



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

FIFTH SECTION

**CASE OF AXEL SPRINGER SE AND
RTL TELEVISION GMBH v. GERMANY**

(Application no. 51405/12)

JUDGMENT

STRASBOURG

21 September 2017

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 and RTL Television GmbH v. Germany,

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

André Potocki, *President*,

Angelika Nußberger,

Yonko Grozev,

Síofra O’Leary,

Carlo Ranzoni,

Mārtiņš Mits,

Lətif Hüseynov, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 29 August 2017,

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

PROCEDURE

1. The case originated in an application (no. 51405/12) 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 two German media companies, Axel Springer SE and RTL Television GmbH (“the applicant companies”), on 8 August 2012.

2. The applicants were represented by Mr R. Mann and Mr H. Nieland, lawyers practising in Hamburg. The German Government (“the Government”) were represented by two of their Agents, Mr H.-J. Behrens and Mrs K. Behr, of the Federal Ministry of Justice and Consumer Protection.

3. The applicant companies alleged that a judicial order banning the publication of images (pictures and video-recordings) in which a defendant could be identified gave rise to a violation of Article 10 of the Convention.

4. On 4 March 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant company, Axel Springer SE, is a publishing house operated in the legal form of a *Societas Europea* registered in Berlin. The

second applicant company, RTL Television GmbH, is a broadcasting company set up as a private limited company registered in Cologne.

6. On 14 June 2010 the defendant, S., then aged 28, was arrested. The public prosecutor's office charged him with killing his parents, dismembering their bodies, burning some of the parts, flushing others down the toilet and disposing of the rest by putting them in barrels. S. confessed to the police. Several German newspapers reported on the case. Some published pictures of S., which mostly showed him at a much younger age.

7. The public prosecutor's office obtained a psychiatric expert opinion in October 2010. The expert concluded that S. was suffering from a schizoid personality disorder at the time when he had committed the offence.

8. The trial against S. began on 11 January 2011 at the Potsdam Regional Court. Photographers working for the applicant companies attended the hearings to take still photographs and make video-recordings of the defendant.

9. Prior to the start of the hearing, the presiding judge informed the photojournalists orally that the defendant's face would have to be made unidentifiable "in the usual manner" before any images of him were published.

10. According to the applicant companies, the presiding judge had indicated at the beginning of the hearing on 11 January 2011 that anyone who failed to comply with this order no longer needed to show himself at the Regional Court of Potsdam and apply for permission to take photos of future proceedings. The applicant companies submitted a copy of an email of a journalist who attended the hearing confirming the alleged statement of the presiding judge.

11. The Government contested the applicant companies' assertions that the presiding judge had threatened not only to bar journalists from taking photographs during the proceedings against the defendant, but also from future proceedings before the Potsdam Regional Court. The Government submitted that according to the presiding judge no such statement had been made.

12. S. repeated his confession on the first day of the hearing.

13. By a letter of 12 January 2011 the second applicant company asked the President of the Regional Court to change the presiding judge's oral order. It pointed out, *inter alia*, that several unpixelated pictures of S. had been published in different newspapers before. By a letter of the same date the president replied that he had forwarded the letter to the presiding judge for lack of competence.

14. On 17 January 2011 the presiding judge supplemented his order and provided his reasons in writing. The only media representatives who were permitted to take photographs and make video-recordings of S. were those who had previously registered with the court and given an assurance that prior to the publication or forwarding of the material, the face of S. would

be disguised by a technical process, for example by pixelisation, so that it would only be possible to use the images in such a form. Journalists were barred from further reporting on the case if they failed to comply with the order.

15. The presiding judge stated in his reasons that he had to balance the public interest in being informed and the personality rights of S. He acknowledged that the crime at issue was very different from “usual crimes” and that permitting only pictures that disguised S. impaired the public’s ability to be informed. However, he held that the order was justified in view of the need to protect the personality rights of S. He reasoned that it was unlikely that the case had caused a sensation throughout Germany. No nationwide television channel besides the second applicant had shown any interest in reporting on it. He stressed the importance of the presumption of innocence, finding that reporting on S. in a way which identified him could have a “pillory effect”. Consequently, according to the presiding judge the personality rights of S., who had never been in the public eye or sought to contact the media and who had expressly requested that his identity be concealed, outweighed the public interest in being informed. Furthermore, the order had already proved to be necessary as there had been individual violations of the judge’s instructions following the first day of the hearing.

16. On 18 January 2011 the presiding judge sent the supplemented written order to a number of journalists, including some who worked for the applicant companies.

17. On 31 January 2011 the applicant companies filed an objection (*Gegenvorstellung*), requesting the suspension of the judicial order banning the publication of images enabling identification “during the proceedings against (...) S.” (*“für die Dauer des Prozesses gegen (...) S.”*). The applicant companies stressed the fact that S. had confessed to the crime on the first day of the hearing.

18. On 4 February 2011 the presiding judge upheld the order. He held that the implications of the confession and its credibility could only be assessed at the end of the hearing.

19. Further hearings took place on 20 and 27 January 2011 and on 8 February 2011. On 10 February 2011 the Regional Court delivered its verdict, sentencing the defendant to prison on two counts of murder.

20. On 1 February 2012 the Federal Constitutional Court declined to consider a constitutional complaint by the applicant companies, without providing reasons (no. 1 BvR 381/11).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal provisions

21. The Courts Act (Gerichtsverfassungsgesetz) sets out provisions on reporting on court hearings and on judges' powers to issue orders to ensure their proper conduct. The relevant provisions read as follows:

Section 169

“Hearings before the adjudicating court, including the pronouncement of judgments and rulings, shall be public. Audio, television or radio recordings as well as audio and film recordings intended for public presentation or publication are not permitted.

...

Section 176

The presiding judge is responsible for maintaining order at hearings.

Section 177

Parties, accused persons, witnesses, experts or persons not participating in a hearing who fail to follow orders given to maintain order can be removed from the courtroom or taken into detention and held for a determined period of time; such a period may not exceed twenty-four hours. Decisions on measures pursuant to the first sentence in respect of persons who are not participants in the hearing shall be made by the presiding judge and in all other cases by the court.”

B. Case-law of the Federal Constitutional Court

22. The Federal Constitutional Court established in a decision of 19 December 2007 (no. 1 BvR 620/07) on video-recording in criminal proceedings that based on section 176 of the Courts Act a presiding judge can impose restrictions, *inter alia*, on the taking of photographs and making video-recordings. In doing so, the presiding judge has to balance the public interest in being informed and the personality rights of the defendant, giving consideration to the circumstances of the case. An essential criterion is the gravity of the offence at stake and special circumstances which may cause a rise in public interest. It noted that the public interest weighed more when the gravity of the offence clearly differed from acts of common criminality. That applied even if the defendant had never been in the public eye before. As to a defendant's personality rights, account had to be taken of the fact that criminal proceedings caused an unusual and burdensome situation which could not be avoided as attendance at them was mandatory. In particular in respect of defendants, a possible pillory effect or implications on the presumption of innocence and/or later social rehabilitation had to be considered.

23. The Federal Constitutional Court has decided on several applications for interim relief concerning judicial orders banning the publication of pictures and/or photographic journalism in which a defendant could be identified. The decisions stressed that the presumption of innocence meant that reports on criminal proceedings which included photographs had in general to be restrained and, at the very least, very balanced. The nature and gravity of the offence at issue might not only cause a higher level of public interest but also a higher risk of the stigmatisation of the defendant (decision of 27 November 2008, no. 1 BvQ 46/08). A confession by a defendant might impact the balancing process (decision of 20 December 2011, no. 1 BvR 3048/11) as could a possible lack of criminal responsibility due to mental health problems (decision of 30 March 2012, no. 1 BvR 711/12). In a decision of 9 September 2016 the Federal Constitutional Court has further found that an order to pixelate pictures largely respected the public interest in information (no. 1 BvR 2022/16).

III. RECOMMENDATION BY THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

24. The Appendix to the Recommendation Rec(2003)13 of the Committee of Ministers of the Council of Europe to member states on the provision of information through the media in relation to criminal proceedings (adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies) contains the following principles of particular interest to the present case:

“Principle 8 - Protection of privacy in the context of on-going criminal proceedings

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.

...

Principle 14 - live reporting and recordings in court rooms

Live reporting or recordings by the media in court rooms should not be possible unless and as far as expressly permitted by law or the competent judicial authorities. Such reporting should be authorised only where it does not bear a serious risk of undue influence on victims, witnesses, parties to criminal proceedings, juries or judges.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant companies complained that the judicial order banning the publication of images by which S. could be identified had violated their right to freedom of expression as provided in Article 10 of the Convention, which reads, so far as relevant, as follows:

“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 (...).”

A. Admissibility

26. The Court observes that the applicant companies raised their complaint in substance before the domestic courts and that it 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 Government

27. The Government stated that the presiding judge's order had been based on section 176 of the Courts Act. It had been the presiding judge's duty to issue instructions to maintain order at the court hearing, which also included ensuring the personality rights of S. and other parties involved.

28. Article 10 of the Convention had not been violated as the presiding judge had maintained a fair balance between the interests affected. He had taken account to a sufficient degree of the public interest in being informed and had been entitled to give precedence to the interests of S. in view of the circumstances of the case. It had been obvious that the reports on the proceedings against S. had focused primarily on satisfying public demand for sensationalist stories about the gruesome details of the crime. The restriction on publishing images of S. had been justified. S. had been utterly unknown to the public. He had merited an increased degree of protection against reporting as he suffered from a psychiatric disorder, as established by a psychiatric report in October 2010.

29. The Government emphasised that the pictures taken in the courtroom had shown S. in handcuffs, next to police officers or his defence lawyer. Disseminating pictures of that kind, where he could be identified, would have increased the pressure on him. His interests could not be given less weight in view of his confession on the first day of the hearing, bearing in mind the importance of the presumption of being innocent until proven guilty.

(b) The applicant companies

30. The applicant companies argued that the court order had had no legal basis in section 176 of the Courts Act.

31. According to the applicant companies, the domestic courts had failed in the present case to recognise the importance of the public interest in being informed and to balance the interests in question properly. The very unusual circumstances of the crime at issue had attracted an enormous amount of public interest, which had not been limited to mere curiosity but had also involved issues such as the role of the parents of S. in the family conflict. The domestic courts had ignored the fact that S. had become known to the public by virtue of the crime he had committed. As to the presumption of innocence, the domestic courts had not paid enough attention to the fact that S. had not only made a confession on the first day of the hearing but also previously during the investigation. With regard to the presiding judge's assumption that S. had needed particular protection, it had to be noted that the judge had nonetheless not taken any protective procedural measures, such as closing the proceedings to the public. Since the court had ordered that pictures of S. had to conceal his identity by technical means, the judicial ban had gone considerably beyond the requirements needed for the protection of the presumption of innocence.

32. The applicant companies highlighted that Article 10 of the Convention not only protected the substance of information and ideas, but also the form in which it was conveyed.

2. The Court's assessment

33. The Court notes, and the parties agreed, that the judicial order given in the present case had constituted an interference with the applicant companies' right to freedom of expression as guaranteed by Article 10 of the Convention.

34. Such interference contravenes the Convention if it does not satisfy the requirements of paragraph 2 of Article 10. It therefore falls to be determined whether the interference was "prescribed by law", pursued one or more of the legitimate aims in that paragraph and was "necessary in a democratic society" for that aim or aims.

(a) Prescribed by law

35. The Court reiterates that the relevant national law must be formulated with sufficient precision to enable the persons concerned – if need be with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 42, ECHR 2000-I). It has, however, acknowledged the fact that frequently laws are framed in a manner that is not absolutely precise (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 143, 27 June 2017, and *markt intern Verlag GmbH and Klaus Beermann v. Germany*, 20 November 1989, § 30, Series A no. 165).

36. The Court notes that the wording of section 176 of the Courts Act lacks precision to a certain degree, stating that “the presiding judge is responsible for maintaining order at hearings”, thereby giving presiding judges broad discretion. The Court acknowledges that in light of the varied situations that presiding judges face in proceedings, it is impossible to establish precise requirements for the measures to take in order to maintain the proper conduct of hearings in every individual case. Furthermore, in the context of restrictions on reports using photographs in criminal proceedings, the aforementioned provision has been subject to interpretation by the Federal Constitutional Court which has elaborated criteria for presiding judges for the balancing of interests (see paragraphs 22-23 above). The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain (*Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 144).

37. Accordingly, the Court is satisfied that the interference was “prescribed by law”.

(b) Legitimate aim

38. It is not in dispute that the judicial order served to protect the personal rights of S. in the context of the trial in the course of which he was to be presumed innocent until proved guilty. The Court notes that the judicial order therefore pursued the legitimate aim of “protecting the rights of others”.

(c) Necessary in a democratic society*(i) General principles*

39. The Court refers to the general principles set forth in its case-law for assessing the necessity of an interference with the exercise of freedom of expression which have been recently summarised in *Bédat v. Switzerland* [GC], no. 56925/08, § 48-54, ECHR 2016, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 88-93, 10 November

2015. The Court has emphasised the essential role played by the press in a democratic society and in particular its duty to impart information and ideas on all matters of public interest. This duty extends to the reporting and commenting on court proceedings which contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. It is inconceivable that there can be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them (*Axel Springer AG v. Germany* [GC], no. 39954/08, § 80, 7 February 2012). Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (*Axel Springer AG*, cited above, § 81).

40. However, the Court has also underlined that the press must not overstep certain bounds, regarding in particular the protection of the right to privacy of accused persons in criminal proceedings and the presumption of innocence (*Bédât*, cited above, § 51; *Egeland and Hanseid v. Norway*, no. 34438/04, § 53, 16 April 2009; *Eerikäinen and Others v. Finland*, no. 3514/02, § 60, 10 February 2009). The fact that everyone charged with a criminal offence has the right under Article 6 § 2 of the Convention to be presumed innocent until proved guilty is of relevance for the balancing of competing interests which the Court must carry out (see *News Verlags GmbH & Co.KG*, cited above, § 56).

41. Lastly, the Court reiterates that the Contracting States have a certain margin of appreciation in assessing the necessity and scope of any interference in the freedom of expression protected by Article 10 of the Convention, in particular when a balance has to be struck between conflicting private interests (*Bédât*, cited above, § 54). Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, strong reasons are required if it is to substitute its view for that of the domestic courts (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011; *Axel Springer AG*, cited above, § 88).

42. Where the right to freedom of expression is being balanced against the right to respect for private life, the criteria laid down in the Court's case law have to be taken into account (*Couderc and Hachette Filipacchi Associés*, cited above, § 93; *Axel Springer AG v. Germany*, cited above, §§ 89-95). The Court considers that the criteria thus defined are not exhaustive and should be transposed and adapted in the light of the particular circumstances of the case (compare *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 166). This applies in particular to cases where the presumption of innocence under Article 6 § 2 of the Convention comes into play (see, *mutatis mutandis*, *Bédât*, cited above,

§ 55). The Court has identified, as far as relevant for the present case, the following criteria in the context of balancing competing rights: the contribution to a debate of public interest, the degree to which the person affected is known, the influence on the criminal proceedings, the circumstances in which the photographs were taken, the content, form and consequences of the publication, as well as the severity of the sanction imposed.

(ii) *Application to the present case*

(α) The contribution to a debate of public interest

43. The Court has stressed the contribution made by photographs in the press to a debate of general interest (*News Verlags GmbH & Co.KG*, cited above, §§ 52 et seq.; and *Eerikäinen and Others v. Finland*, cited above, § 62). Depending on the degree of notoriety of the person concerned and the nature of the crime, the public might have an interest in having someone's physical appearance disclosed (see, *mutatis mutandis*, *Österreichischer Rundfunk v. Austria*, no. 35841/02, § 68, 7 December 2006). The Court acknowledges that there may be good reasons for prohibiting the publication of a suspect's image, depending on the nature of the offence at issue and the particular circumstances of the case.

44. The crime at issue was brutal but had been committed within a family following a private dispute and in a domestic setting. There were no indications that it had gained particular notoriety. At the very beginning of the proceedings, when the judicial ban was ordered, media interest in the case had been rather limited, as pointed out by the presiding judge and stressed by the Government. The Court agrees with the domestic court's assessment that there was a limited degree of public interest in the case.

45. The judicial order at issue did not restrict the content of reporting but concerned the publication of images by which S. could be identified. Therefore, the question arising here is whether the publication of such images was capable of contributing to the public debate on the case.

46. The Court does not consider that information on S.'s physical appearance could have contributed significantly to the debate on the case, in particular as there was no notoriety. Furthermore, there is no indication that S.'s physical appearance could have contributed to the assessment of issues such as the role of S.'s parents in the family conflict.

(β) The degree to which the person affected was known

47. The Court notes that S. was undoubtedly not a public figure, but an ordinary person who was the subject of criminal proceedings. The public became aware of S. for the first time as a consequence of the crime he had committed. The fact that he was the subject of criminal proceedings, albeit for a very serious offence, cannot deprive him entirely of the protection of

Article 8 of the Convention (*Bédat*, cited above, § 76 and *Eerikäinen and Others*, cited above, § 66).

48. The fact that someone's picture has already appeared in an earlier publication might be considered in the balancing process (*Axel Springer AG*, cited above, § 92, and *Österreichischer Rundfunk*, cited above, § 65) and lead to the conclusion that there was no need to restrict the disclosure of an identity (*Egeland and Hanseid*, cited above, § 59).

49. The Court notes that the presiding judge did not take into account previously published photographs of S. Considering the particular circumstances in which the judge issued the order, namely the point in time at the very beginning of the court hearing, and the necessary promptness of the decision-making process, he could not be expected to know of all prior publications at that time and consider them when balancing the competing interests.

50. The Court observes that S.'s physical appearance was known to the public as a consequence of the prior publications. However, most of the pictures of S. published prior to the criminal proceedings had apparently been taken many years before and showed him at a much younger age. In this regard, it must also be borne in mind that, until then, the German press had only occasionally reported on the case, with coverage basically limited to local media, as pointed out by the Government. Therefore, at the time of the proceedings against him, these pictures would not have enabled the public to identify S., and his identity cannot be said to have been already known to the public.

(γ) The influence on the criminal proceedings

51. The Court notes that S. had confessed to the crime twice and that, according to the applicant companies (see paragraph 32 above), therefore he would no longer have benefitted from the presumption of innocence. However, a confession in itself does not remove the protection of the presumption of innocence. According to Article 6 § 2 of the Convention, everyone charged with a criminal offence must be presumed innocent until proved guilty according to law. The Court acknowledges that a confession might, under certain circumstances, have an impact on the balancing of the competing rights, as the Federal Constitutional Court observed (no. 1 BvR 3048/11, see paragraph 23 above). However, in the present case the Court is satisfied that the presiding judge took into consideration the fact that S.'s declarations and their credibility had to be assessed at the end of the main hearing, according to the domestic law, and not before it began. This applies all the more as S. suffered from a schizoid personality disorder, according to a psychiatric expert report obtained by the prosecutor's office. The criminal court had to review carefully the confession in order to satisfy itself that it was accurate and reliable.

(δ) The circumstances in which the photographs were taken

52. The Court has regard to the fact that images of an accused taken in a court room may show the person in a state of great distress and possibly in a situation of reduced self-control (see, *mutatis mutandis*, *Egeland and Hanseid*, cited above, § 61). The photographs of S. taken at the beginning of the hearing showed him in the courtroom in handcuffs, next to police officers or his defense. Under these circumstances, S. had no means to protect his privacy and to prevent journalists from obtaining images by which he could be identified. He did not voluntarily expose himself to the public, but was forced to attend the hearing. The Court finds that under the given circumstances there was a strong need to protect S.'s privacy.

53. The Court notes moreover that S. never sought to contact the media nor make any public comments. Quite the reverse, he expressly asked to be protected from reporting which identified him. S. did not consent to the taking of photographs.

(ε) The content, form and consequences of the publication

54. The court order concerns the publication of images taken during the hearing by which S. could be identified. As pointed out by the Government, disseminating images showing S. in the courtroom, from which he could be identified, would have increased the psychological pressure on him. The Court notes that particular consideration should be given to the harmful effect which the disclosure of information enabling the identification of suspects, accused or convicted persons or other parties to criminal proceedings may have on these persons (see Principle 8 of the Appendix to the Recommendation Rec(2003)13 of the Committee of Ministers of the Council of Europe, see paragraph 24 above). Likewise, it has to be considered that a publication of images in which a defendant could be identified may have negative implications on a later social rehabilitation, if convicted, as the Federal Constitutional Court pointed out (no. 1 BvR 620/07, see paragraph 22 above). In the present case, it was also in the interest of safeguarding due process not to increase the psychological pressure on S., in particular in view of his personality disorder.

(ζ) The scope of the order and the severity of the sanction

55. The material scope of the judicial order was limited to a ban on the publication of images from which S. could be identified. As to the temporal scope of the judicial order, the applicant companies submitted that the presiding judge had stated on 11 January 2011 that anyone who failed to comply with his order would no longer have the right to take photographs prior to the commencement of proceedings. They had concluded that the threat applied not only to the proceedings in question, but had to be considered as a general ban for the future. The court is not convinced by the

applicants' argument that the judicial order could have an effect reaching beyond the first-instance hearing. The reasons given in the order explicitly refer to "orders on reporting on the main hearing" ("*Anordnung hinsichtlich der Bildberichterstattung über die Hauptverhandlung*"). In their objection of 31 January 2011 (see paragraph 17 above) the applicant companies themselves objected to a ban on reporting enabling identification "during the proceedings against (...) S." ("*für die Dauer des Prozesses gegen (...) S.*"). In view of the written version of the judicial order of 17 January 2011, and given that the presiding judge's competence was limited to the hearing at issue under section 176 of the Courts Act, there is no support for the applicant companies' allegation that the scope of the order went beyond the proceedings against S.

56. The Court notes that the judicial order was not a particularly severe restriction on reporting. The taking of images as such was not limited. The order banned merely the publication of images from which S. could be identified. Any other reporting on the proceedings was not restricted. Thus, the presiding judge chose the least restrictive of several possible measures in order to safeguard due process and protect S.'s privacy.

57. As regards the consequences of a breach of the court order, the potential barring from further reporting on the case was equally limited to the proceedings against S. The Court does not consider that the order had a chilling effect on the applicant companies contrary to their rights under Article 10 of the Convention.

(η) Conclusion

58. The Court recognises the careful balancing act carried out by the presiding judge, considering the various factors that are relevant under the Convention. Having regard to the criteria and considerations stated above, in particular the fact that the case concerned the publication of images taken in a criminal court hearing, the Court finds that the presiding judge clearly addressed the conflict between opposing interests and applied the domestic legal provision by carefully weighing the relevant aspects of the case. In view of the margin of appreciation available to the national authorities in the context of restrictions on reporting on criminal proceedings, the Court is satisfied that the presiding judge balanced the interests involved in conformity with Convention standards. The order was proportionate to the legitimate aim pursued as the presiding judge chose the least restrictive of several possible measures. Consequently, the Court concludes that the interference with the applicant companies' right to freedom of expression was "necessary in a democratic society".

59. 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 21 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

André Potocki
President