showing him walking alone with a kitchen knife in his hand (he had subsequently attempted suicide by cutting his wrists, but the CCTV footage did not show this), which had resulted in images of himself being published and broadcast widely. He further complained of the lack of an effective domestic remedy in that regard. The Court found that the disclosure of the footage by the municipal council had not been accompanied by sufficient safeguards and constituted disproportionate and unjustified interference with the applicant’s private life, **in breach of Article 8** (right to respect for private life) of the Convention. Furthermore, at the relevant time, the applicant had not had an effective remedy for breach of confidence, **in violation of Article 13** (right to an effective remedy) **read in conjunction with Article 8** of the Convention.

### Gurgenidze v. Georgia

17 October 2006

The applicant, a former university lecturer who was unemployed at the material time, decided to sell some manuscripts he had inherited from his father in order to support his family. He therefore offered for sale a manuscript by a renowned writer, prompting the writer’s daughter-in-law to arrange a meeting with him. She was accompanied to the meeting by a relative and by a journalist. There followed a series of interviews and articles, illustrated by a photograph of the applicant, in which the writer’s daughter-in-law accused him of stealing the manuscript in question. The applicant complained that the information and his photograph, which were published in a newspaper, and also the decisions of the domestic courts in the matter, had violated his right to respect for his private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found that, with regard to the publication of the information and photograph in question, the domestic courts had not struck a fair balance between the competing interests. The way in which they had dealt with the case had therefore not afforded the applicant sufficient and effective protection of his private life.

### Reklos and Davourlis v. Greece

15 January 2009

This case concerned the photographs of a new-born baby taken in a private clinic without the parents’ prior consent, and the retention of the negatives. Immediately after birth the baby had been placed in a sterile unit to which only medical staff at the clinic had access. The following day the mother was presented with two photographs of the baby, shown facing the camera, taken inside the sterile unit by a professional photographer based in the clinic. The applicants complained of the photographer’s intrusion into an environment to which only medical staff should have had access, and the possible annoyance caused to the infant by being photographed from the front. Faced with the clinic’s indifference to their complaints and its refusal to hand over the negatives of the photographs, the applicants brought an action for damages, which was dismissed as unfounded.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. Although the photographs showed the baby only from the front and not in a state which could be considered demeaning or was otherwise liable to damage his personality, the overriding consideration in this instance was not whether the photographs were harmless but the fact that the photographer had kept them without obtaining the applicants’ consent. The baby’s image had thus been retained in the hands of the photographer in an identifiable form with the possibility of subsequent use against the wishes of the child and/or his parents. The domestic courts had not

taken into account the lack of parental consent for the photographs to be taken or for the negatives to be kept by the photographer and had thus failed sufficiently to guarantee the child’s right to the protection of his private life.

**Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria and Krone Verlag GmbH v. Austria**

19 June 2012

The two cases concerned compensation proceedings under the Media Act brought by a mother and child against two publishing companies on account of their newspapers’ reporting on the dispute between the parents over custody of the child. The articles published by the two newspapers revealed the child’s identity and gave details of his family life, and were accompanied by photographs showing him in a state of apparent pain and despair.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It was true that the articles had dealt with a matter of public concern. However, given that neither the child nor his parents were public figures or had previously entered the public sphere, it had not been essential for understanding the case to disclose his identity, reveal most intimate details of his life or publish a picture from which he could be recognised. The Court was not convinced by the applicants’ arguments that it had been necessary to publish a picture showing the child’s suffering in order to draw public attention to the issue or to ensure the credibility of the story. Lastly, the interference with the applicants’ rights had been proportionate to the aims pursued. They had not been fined in criminal proceedings but had simply been ordered to pay compensation to the child for the injury caused due to interference with his right to respect for his strictly private life.

**Küchl v. Austria, Rothe v. Austria and Verlagsgruppe News GmbH and Bobi v. Austria**

4 December 2012

The applicants in the first two cases were the principal and deputy principal respectively of a seminary where future Roman Catholic priests were trained. In 2004 the weekly news magazine *Profil* published an article which stated that the applicants had had sexual relations with seminarians. The article was accompanied by a photograph showing the first applicant with his hand between the legs of one of the seminarians and two photographs showing the second applicant about to kiss and embrace a seminarian. Both applicants brought proceedings against Verlagsgruppe News GmbH, the magazine’s publisher, requesting compensation for defamation and for the violation of their strictly personal sphere. They complained about the final judgments of the Austrian courts refusing them compensation for the publication of the article and the photographs. In the third case, the publisher and the editor-in chief of *Profil* complained about an injunction, upheld by the Austrian Supreme Court, prohibiting them from publishing the first applicant’s picture in connection with allegations of unwanted homosexual advances towards seminarians or sexual antics with seminarians.

In the first two cases the Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. In the third case it held that there had been **no violation of Article 10** (freedom of expression) of the Convention.

**Bremner v. Turkey**

13 October 2015

This case concerned the broadcasting of a television documentary in which the applicant, who was shown promoting his evangelical Christian beliefs, was described as a “foreign pedlar of religion” engaged in covert activities in Turkey. The applicant alleged that the broadcasting of the documentary and the refusal of the judicial authorities to grant his request for compensation had breached his right to respect for his private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the Turkish authorities had not struck a fair balance between the competing interests and that the manner in which they had dealt with the



case had not afforded the applicant adequate and effective protection of his right to his own image and therefore to respect for his private life. In particular, as to the contribution allegedly made by the broadcasting of the applicant’s image to a debate in the general interest, the Court did not find any general-interest justification for the journalists’ decision to broadcast his image without blurring it. In view of the fact that the applicant was not famous, there was nothing to suggest that the broadcasting of his image would be newsworthy or useful. In addition, the Court noted that none of the domestic courts seemed to have assessed the degree of contribution of the broadcasting of the applicant’s image, without blurring it, to a debate in the general interest.

### **Société de Conception de Presse et d’Edition v. France**

25 February 2016

This case concerned the conviction of the applicant – the publisher of the monthly magazine *Choc* – following the unauthorised publication, on the front cover and again four times on inside pages of edition 120 of the magazine, of a photograph of a young man – wearing shackles and showing visible signs of ill-treatment – taken by his torturers while he was in captivity. The applicant complained of an infringement of the right to freedom of expression and information.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the restriction imposed by the French courts on the exercise of the publishing company’s rights had been based on relevant and sufficient reasons and had been proportionate to the legitimate aim pursued. It had therefore been necessary for the proper functioning of a democratic society. The Court found in particular that the publication of the photograph, which had not been intended for public viewing, constituted serious interference with the private life of the young man’s relatives. Moreover, the restriction on freedom of expression had been proportionate, as the domestic courts had merely ordered that the photograph in question be blacked out, without censoring the article or ordering its withdrawal.

### **Bogomolova v. Russia**

20 June 2017

This case concerned the use of a minor’s image without parental authorisation. The child’s photo had been featured on the cover of a booklet meant to inform the public about the local authorities’ efforts to protect orphans and the assistance available for families looking to adopt. The applicant complained that the unauthorised publication of her son’s photograph had infringed their right to private and family life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that the Russian courts had failed to examine whether the applicant had given her consent for the publication of the photograph, focusing instead on the authorisation she had given that her son be photographed. The Court also highlighted the false impressions and inferences which could be drawn from the context of the photograph, namely that the child pictured had no parents or had been abandoned by his parents, and the effect that that could have on public perception of the applicant’s relationship with her son.

## Persons arrested or under criminal prosecution

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### **Sciacca v. Italy**

11 January 2005

During an investigation into irregularities in the management of the school where she taught, the applicant was prosecuted for criminal conspiracy, tax evasion and forgery. Following a press conference given by the public prosecutor’s office and the Revenue Police, two daily newspapers published articles on the facts giving rise to the prosecution, illustrated by a photograph which featured the applicant. The photograph, which was published four times, was the one which had been taken by the Revenue Police when the file was drawn up on the applicant and which they had released to the

press. The applicant submitted that the dissemination of her photograph at the press conference had infringed her right to respect for her private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It noted in particular that the photograph, taken for the purposes of drawing up an official file, had been released to the press by the Revenue Police. Further, according to the information in the Court’s possession, there was no law in Italy governing the taking of photographs of people under suspicion or arrested and assigned to residence and the release of photos to the press. It was rather an area in which a practice had developed. The Court therefore found that the interference with the applicant’s right to respect for her private life had not been “in accordance with the law” within the meaning of Article 8 of the Convention.

### **Österreichischer Rundfunk v. Austria**

7 December 2006

In July 1999 the applicant (the Austrian Broadcasting Corporation) broadcast information about the release on parole of the head of a neo-Nazi organisation who had been sentenced under the National Socialist Prohibition Act. That news item also mentioned his deputy, who had previously been convicted under the Act and had been released on parole five weeks earlier. During the broadcast, a picture of the deputy at his trial was shown for a couple of seconds. The deputy successfully brought proceedings under the Copyright Act and the applicant’s rights to publish the deputy’s picture were restricted. The applicant complained that the Austrian courts’ decisions violated its right to freedom of expression. It further complained that the contested injunction prohibited it from publishing the picture while other media remained free to do so.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the reasons adduced by the domestic courts had not been relevant and sufficient enough to justify imposing the injunction, and that the interference with the applicant’s rights could not be considered necessary in a democratic society. When weighing the individual’s interest not to have his physical appearance disclosed against the public’s interest in the publication of his picture, the domestic courts had in particular not taken into account the deputy’s notoriety and the political nature of the crime of which he had been convicted. Nor had they had regard to other important elements, namely that the facts mentioned in the news items were correct and complete and that the picture shown was related to the content of the report. In addition, the injunction in issue had only applied to the applicant and other media had remained free to publish the deputy’s picture in the same context.

### **Verlagsgruppe News GmbH v. Austria (no. 2)**

14 December 2006

The case concerned an injunction against the applicant, a publishing company, prohibiting it from publishing photographs of a businessman in the context of reports on investigations against him on the suspicion of large-scale tax evasion. A widely-read weekly magazine owned by the applicant company had printed an article on the investigation in progress, accompanied by a photograph of the businessman.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. The claimant – a business magnate who owned and managed one of the country’s most prestigious firms – was by virtue of his position a public figure. Furthermore, the article had reported on a matter of public interest. With regard to the photograph, the Court stressed that there was little scope for an absolute ban on publishing a public figure’s picture in an article contributing to a public debate. The reasons adduced by the Supreme Court, although relevant, had not been sufficient. Thus, the absolute prohibition on publishing the picture of the claimant alongside the article reporting on the pending investigations against him had not been proportionate to the legitimate aim pursued, namely the protection of his reputation and rights.

### **Khuzhin and Others v. Russia**

23 October 2008

The applicants were arrested in April 1999 and subsequently charged with kidnapping and torture. A few days before their trial in July 1999, a national television channel broadcast a talk show during which three prosecution officials discussed the case in detail. The first applicant complained in particular that the police had taken his passport photograph from the criminal case-file and, without his consent, given it to a journalist who had used it in a television show.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that, in the circumstances of the present case, the release of the first applicant’s photograph from the criminal file to the press had not pursued any of the legitimate aims enumerated in paragraph 2 of Article 8 of the Convention. The Court observed in particular that, being in custody at the material time, the first applicant was not a fugitive from justice and the showing of his photograph could not have been necessary for enlisting public support to determine his whereabouts. Nor could it be said to have bolstered the public character of judicial proceedings because at the time of the recording and the first airing of the television show the trial had not yet begun.

### **Giorgi Nikolaishvili v. Georgia**

13 January 2009

This case concerned the arrest of a witness in order to put pressure on his brother, who was wanted by the judicial authorities. Photographs of the applicant, his brother and two other men were posted on the "wanted persons" boards of various police stations. The four men were identified by name and said to be wanted in connection with a murder. In subsequent correspondence between the applicant’s lawyer and the Ministry of the Interior, it emerged that the only wanted man was the applicant’s brother and that operational measures were being taken to interview the applicant as a witness in view of his repeated refusals to appear before the district prosecutor.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, as the posting of the applicant’s photograph on the wanted board was not in accordance with domestic law.

### **Erikäinen and Others v. Finland**

10 February 2009

The applicants, the publishing company and editor-in-chief of a magazine and one of its journalists, complained of being ordered by the Finnish Supreme Court to pay damages after publishing an article reporting on the pending criminal proceedings against a businesswoman accused of fraud against the social security scheme and some insurance companies. Although the article did not mention her by name, it was set alongside another wholly unrelated article which the journalist had written some years previously for another magazine, with the woman’s consent, and which gave her full name and included two photographs of her.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. The report in the impugned article concerning the criminal proceedings against the businesswoman had been based on a public document concerning a subject of legitimate public interest and designed to contribute to public discussion of the subject. Moreover, the Finnish Supreme Court had not examined the implications of the fact that the photographs had been taken with the woman’s consent with a view to their publication, albeit for the purposes of a previous article and in a different context. Accordingly, the grounds relied on, although relevant, were not sufficient to justify the interference with the applicants’ right to freedom of expression.

### **Toma v. Romania**

24 February 2009

In this case the police had called journalists and allowed them to take pictures, with a view to publication, showing the applicant in police custody after he and another

individual had been arrested by drug squad officers in possession of 800 grams of cannabis which, according to the authorities, they intended to sell. On the day of the arrest journalists from a local channel and a newspaper filmed and took photographs of the applicant at the police station. The next day a photograph of the applicant showing visible traces of violence was published on the front page of the newspaper, together with an article calling him a “drug trafficker”.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. The behaviour of the police in calling journalists and allowing them to film the applicant at the police station on the day proceedings were brought against him, without his consent and with a view to publishing the pictures in the media, amounted to interference with the applicant’s right to respect for his private life. The Romanian Government had offered no explanation to justify such interference and there was nothing to suggest that the dissemination of the pictures concerned, which had no real news value as such, had been meant to serve the interests of justice. Accordingly, the interference with the applicant’s right to respect for his private life had not pursued one of the legitimate aims provided for in Article 8 § 2 of the Convention.

### **Egeland and Hanseid v. Norway**

16 April 2009

The two applicants, editors-in-chief of two major national newspapers in Norway, complained about their conviction and sentencing to a fine for publishing photographs of an individual about to be taken away to serve the long prison term to which she had just been sentenced for her involvement in a triple murder.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. Although the photographs had concerned a public event and had been taken in a public place at a time when the person’s identity was already well known to the public, the Court found that their portrayal of her had been particularly intrusive. Furthermore, the person concerned had not consented to the photographs being taken or to their publication, and the fact that she had cooperated with the press on previous occasions could not justify depriving her of protection in these circumstances. In addition, the fines imposed on the applicants had not been particularly severe. In sum, the requirements of the protection of privacy and the fair administration of justice had been sufficient to justify the restriction on the applicant editors’ right to freedom of expression.

### **Khmel v. Russia**

12 December 2013

At the time of the facts, the applicant was a member of the Murmansk regional legislature. He was taken to a police station on suspicion of drunk driving. He refused to give his name, behaved in an unruly manner and would not leave the building when asked to do so. The police chief invited television crews to the station, and that afternoon the applicant was filmed whilst in a dishevelled state and acting inappropriately. Some of the footage was broadcast on public television the next day. Administrative and criminal proceedings were later brought against him for his actions on the day he was filmed. The applicant complained in particular of the filming of him at the police station and the broadcasting of the footage, which he claimed to be unlawful.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, as in the absence of the applicant’s consent, the release of the video recording to the regional television had been in flagrant breach of the domestic law. The interference with the applicant’s right to respect for private life was therefore not “in accordance with the law” within the meaning of Article 8 § 2 of the Convention.

### **Axel Springer SE and RTL Television GmbH v. Germany**

21 September 2017

This case concerned the complaint by two media companies about a judicial order banning the publication of images in which the defendant in a criminal trial for murder

could be identified.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found that the national judge had carefully balanced the opposing interests. The order had been proportionate to the legitimate aim pursued, namely to protect the personality rights of the defendant – who was not a public figure – during his trial, in the course of which he was to be presumed innocent until proved guilty. The Court noted in particular that the order had not been a particularly severe restriction on reporting; taking images as such had not been limited.

**Bild GmbH & CO. Kg and Axel Springer AG v. Germany**

4 December 2018 (decision on the admissibility)

This case concerned an order prohibiting the publishers of the mass-circulation daily newspaper *Bild* from publishing or distributing a photograph of a well-known Swiss journalist taken while he was in pre-trial detention.

The Court declared the application **inadmissible**, finding that the German courts had duly balanced the applicant companies’ right to freedom of expression and the right to privacy of the television presenter, who had been in pre-trial detention at the time. In particular, in the Court’s view, although the photograph in question had not been defamatory, depreciatory or degrading for the television presenter’s image, it had nevertheless shown him in a situation – in a prison yard – where he could not have expected to be photographed. As to the penalty imposed on the two applicant companies, the Court observed that the German courts had simply banned them from further publishing or distributing the photograph and ordered them to repay a modest sum in lawyer’s fees.

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