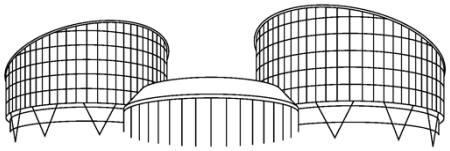

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF AXEL SPRINGER SE v. GERMANY

(Application no. 8964/18)

JUDGMENT

Art 10 • Freedom of expression • Justified and proportionate court order for applicant company, a publishing house, to publish a reply by a political official concerned to its newspaper article with a view to rectifying a factual inaccuracy • Domestic court's assessment well-reasoned and giving due consideration to Court's case-law

STRASBOURG

17 January 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.

In the case of Axel Springer SE 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,
Ana Maria Guerra Martins*, judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 8964/18) 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 Axel Springer SE ("the applicant company"), on 14 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 respondent Government and the observations in reply submitted by the applicant company;

the comments submitted by Ms K., who was granted leave to intervene by the President of the Section;

Having deliberated in private on 6 December 2022,

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

INTRODUCTION

1. The application concerns a court decision ordering the applicant company to publish a rectification in respect of a newspaper article about a political official's connection to the German Democratic Republic's (GDR) ruling party.

THE FACTS

2. The applicant company, Axel Springer SE, is a publishing house carrying on business in the legal form of a *Societas Europea* registered in Berlin. The applicant company was represented by Mr J. Hegemann and Ms L. Schopp, lawyers practising in Berlin.

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

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

5. The applicant company publishes the daily newspaper *Die Welt*.

6. On 4 October 2013 it published an article under the headline "The Stasi woman by Gregor Gysi's side" (*Die Stasi-Frau an Gregor Gysis Seite*).

Mr Gysi was at the time a member of the German Parliament and chairperson of the political party *die Linke* (formerly the PDS). The article stated that Ms K., the party's executive director, had been an agent for the former GDR's Ministry of State Security (*Ministerium für Staatssicherheit* – commonly referred to as "the Stasi"); it also addressed the disappearance, following the fall of the communist regime in 1989, of vast assets that had belonged to the East German Communist Party (SED). The article was published on page 8 of the newspaper and, in so far as relevant, read as follows:

> "She sits on the Federal Arbitration Commission of *die Linke* ...
>
> Furthermore, the name K. stands ... for a particularly unsavoury chapter in the party's history: the handling of billions in SED assets after the peaceful revolution in the GDR. ... Even at the end of 1989 the SED still possessed a convoluted business empire, extensive real estate holdings and 6.2 billion East German marks in cash. ... There could still be secret bank accounts all over the world. ...
>
> There is currently no evidence that K. was involved in possible criminal activities. But according to documents in our possession she remains involved, directly or indirectly, with a number of companies whose assets stem from the heritage of the Honecker-party. According to the Commercial Register, K. holds shares [in the above-mentioned companies] as a private individual. But in 1995 the Berlin Higher Administrative Court found that two of the companies in which she holds stakes manage assets for the [PDS] on a fiduciary basis. ...
>
> The PDS, as successor to the SED, placed the utmost confidence in K. Under its newly elected leader, Gysi, the party had a major problem: in the early '90s the periodical *Neues Deutschland,* (New Germany, or ND), the party's former mouthpiece, was on the brink. ... Suddenly the "Association of Friends of the ND" appeared and promised large sums of money – at least one million Deutschmarks. Some media accounts even mentioned four million. Who was supposed to raise the funds and where they stemmed from is not known. Honorary chairwoman of the "Friends of the ND": K."

7. On 2 October 2013, two days before the article's publication, the applicant company sent a list of questions to K., addressing, *inter alia*, her membership in the "Association of Friends of the ND". K. refused to answer the questions.

8. On 11 October 2013 K.'s lawyer requested the applicant company to publish a rectification regarding the passages from the article cited above. In her reply, K. stated, notably, that she had not been involved in the disappearance of SED assets.

9. When the applicant company refused to publish the reply, on 16 October 2013 K. lodged an application for an injunction with the Berlin Regional Court. On 22 October 2013 the court dismissed her application. It found that the impugned article had not made the alleged connection between K. and the disappearance of SED assets. It further found that the fact that the text could be interpreted in such a way was insufficient to warrant a rectification.

10. K. appealed against the decision. On 14 November 2013 the Court of Appeal informed her lawyer of its doubts regarding the length of her reply,

and a revised text was submitted. On 18 November 2013 the Court of Appeal, relying on section 10 of the Berlin Press Act (see paragraph 16 below), allowed the application for an injunction and ordered the applicant company to publish the following rectification:

> "[1.] You write about me: "She sits on the party's Federal Arbitration Commission." That's wrong – since 1 January 2013 I have not been a member of the Commission.
>
> "[2.] You write: "the name K. stands ... for a ... chapter in the party's history: the handling of the SED's assets, worth billions, after the peaceful revolution in the GDR. ... Even at the end of 1989 the SED still possessed a convoluted business empire, extensive real estate holdings and 6.2 billion East German marks in cash. ... There could still be secret bank accounts all over the world.
>
> There is currently no evidence that K. was involved in possible criminal activities. But according to documents in our possession she remains involved, directly or indirectly, in a number of companies whose assets stem from the heritage of the Honecker-party. ... K. holds shares [in those companies] as a private individual. But according to the findings reached by the Berlin Higher Administrative Court in 1995, two companies in which she holds stakes manage assets for the [PDS] on a fiduciary basis."
>
> You identify those companies as FEVAC and Vulkan.
>
> In this regard I note: I had nothing to do with the disappearance of the SED party assets after 1989. FEVAC and Vulkan were founded in 1992 with money from the PDS on the recommendation and with the approval of the Treuhandanstalt [an agency established by the GDR government to privatise State enterprises prior to German reunification]. I became a shareholder in FEVAC in 1998.
>
> [3.] You write: "The PDS as successor to the SED placed utmost confidence in K. Under its newly elected leader, Gysi, the party had a major problem: in the early '90s the periodical New Germany (*Neues Deutschland*, or ND), the former party mouthpiece, was on the brink. ... suddenly the "Association of Friends of the ND" appeared and promised large sums of money – at least one million Deutschmarks. Some media accounts even mentioned four million. Who was supposed to raise the funds and where they stemmed from is not known. Honorary chairwoman of the "Friends of the ND": K."
>
> In this regard I note: I have only been a member of this association since around 2000 and I have held the chair since 2002.
>
> Berlin, 11 October 2013
>
> J. Eisenberg, counsel, for K."

11. In the subsequent main proceedings, on 10 December 2013 the Berlin Regional Court again dismissed K.'s application for an injunction, essentially for the same reasons as those on which it had relied previously (see paragraph 9 above).

12. Again, K. lodged an appeal. In response, the applicant company argued, *inter alia*, that K. had no legitimate interest in respect of the matter addressed by the third point of her reply (see paragraph 10 above), since prior to the publication of the article she had refused to answer the applicant company's question regarding her membership of the ND (see paragraph 7

above); furthermore, the text of her reply was dated 11 October 2013, whereas the latest version had only been submitted to the applicant company on 12 December 2013. It further argued that the information about the two above-mentioned companies that K. had provided in her reply had been unnecessary for the purposes of the rectification.

13. On 16 January 2014 the Court of Appeal again ordered the applicant company to publish K.'s reply. The court ordered that the reply be printed on page 8 of the newspaper and rejected K.'s demand for a front-page announcement of the rectification. It considered that although the article had not explicitly alleged that K. had concealed SED party assets, such a conclusion would be reached by the average reader. The article had linked K.'s name with the disappearance of SED party assets after 1989. The statement contained in the article that there was no evidence for any criminal activities had not offset the implication that K. had been involved in the disappearance of the assets, since it had been presented alongside the information that K. had maintained (and continued to maintain) ties to companies that had been funded with party assets. Regarding the length and content of the rectification, the Court of Appeal noted that the wording of the rectification had been limited to what was necessary to refute the impugned statements contained in the original article. Given the level of detail provided in the article about K.'s links with those companies, it considered that K., for her part, should be granted the opportunity to give her view on the origin of those companies' capital (*Stammkapital*). Furthermore, K. had been under no obligation to answer the applicant company's questions; the refusal to do so had therefore not called into question her legitimate interest in having the reply published. Lastly, the date under the text could not be considered to be manifestly incorrect: the first request for a rectification had been sent to the applicant company on 11 October 2013, and while K. had modified the text several times on the basis of the courts' legal concerns, the core message of the reply had remained the same.

14. On 3 February 2014 the applicant company published the requested rectification; printed below the rectification was a note from the editor stating that the information contained in it was correct and that the newspaper had no knowledge connecting K. to the disappearance of SED party assets.

15. By a decision of 14 August 2017 (no. 1 BvR 745/14) the Federal Constitutional Court declined to consider the constitutional complaint by the applicant company, without providing reasons.

RELEVANT LEGAL FRAMEWORK

I. THE DOMESTIC LEGAL FRAMEWORK

16. Section 10 of the Berlin Press Act, in so far as relevant, provides:

"(1) The editor in charge and the publishers of a periodical print medium shall be under the obligation to print a rectification [written by] any person or entity affected by a factual allegation made in the print medium. ...

(2) The obligation to print a rectification shall not apply if the affected person or entity lacks a legitimate interest, if the length of the rectification is not appropriate or is published (by way of an advertisement) for the sole purpose of business transactions. If the length of the rectification does not exceed the length of the contested text, it shall be deemed appropriate. The rectification must be limited to a statement of fact and must not constitute a punishable offence. ..."

II. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe

17. Resolution (74) 26 of the Committee of Ministers of the Council of Europe on the right of reply – Position of the individual in relation to the press, in so far as relevant, provides:

"The Committee of Ministers ...

Recommends to member governments, as a minimum, that the position of the individual in relation to the media should be in accordance with the following principles:

1. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating to him which he has a justified interest in having corrected, such correction being given, as far as possible, the same prominence as the original publication. ..."

18. The Appendix to Resolution (74) 26 – Minimum rules regarding the right of reply to the press, the radio and the television and to other periodical media, in so far as relevant, provides:

"1. Any natural and legal person, as well as other bodies, irrespective of nationality or residence, mentioned in a newspaper, a periodical, a radio or television broadcast, or in any other medium of a periodical nature, regarding whom or which facts have been made accessible to the public which he claims to be inaccurate, may exercise the right of reply in order to correct the facts concerning that person or body.

2. At the request of the person concerned, the medium in question shall be obliged to make public the reply which the person concerned has sent in.

3. By way of exception the national law may provide that the publication of the reply may be refused by the medium in the following cases:

i. if the request for publication of the reply is not addressed to the medium within a reasonably short time;

ii. if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate;

iii. if the reply is not limited to a correction of the facts challenged;

iv if it constitutes a punishable offence;

v. if it is considered contrary to the legally protected interests of a third party;

vi. if the individual concerned cannot show the existence of a legitimate interest."

19. Recommendation Rec (2004)16 of the Committee of Ministers to member States on the right of reply in the new media environment, in so far as relevant, provides:

"1. Scope of the right of reply

Any natural or legal person, irrespective of nationality or residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his/her personal rights.

...

5. Exceptions

By way of exception, national law or practice may provide that the request for a reply may be refused by the medium in question in the following cases:

– if the length of the reply exceeds what is necessary to correct the contested information;

– if the reply is not limited to a correction of the facts challenged;

– if its publication would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency;

– if it is considered contrary to the legally protected interests of a third party;

– if the individual concerned cannot show the existence of a legitimate interest;

– if the reply is in a language different from that in which the contested information was made public;

– if the contested information is a part of a truthful report on public sessions of the public authorities or the courts."

B. European Union

20. Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry, in so far as relevant, provides:

"I. The Member States, in the interests of promoting the development of the audiovisual and on-line information services industry, take the necessary measures to ensure the protection of minors and human dignity in all audiovisual and on-line information services by:

1. considering the introduction of measures into their domestic law or practice regarding the right of reply or equivalent remedies in relation to on-line media, with due regard for their domestic and constitutional legislative provisions, and without prejudice to the possibility of adapting the manner in which it is exercised to take into account the particularities of each type of medium;

ANNEX I

...

An application for exercise of right of reply or the equivalent remedies may be rejected if the claimant does not have a legitimate interest in the publication of such a reply, or if the reply would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency.

The right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been breached by the media."

C. American Convention on Human Rights

Article 14 (Right of Reply) of the American Convention on Human Rights reads:

"1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicant company complained that being ordered to publish the rectification had violated its freedom of expression under Article 10 of the Convention, which, in so far as relevant, reads:

"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

22. 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

23. The applicant company maintained that the article had in fact not associated K. with the disappearance of SED party assets and had contained no hidden allegations in this regard. Rather, it had clearly stated that there was no evidence for K.'s involvement in any criminal activities. The assessment that "... the name K. stands ... for a particularly unsavoury chapter in the party's history: the handling of billions in SED assets after the peaceful revolution in the GDR" did not contain a factual allegation but rather a value judgment to the effect that K. was a financial beneficiary of the SED dictatorship. A rectification should thus have been excluded.

24. Furthermore, the applicant company argued that K.'s conduct prior to the publication of the impugned article had not been properly taken into account. It would have been a simple task for K. to answer the applicant company's question regarding the duration of her time as chair of the "Association of Friends of the ND" since this information did not incriminate her in any way but was not publicly available. However, since she had chosen to withhold this information from the applicant company (see paragraph 7 above), she could not have legitimately requested a rectification in this regard.

25. Lastly, the sanction imposed on the applicant company by the court order had to be considered to have been even more severe than the order to publish the rectification itself, since the applicant company had been ordered to publish the rectification with an incorrect date. The court-ordered rectification had still carried the date of K.'s original request to the applicant company (11 October 2013), despite the fact that the text had undergone several modifications and the final version had only been submitted to the applicant company on 12 December 2013. This discrepancy had endangered the applicant company's reputation since its readers had been led to conclude that the applicant company had deliberately delayed the publication of the rectification.

(b) The Government

26. With regard to the content of the article, the Government agreed with the domestic court's view that the impugned article contained the covert assertion that K. had been involved in the disappearance of SED party assets. The reservation in the article that no evidence of criminal activities existed had merely pointed to a lack of proof but had done nothing to offset the allegation.

27. Furthermore, the Government submitted that K.'s refusal to answer a journalist's questions could not have cast doubt on the legitimacy of K.'s

interest in subsequently lodging a request for a rectification. A different interpretation of the law would essentially result in the press having a right to information that it could level against any private individual.

28. The Government lastly asserted that such a discrepancy between the date of the rectification and its publication (see paragraph 25 above) was not unusual and would not have caught the average reader's attention.

2. The third-party intervener's submissions

29. K. emphasised that together with the rectification, the applicant company had published an editor's note confirming the veracity of K.'s reply (see paragraph 14 above). In her view, this meant that the applicant company's decision to lodge an application with the Court had been contradictory and that it had not had any need for legal protection. Furthermore, given that the inaccuracy of the information contained in the article had not been contested by either party, the order to publish a rectification could not be considered to have constituted a very serious infringement of the applicant company's rights.

3. The Court's assessment

30. Neither party disputes that the domestic courts' order to publish a rectification 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 section 10 of the Berlin Press Act (see paragraph 16 above). It served the purpose of protecting the reputation of K. and therefore pursued the legitimate aim of protecting the reputation or rights of others within the meaning of Article 10 § 2 of the Convention.

31. It remains to be established whether the interference was "necessary in a democratic society".

(a) General principles

32. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 98, 25 June 2020, and *M.P. v. Finland,* no. 36487/12, § 51, 15 December 2016).

33. The press plays an essential role in a democratic society. In determining whether, in the present case, the interference with the applicant company's rights was "necessary in a democratic society" the Court thus observes at the outset that as a general principle, newspapers and other privately-owned media must be free to exercise editorial discretion in

deciding whether to publish articles, comments and letters submitted by private individuals. The Court has held that the legal obligation to publish a rectification may be considered a normal element of the legal framework governing the exercised of the freedom of expression by the media (see *Kaperzyński v. Poland*, no. 43206/07, § 66, 3 April 2012; *Rusu v. Romania*, no. 25721/04, § 25, 8 March 2016; *Marunić v. Croatia*, no. 51706/11, §§ 50 and 54, 28 March 2017). At the same time, it has stressed that given the high level of protection enjoyed by the press there need to be exceptional circumstances in which a newspaper may legitimately be required to publish, for example, a retraction, an apology or a judgment in a defamation case (see *Melnychuk v. Ukraine (dec.),* no. 28743/03, ECHR 2005-IX, and *Eker v. Turkey*, no. 24016/05, § 45, 24 October 2017). In this respect the potential chilling effect of the penalties imposed on the press in the performance of its task as a purveyor of information and public watchdog in the future must also be taken into consideration (see, *mutatis mutandis*, *Radio Twist a.s. v. Slovakia*, no. 62202/00, § 53, ECHR 2006-XV, in respect of interference with the right to impart information).

34. The Convention organs have held that the aim of the right to reply is to afford everyone the possibility of protecting him or herself against certain statements or opinions disseminated by the mass media that are likely to be injurious to his or her private life, honour or dignity (see *Ediciones Tiempo v. Spain*, no. 13010/87, Commission decision of 12 July 1989, *Decisions and Reports* 62, p. 247). In this regard, the Court reiterates that the primary objective of the right of reply is to allow individuals to challenge false information published about them in the press (see *Gülen v. Turkey* (dec.), nos. 38179/16, 38384/16, 38389/16, 38394/16, 38400/16, 38410/16, § 66, 8 September 2020; see also the Recommendations of the Committee of Ministers of the Council of Europe quoted in paragraphs 17-19 above).

35. As to the relevant criteria, the Court will take into consideration whether there exists a sufficient connection between the statement in question and the requested rectification and whether the latter can be considered to constitute a proportionate reaction (see the above cited cases of *Eker*, §§ 49-50 and *Melnychuk*). One relevant aspect for this assessment is the content of the reply in comparison with the impugned statement (see *Eker*, cited above, § 50). Furthermore, the Court has taken into account whether publication of the reply would constitute a punishable offence (ibid., § 49). In the circumstances of the present case, the Court will also have regard to whether the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate and the timeframe within which the request for a rectification was made (see also the Appendix to the Resolution (74) 26 of the Committee of Ministers of the Council of Europe, paragraph 18 above).

36. While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is

necessary remains subject to review by the Court for conformity with the requirements of the Convention. A margin of appreciation must be left to the relevant national authorities in this assessment. The breadth of this margin varies and depends on a number of factors, including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference. There will usually be a wide margin of appreciation if the State is required to strike a balance between competing private and public interests, or different Convention rights (see *Klaus Müller v. Germany*, no. 24173/18, § 66, 19 November 2020, with further references).

37. In cases like the present one, which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 91, 12 June 2014). 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 (ibid., § 92).

(b) Application of these principles to the present case

38. In examining the "necessity" of the interference in the light of the above-mentioned principles and considerations, regard needs to be given to the object, content, length and timing of the rectification. For this purpose, the following aspects, *inter alia*, should be taken into account (see also paragraph 35 above): the existence of a legitimate interest in a rectification owing to the content and dissemination of the impugned statement; whether a sufficient connection exists between the rectification and the impugned statement and the proportionality of the rectification in respect of its content and length, the placing of the rectification and any delay between the publication of the article and the lodging of the request for a rectification.

39. Regarding the question of a legitimate interest, the Court firstly notes the different interpretations of the article reached by the national courts. In the Regional Court's opinion, the article had not connected K. to the disappearance of SED party assets in such a manner as to require a rectification (see paragraph 9 above). In the same vein, the applicant company argued that the original text had contained no such allegation – either direct or indirect. Rather, the statement linking K. to the disappearance of SED party assets had constituted a mere value judgement (see paragraph 23 above). The Court of Appeal, however, considered that the average reader would

understand the article as implying that K. had been involved in the disappearance of SED party assets and that the article thus made a statement of fact (see paragraph 13 above). In this regard, the Court notes that under the relevant domestic law (see paragraph 16 above) a rectification may only be requested in respect of factual allegations.

40. The Court reiterates that its task, in exercising its supervisory function, is not to take the place of the national authorities but rather to review under Article 10 of the Convention the decisions they have taken pursuant to their power of appreciation (see *Bédat v. Switzerland* [GC], no. 56925/08, § 48 (iii), 29 March 2016).

41. The Court has recognised that the limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103, and *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 59, Series A no. 204). However, this requirement of tolerance does not involve a duty to tolerate factual inaccuracies.

42. The Court observes that in assessing the content of the article, the Court of Appeal took account, notably, of the divergent statements in the article to the effect that K.'s name was linked to the disappearance of SED party assets but that no evidence linked her to any criminal activities. In the Court's view, the Court of Appeal gave a lengthy and well-reasoned assessment of the article's content, and its interpretation showed no signs of arbitrariness. Accordingly, its finding that K. had a legitimate interest in the requested rectification does not raise concerns.

43. Moreover, in the light of the appellate court's interpretation, the Court notes that the requested rectification had a sufficient connection to the impugned article.

44. With regard to the applicant company's argument that the domestic courts should have refused K.'s request for a rectification on the basis of her refusal to answer its questions (see paragraph 24 above), the Court reiterates that a person's conduct prior to publication will only reduce his or her "legitimate expectation" regarding the effective protection of his or her private life under specific circumstances (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 101, 7 February 2012, with further references). Usually, such a consequence will require the person concerned to have sought the limelight himself *(ibidem*) or result from the person's own illicit actions – such as, for example, the commission of a criminal offence (see *Mikolajová v. Slovakia*, no. 4479/03, § 57, 18 January 2011).

45. The Court observes moreover that while press organs are held to report in good faith in order to provide "reliable and precise" information in accordance with the ethics of journalism (see *Axel Springer AG*, cited above, § 93) and thus should give the person concerned the chance to defend him or herself, the fact that the impugned allegations were communicated does not confer unrestricted freedom to publish unverified allegations. Neither does it

preclude the right of reply of the person concerned in order to correct facts claimed to be inaccurate. Therefore, and taking into account that the applicant company's argument does not concern any illicit behaviour on the part of K. prior to the publication of the contested article, her refusal to answer the applicant company's questions cannot serve as an argument for limiting her right to a rectification of incorrect facts.

46. The Court further observes that the statements in question were published in a daily newspaper (see paragraph 5 above). There is no indication that there was an undue delay between the publication of the impugned article and the lodging of a request for a rectification (see paragraphs 6 and 8 above).

47. With regard to the proportionality of the rectification order, the Court notes at the outset that there is a material difference between the rectification of facts claimed to be inaccurate and sanctions, such as the prohibition on publication, criminal sanctions and the order to pay damages, for value judgements in defamation cases (see, *mutatis mutandis, Lingens*, cited above, § 46, and *Oberschlick*, cited above, § 63). In determining the proportionality of the rectification order, the Court of Appeal considered that the applicant company presented K.'s connection to companies with alleged ties to the SED in some detail. Accordingly, it found that the information provided in K.'s reply in this regard had not exceeded what was necessary to counter the applicant company's allegations. The Court sees no reason to challenge this assessment. It observes in addition that the rectification was to be printed on the same page as that on which the original article had appeared, and that a request to have the rectification announced on the newspaper's frontpage had been refused (see paragraph 13 above). Furthermore, there is no indication that the length of K.'s reply exceeded the length of the statements in question (see, for a similar factual situation and *a fortiori*, *Funke Woman Group GmbH v. Germany* (dec.) [Committee], nos. 25845/17 and 34929/18, § 30, 7 December 2021). Similarly, nothing suggests that the publication of the reply constituted a punishable offence.

48. Lastly, the Court notes that K.'s reply did not bear the date of the final version the applicant company had been ordered to publish but instead the date of K.'s original request to the applicant company (see paragraph 25 above). In this regard, the Court of Appeal considered that the discrepancy did not render the published information manifestly incorrect. While the text of the original reply had been modified several times in order to alleviate the domestic courts' legal concerns, the core message of the reply was identical (see paragraph 13 above). The Court sees no reason to disagree with this assessment.

49. In the light of the aforementioned considerations, the Court finds that, in assessing the circumstances submitted for its appreciation, the Court of Appeal gave due consideration to the principles and criteria, as laid down by the Court's case-law for balancing the right to respect for private life and the

right to freedom of expression. The Court discerns no strong reasons that would require it to substitute its view for that of the Court of Appeal (see the case-law quoted in paragraph 37 above).

50. Accordingly, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President