



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

FIRST SECTION

CASE OF LILLO-STENBERG AND SÆTHER v. NORWAY

(Application no. 13258/09)

JUDGMENT

STRASBOURG

16 January 2014

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 Lillo-Stenberg and Sæther v. Norway,

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 13258/09) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Norwegian nationals, Mr Lars Lillo-Stenberg and Mrs Andrine Sæther (“the applicants”), on 5 March 2009.
2. The applicants were represented by Mr Harald Stabell, a lawyer practising in Oslo. The Norwegian Government (“the Government”) were represented by their Agent, Mrs Fanny Platou Amble, attorney at the Attorney General’s Office (Civil Affairs).
3. The applicants alleged that their right under Article 8 of the Convention to respect for private life had been breached by a Supreme Court judgment of 2 September 2008.
4. On 26 May 2010 the application was communicated to the Government, but it was decided to await the outcome of *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, ECHR 2012 and *Axel Springer AG v. Germany* [GC], no. 39954/08, 7 February 2012.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1962 and 1964 respectively. They live in Oslo. The first applicant is a musician and the second applicant is an actress. They are both known to the public in Norway.

6. On 20 August 2005, the applicants married in a private ceremony which took place outdoors on an islet in the municipality of Tjøme in the Oslo fjord, approximately 100 km south of the capital.

7. Subsequently, the weekly magazine *Se og Hør*, hereafter “the magazine”, published a two-page article about the wedding, accompanied by six photographs. One photograph showed the bride, her father and her bridesmaids arriving at the islet in a small rowing boat; another showed the bride being brought to the groom by her father on the islet, surrounded by people; and yet another photograph showed the bride and the groom returning to the mainland on foot by crossing the lake on stepping stones. In the last photograph, the bride was barefoot with her wedding dress raised above her knees to avoid getting the dress wet. There was also a photograph of a couple and their baby who were wedding guests. Finally, there were two old photographs: one of the applicants framed in a heart and one of the second applicant and the applicants’ young son attending a musical festival one month earlier.

8. The article described the ceremony, the applicants and some of the guests. It stated, *inter alia*, that the ceremony was touching; that several guests could not hold back their tears when the bride arrived at the islet and a male voice choir starting singing the song “To live is to love”; and that a party took place after the ceremony in the garden of a named guest house. It also stated that the applicants’ manager had informed the magazine that the applicants did not wish to comment on their wedding.

9. The applicants brought compensation proceedings against the magazine before Oslo District Court (*Oslo tingrett*) and invoked, among other things, the right to respect for private life under section 390 of the Penal Code and Article 8 of the Convention. It was not in dispute that the magazine was not invited to the wedding and that the photographs were taken without the applicants’ knowledge approximately 250 meters from the islet.

10. By judgment of 22 November 2006 the Oslo District Court found for the applicants and ordered the magazine to pay them each 50,000 Norwegian kroner (NOK). In addition, the editor responsible was ordered to pay each applicant NOK 15,000 and the journalist and the photographer were ordered to pay each applicant NOK 5,000.

11. The magazine appealed to the Borgarting High Court (*lagmannsrett*), which by judgment of 13 February 2008 upheld the judgment.

12. The magazine appealed to the Supreme Court (*Høyesterett*), which by judgment of 2 September 2008 found against the applicants, by three votes to two.

13. Mr Justice U. gave the following reasons, which in the main were endorsed by the two other members of the majority:

“I have concluded that the appeal should be allowed.

(34) In recent years the Supreme Court has considered legal questions relating to violation of privacy in the judgments Rt-2007-687 (Big Brother) and Rt-2008-489 (Plata). My argument is based mainly on these judgments. As follows from the judgments, section 3-6 of the Damages Act concerning redress for violation of privacy must be read in conjunction with section 390 of the Penal Code. The provision in section 3-6 refers, at any rate primarily, to violation of section 390. In my view, there is no need to consider whether, as contended by [the applicants], there may be cases that are covered in principle by Article 8 of the European Convention on Human Rights but not by "privacy" under section 390 of the Penal Code. Nor will I examine whether this is a discussion of terminology or of facts.

(35) I have already described the content of the article. There is no doubt that the case concerns information – which I am using as a general term to refer to both text and pictures – that taken as a whole is relevant to the issue of privacy. There is no reason for me to evaluate individual elements on the basis of whether or not they impinge on the concept of privacy. The article as a whole contains information about the couple and their child in addition to information about the wedding. The relationships within the family and between the family and their friends are clearly of a personal nature.

(36) Thus the question under consideration is whether a *violation* of privacy took place, cf. section 390 of the Penal Code. There would have been no question of violation of privacy if consent to publication had been obtained, cf. paragraph 62 of the judgment in the Big Brother case. In this case it has been clearly established that the couple had not been informed beforehand that there were plans to publicise the wedding, nor were they asked for their consent. However, the journalist, Mr S, contacted [the first applicant's] manager on Monday, immediately before the article went to press. The manager said that the couple did not wish to comment on the wedding. A little later the same day *Se og Hør* was contacted and informed that the couple did not consent to publication, but the reply was that the magazine was already in the press. It has thus been clearly established that the article was published without the couple's consent. I would add that I see nothing in the article indicating that the couple had given the magazine permission to report on the wedding in return for payment. On the contrary, the article stated at the end that the two celebrities did not wish to comment.

(37) The next question is whether the article was unlawful. This question must be decided on the basis of an overall evaluation of the article, cf. paragraph 64 of the Big Brother judgment with further references. In my assessment of legality I also refer to the Big Brother judgment, citing, as was done in the Plata judgment, paragraphs 57 and 58:

‘... When the penal provision applies to *violation* of privacy, this necessarily implies that the issue that arises is that of legality. This again implies that the publication must be assessed as a whole, in the actual context and situation, where protection of privacy must be weighed against freedom of expression, cf. *Bratholm og Matningsdal*, Part Three, 1998, page 222, of the Penal Code and comments, and further references.

... The European Convention on Human Rights is incorporated into internal Norwegian law in the Human Rights Act. Both Article 8 relating to respect for private and family life and Article 10 relating to the right to freedom of expression are central to the present case. The principles that must be weighed in this case are similar to those that must be weighed under section 3-6, first paragraph, of the Damages Act and section 390 of the Penal Code, and in the present situation these provisions should be

interpreted in such a way that their content is in compliance with Articles 8 and 10 of the European Convention on Human Rights.’

(38) Reference is also made in paragraph 72 of the Big Brother judgment to the summing up by the European Court of Human Rights in the von Hannover judgment:

‘... The conclusion must naturally be read in conjunction with the rest of the judgment. The issue throughout is the balancing of the right to privacy against the principle of freedom of expression. The central issue with respect to protection of privacy is therefore whether the published article contributes to a debate of public interest. In other words, the particular importance of protection under Article 10 of the Human Rights Convention lies in the relevance of the information in question to public debate. With respect to publication of details referring exclusively to an individual’s private life, and particularly to the private relationship between two persons who do not occupy positions in politics or in society, this is clearly outside the area that the provisions relating to freedom of expression are intended to regulate.’

(39) Both [applicants] are well-known figures, but neither of them has had a prominent role either in the public administration or in any other public body. Thus the provisions of Article 10 have no particular weight with respect to the magazine article in question, which clearly has a purely entertainment value. In the assessment of legality, protection under Article 8 of the Human Rights Convention is the most relevant principle to be weighed.

(40) I will now examine the circumstances in the present case in relation to the issue of legality. As mentioned above, an overall assessment of the magazine article shows that it concerns the subjects’ private life, and the question is whether in spite of this there are grounds for saying that it does not constitute a violation of privacy. A wedding is a very personal act. At the same time it also has a public side. A wedding is a public affirmation that two persons intend to live together, and has legal consequences in many different sectors of society. Thus information about a wedding does not in itself involve a violation of privacy if it is given in a neutral form and based on a reliable source, cf. paragraph 80 of the Big Brother judgment.

(41) The judgment of the Court of Human Rights in the case of von Hannover and the subsequent judgment of the Supreme Court in the Big Brother case have premises that seem to go far in support of protection against the use of pictures and texts concerning an individual’s private life. It is therefore necessary to examine the facts on which the judgments were based. Paragraph 49 of the von Hannover case concerns a series of photographs of the aggrieved party. In its evaluation of the application of the law in the case at hand, the court stated in paragraphs 68 and 69:

‘... The Court finds another point to be of importance: even though, strictly speaking, the present application concerns only the publication of the photos and articles by various German magazines, the context in which these photos were taken – without the applicant’s knowledge or consent and the harassment endured by many public figures in their daily lives cannot be fully disregarded (see paragraph 59 above). In the present case this point is illustrated in particularly striking fashion by the photos taken of the applicant at the Monte Carlo Beach Club tripping over an obstacle and falling down ... It appears that these photos were taken secretly at a distance of several hundred metres, probably from a neighbouring house, whereas journalists’ and photographers’ access to the club was strictly regulated ...

... The Court reiterates the fundamental importance of protecting private life from the point of view of the development of every human being’s personality. That protection – as stated above – extends beyond the private family circle and also

includes a social dimension. The Court considers that anyone, even if they are known to the general public, must be able to enjoy a “legitimate expectation” of protection of and respect for their private life ...’

(42) Paragraph 59 states:

‘Furthermore, photos appearing in the tabloid press are often taken in a climate of continual harassment which induces in the person concerned a very strong sense of intrusion into their private life or even of persecution.’

(43) Thus the way in which the photos were published and the constant photographing – often by photographers who followed her around – constituted harassment of the aggrieved party and also an invasion of privacy. The situation was similar to some extent in the Big Brother case. *Se og Hør* ran several articles featuring photos taken from different sources together with speculation and gossip. The magazine also described the relationship between the parties during their life together, which was an invasion of their private life as a couple.

(44) The right to protection of privacy is no weaker for well-known cultural personalities than it is for others, despite the fact that their photos are published in magazines and newspapers and on the internet in connection with their professional lives. It could be said that in the case of such individuals it is even more important to ensure that their private lives and personal relationships are protected.

(45) A wedding is a very significant personal experience for the bridal couple, an experience that includes their families, friends and other persons close to them. The wedding ceremony and celebrations are therefore clearly part of private and family life and thus in principle should be protected. However, in my opinion this consideration is only one aspect of the case.

(46) As mentioned above, a neutral description of two individuals’ wedding is not unlawful.

(47) Neither the text nor the photos in the disputed magazine article contain anything unfavourable to the couple. The article contains no criticism, nor is there anything in the content that could weaken their reputations.

(48) Furthermore, although the couple’s relationships with close friends are part of their private life, I cannot see that in this context the naming of a few of the participants constitutes a violation. Nor is it particularly unusual to write that the ceremony was “moving, and several of the guests couldn’t hold back their tears when a men’s choir sang ...”.

(49) The article contains no photos of the actual wedding ceremony. It is therefore not possible for me to have any views on whether such photos, including close-ups, would have to be regarded in a different light from those featured in the article. Photos in such a situation would clearly have more personal significance than photos showing the bridal couple arriving at or leaving the place where the marriage took place.

(50) I shall now examine more closely the way the wedding was conducted. The bride arrived at the islet in a rowing boat, with six bridesmaids on board. There she was greeted by her future husband and by a men’s choir singing a hymn. After the ceremony the bride and groom had to step from rock to rock in order to reach the shore, which the bride accomplished in bare feet. As pointed out in paragraph 50 of the von Hannover judgment, the concept of private life is comprehensive, and includes ‘a zone of interaction of a person with others, even in a public context, which may fall within the scope of ‘private life’. However, a certain amount of weight must be given to the fact that the wedding was organised in a very unusual way, and took

place in an area that is accessible to the public under the Outdoor Recreation Act and that is easily visible. As already mentioned, the photos do not show the most personal part of the wedding, the actual marriage ceremony.

(51) As mentioned above, the photos were taken of a wedding in a place accessible to the public. It can be assumed that even in August there are large numbers of people on Tjøme, which is one of the most popular locations for holiday cottages and recreation in Norway. Furthermore, many of the arrangements were such as to attract attention from third parties, for example the arrival of the bride in an open boat and the presence of a men's choir singing a hymn on the islet. The arrangements were also spectacular in themselves. In spite of the fact that all individuals, including celebrities, are entitled to protection against being photographed even in public places, I consider that this must be taken into account in the assessment of legality.

(52) The photos were taken from a headland about 200-250 metres from the islet where the ceremony was being held, and a 300- to 400-millimetre zoom lens was used. For the bridal couple, however, the situation would not have been any better if the photography had taken place somewhere closer, or from a place where the photographer and journalist could have been seen by the wedding party. This could have disturbed the whole wedding. Nor was the photographing in the nature of a breach of confidence, as it would have been if for example any of the participants had published personal photos taken during or in connection with the wedding. The situation would also have been different if the photos had been taken of events taking place in a closed area where the subjects had reason to believe that they were unobserved, cf. paragraph 68, second sub-paragraph, of the von Hannover judgment.

(53) The article contained a photo of [the second applicant] together with the couple's under-age child. During the proceedings the focus has been on the photos related to the wedding, and it has not been contended that the use of the photo of the under-age child puts the case in a different light. The photo had previously been published in *Aftenposten*, and it has not been contended that consent was lacking on that occasion. For these reasons I shall not examine the particular questions raised by the use of a photo of an under-age child without the necessary consent of the parents.

(54) Thus it must be concluded that the article did not involve unlawful violation of privacy.

(55) [The applicants] have contended as an alternative that the photos were used in a way that conflicts with the provisions of section 45c of the Copyright Act relating to the right to control the use of one's image. In my view these provisions should also be read with the reservation that there could be a conflict of principles and in conjunction with Articles 8 and 10 of the Human Rights Convention. The conclusion would then be the same as that of my principal assessment.

(56) The Court therefore allows the appeal. However, the case raises difficult and uncertain legal questions, clarification of which is in the public interest, cf. section 20-2, third paragraph, a, of the Code of Civil Procedure. No award of costs should therefore be made."

14. Mr Justice T. gave the following reasons which in the main were endorsed by the other member of the minority:

"(58) I am substantially in agreement with the first-voting judge's general interpretation of section 3-6 of the Damages Act and section 390 of the Penal Code. However, when weighing the right to privacy against the principle of freedom of expression in this specific case, I have arrived at a different conclusion, since I

consider that in the present case the appellants have violated the right to privacy under section 390 of the Penal Code.

(59) I will first examine whether the subject of the article in *Se og Hør* can be considered to be 'a personal matter' in the meaning of section 390.

(60) I agree with the first-voting judge that information that a marriage has been contracted between two named individuals can be published without being in conflict with the provisions of section 390 of the Penal Code. However, this is not the issue in the present case. The article in *Se og Hør* also describes in words and pictures details of the arrangements in connection with the wedding ceremony.

(61) Weddings have always been a subject of general interest in the sense that those close to the bridal couple consider them important and wish to participate. It is also usual for the couple to wish to share the event with others. For these reasons there should in principle be no reason why the press should not report a wedding ceremony that takes place in full public view, and where no special arrangements have been made to indicate that the ceremony is private.

(62) However, today it is not unusual for the couple to wish to share their wedding and its arrangements only with those closest to them, and often to give the event a personal touch. They are entitled to protect themselves from publicity in such cases as well, and this includes withholding permission for the press to publish the event. In my view the desire to hold a private wedding should be respected in the sense that the wedding ceremony should be regarded as a personal matter within the meaning of section 390.

(63) A private wedding ceremony may take different forms. For example, a wedding held in a private home provides a clear signal to third parties that the marriage is a personal matter that may not be reported in the form published by *Se og Hør* without the bridal couple's prior consent.

(64) In my view all the relevant circumstances indicate that in the present case the wedding was a private event. The wedding party was held at a hotel on Tjøme, which in this context is clearly a private area. The islet where the events reported by *Se og Hør*, and the marriage itself, took place is a relatively short walk away and directly linked with the hotel's property. In my opinion the fact that there is a general right of public access to the islet under the Outdoor Recreation Act does not prevent this part of the wedding from also being of a clearly private nature. It follows from the von Hannover judgment that protection of privacy also applies to places to which the public has access. Furthermore, consent to the use of the islet had been obtained from the landowner. Thus the arrangement as a whole indicated that the couple wished to restrict the wedding to themselves and their guests. From this perspective the event must be considered to be a personal matter within the meaning of section 390.

(65) For these reasons I consider that *Se og Hør* published in words and pictures a number of details relating to a personal matter. Firstly, the magazine published details of the arrangements for the ceremony, which have been described more fully by the first-voting judge. I regard these as the personal touch that the bridal couple had wished to give their wedding and that in my view underlines the private nature of the wedding. Secondly, the article included a description of the guests and the couple's families, together with the names of well-known figures. In this connection the names of guests with children were also given, and pictures were shown of the children and their parents.

(66) Like the first-voting judge, I consider that it has been clearly demonstrated that the opposite parties' consent had not been obtained.

(67) The next question is whether the publication is legal and justified despite the fact that the subject of the article is a personal matter. It follows from paragraph 72 of Rt-2007-687 that the main question to be weighed is whether ‘the article contributes to a debate of public interest. In other words, the particular importance of the principle of protection under Article 10 of the European Convention on Human Rights lies in the sphere of public debate’. I agree with the first-voting judge that this wording cannot be interpreted in such a way that it does not rule out that the publication of personal matters is justified in cases where it does not contribute to public debate. However, when matters of a personal nature such as those in question here are published, they must have at least a minimum of public interest if the invasion of privacy is to be considered legitimate. In the present case the publication was a celebrity article written for the sole purpose of entertainment. Although the desire to entertain is in itself legitimate, its nature does not justify overriding the affected parties’ desire to protect their privacy. In this connection I place special emphasis on the fact that getting married is a very significant occasion in a person’s life, and that therefore the activities celebrating it – the marriage ceremony and the wedding party – will for most people be one of the most important events of their lives, and will often be associated with strong emotions.

(68) The fact that the opposite parties are well-known cultural figures in Norway has no bearing on the assessment. Well-known persons also have the right to respect for personal matters of the kind we are dealing with here. I find support for this view both in Rt-2007-687, cf. paragraph 74, and in the von Hannover judgment ..., cf. paragraph 67.

(69) Although this has not influenced my view of the case, I would also like to comment on *Se og Hør*’s use of a zoom lens. The zoom lens enabled the journalist and the photographer to take close-up pictures of the bridal couple and their guests that make it look as if they were actually at the event themselves, when in fact they were hidden from those who were being observed. It seems likely that the reason for using this technique was that the journalist and photographer were aware that the bridal couple would have reacted to their presence on the islet and this might have resulted in the marriage ceremony being moved inside the hotel. Using a zoom lens because of the personal and private nature of the event resembles the use of a hidden camera, which is a factor that also weighs against the appellants.

(70) For these reasons I am of the opinion that the article in *Se og Hør* cannot be justified on the basis of an assessment of legality, and that the opposite parties are entitled to redress for pain and suffering from the appellants. With regard to the amount of redress, the opposite parties have demanded that the amount decided by the Court of Appeal should be maintained. I have no objections to the amounts decided on. Since I know that I am in the minority, I will not formulate a final conclusion.”

II. RELEVANT DOMESTIC LAW

15. The relevant provision of the Penal Code reads as follows:

Section 390

Any person who violates another person’s privacy by giving public information about personal or domestic relations shall be liable to fines or imprisonment for a term not exceeding three months.

Sections 250 and 254 shall apply correspondingly.

If the misdemeanour is committed in a printed forum, an order for confiscation may be made in accordance with section 38.

A public prosecution will only be instituted when it is requested by the aggrieved person and required in the public interest.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicants complained that their right to respect for private life as secured by Article 8 of the Convention was breached by the Supreme Court's judgment of 2 September 2008. Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

17. The Court notes that the application 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. *Submissions by the parties*

18. The Government submitted that the Supreme Court, in its judgment of 2 September 2008, carried out a balancing test in full conformity with the criteria laid down in the Court's case law, as summarised and clarified in the recent Grand Chamber judgments *Axel Springer AG v. Germany* [GC], no. 39954/08, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, both dated 7 February 2012. They pointed out that in such a situation the Member States should be afforded a wide margin of appreciation and that the Court would require strong reasons to substitute its view for that of the domestic courts. The Government asserted that such strong reasons could not be demonstrated in the present case, and that the Court should therefore refrain from substituting its view for that of the Norwegian Supreme Court. Such an approach would also be fully in line

with the strengthening of the principle of subsidiarity, as most recently reinforced by the Member States in their Brighton Declaration of 19 April 2012, provision B. 11 and 12, in particular *litrae* a) and b).

19. Furthermore, the Court's case-law supported the Norwegian Supreme Court's finding that the applicants' marriage contributed, at least to some degree, to a debate of general interest. Thus, the publication was not for entertainment purposes alone, and the event did not exclusively relate to the applicants' strictly private lives. Furthermore, given the setting and framework the applicants had chosen for the ceremony, the non-intrusive reporting technique employed, and that neither the photographs nor the accompanying article conveyed detrimental or very intimate information, the Supreme Court correctly concluded that the publication was justified under the Convention as well as under Norwegian law.

20. The applicants maintained that the Supreme Court failed to strike a fair balance between "freedom of expression" and "right to respect for private life" and that it did not undertake this balancing exercise in conformity with the criteria laid down in the Court's case-law, and notably the most recent Grand Chamber cases.

21. In particular, in the present case, as acknowledged by the majority in the Supreme Court (see paragraph 39 of the judgment) the article in question "clearly had a purely entertainment value" and the applicants were "well-known figures, but neither of them had a prominent role either in public administration or in any other public body". Accordingly the applicants were not "public figures" and the article did not "contribute to a debate of general interest". The present case should thus clearly be distinguished from *Van Hannover (2) v. Germany*, cited above.

22. Also the content and form of the article and the circumstances in which the photographs were taken supported the fact that there had been a serious intrusion into the applicants' private life. The applicants underlined that the use of a zoom lens enabled the journalist and the photographer to take close-up photographs of the bridal couple and their guests that made it look as if they were actually at the event themselves, when in fact they were hidden from those who were being observed.

23. The applicants contended that the majority of the Supreme Court seemed to base their decision on the view that since the photographs were not taken in "a climate of continual harassment" with reference to *Von Hannover v. Germany*, no. 59320/00, ECHR 2004-VI, and the article did not contain anything unfavourable to the couple, the interference was not severe enough to constitute a breach of Article 8. This approach is not in conformity with the Court's case-law.

24. Therefore, the applicants' right to respect for their private life was breached by the Supreme Court's judgment of 2 September 2008.

2. *The Court's assessment*

(a) **General principles**

25. Starting from the premise that the present case requires an examination of the fair balance that has to be struck between the applicants' right to the protection of their private life under Article 8 of the Convention and the publisher's right to freedom of expression as guaranteed by Article 10, the Court finds it useful to reiterate some general principles relating to the application of both articles.

26. In respect of Article 8, the Court has already held that the concept of private life extends to aspects relating to personal identity, such as a person's name, photograph or physical and moral integrity (see *Von Hannover (no. 2)*, cited above, § 95). Regarding photographs, the Court has stated that 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 (*ibid.* § 96; see also *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05, § 48, 4 June 2009, and *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 53, 23 July 2009).

27. In certain circumstances, even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of and respect for his or her private life (see *Von Hannover (no. 2)*, cited above, § 97).

28. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, *Axel Springer AG v. Germany [GC]*, cited above, § 78, 7 February 2012, and also, among other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV; and *Lindon, Otchakovsky-Laurens and July v. France [GC]*, nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

29. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and

rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog” (see, *Axel Springer AG*, cited above, § 79; see also *Bladet Tromsø and Stensaas v. Norway* [GC], no.21980/93, §§ 59 and 62, ECHR 1999-III, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 71, ECHR 2004-XI).

30. While freedom of expression includes the publication of photographs, this is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photographs may contain very personal or even intimate information about an individual and his or her family (see *Von Hannover (no. 2)*, cited above, § 103; *Eerikäinen and Others v. Finland*, no. 3514/02, § 70, 10 February 2009; *A. v. Norway*, no. 28070/06, § 72, 9 April 2009; and *Rothe v. Austria*, no. 6490/07, § 47, 4 December 2012).

31. The adjective “necessary” within the meaning of Article 10 § 2 implies the existence of a “pressing social need”. In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left with a certain margin of appreciation. This power of appreciation is not unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court’s task in exercising its supervisory function is to look at the interference in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are “relevant and sufficient” and whether it was “proportionate to the legitimate aim pursued” (see, among other authorities, *Bladet Tromsø and Stensaas*, cited above, § 58).

32. Furthermore, the Court has recently set out the relevant principles to be applied when examining the necessity of an interference with the right to freedom of expression in the interests of the “protection of the reputation or rights of others”. It noted that in such cases the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Axel Springer AG*, cited above, § 84, and *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011).

33. In *Von Hannover v. Germany (no. 2)* (cited above, §§ 104-107) and *Axel Springer AG* (cited above, §§ 85-88), the Court defined the Contracting States’ margin of appreciation and its own role in balancing these two

conflicting interests. The relevant paragraphs of the latter judgment read as follows:

“85. The Court reiterates that, under Article 10 of the Convention, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent an interference with the freedom of expression guaranteed under that provision is necessary (see *Tammer v. Estonia*, no.41205/98, § 60, ECHR 2001-I, and *Pedersen and Baadsgaard*, cited above, § 68).

86. However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court (see *Karhuvaara and Iltalehti v. Finland*, no.53678/00, § 38, ECHR 2004-X, and *Flinkkilä and Others*, cited above, § 70). In exercising its supervisory function, the Court’s task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see *Petrenco v. Moldova*, no. 20928/05, § 54, 30 March 2010; *Polanco Torres and Movilla Polanco*, cited above, § 41; and *Petrov v. Bulgaria* (dec.), no. 27103/04, 2 November 2010).

87. In cases such as the present one the Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher who has published the offending article or under Article 8 of the Convention by the person who was the subject of that article. Indeed, as a matter of principle these rights deserve equal respect (see *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 41, 23 July 2009; *Timciuc v. Romania* (dec.), no. 28999/03, § 144, 12 October 2010; and *Mosley v. the United Kingdom*, no. 48009/08, § 111, 10 May 2011; see also point 11 of the Resolution of the Parliamentary Assembly – paragraph 51 above). Accordingly, the margin of appreciation should in principle be the same in both cases.

88. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court’s case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited*, cited above, §§ 150 and 155, and *Palomo Sánchez and Others v. Spain [GC]*, nos.28955/06, 28957/06, 28959/06 and 28964/06, § 57, 12 September 2011).”

34. The Court went on to identify a number of criteria as being relevant where the right of freedom of expression is being balanced against the right to respect for private life (see *Von Hannover (no. 2)*, cited above, §§ 109-113, and *Axel Springer AG*, cited above, §§ 89-95), namely:

- (i) contribution to a debate of general interest
- (ii) how well known is the person concerned and what is the subject of the report?
- (iii) prior conduct of the person concerned
- (iv) method of obtaining the information and its veracity/circumstances in which the photographs were taken
- (v) content, form and consequences of the publication.

(b) Application of these principles to the present case

35. The Supreme Court's legal point of departure was section 390 of the Penal Code interpreted in the light of Articles 8 and 10 of the Convention and the existing case law (see paragraph 13 above). It stated that in order to decide whether the publication was justified, "the publication must be assessed as a whole, in the actual context and situation, where protection of privacy must be weighed against freedom of expression". It should be noted in this connection that the specific wording used by the Supreme Court in its judgment from 2008 corresponded to the said Penal Code provision about violation of privacy by giving public information about personal or domestic relations, rather than the formulation of the criteria set out in the subsequent Grand Chamber judgments from 2012 cited above.

36. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists (see *Von Hannover (no. 2)*, cited above, § 109).

37. The criterion regarding how well-known the person is and the subject of the report, is related to the criterion of general interest. In the present case the applicants had no public community functions but they were well-known performing artists, and accordingly public figures. The article and the photographs concerned their wedding. In this respect the Supreme Court found, among other things, that the article had "a purely entertainment value" and continued:

"a wedding is a very personal act. At the same time it also has a public side. A wedding is a public affirmation that two persons intend to live together, and has legal consequences in many different sectors of society. Thus information about a wedding does not in itself involve a violation of privacy if it is given in a natural form and based on a reliable source".

Hence, although not stating that the article constituted a subject of general interest, the Supreme Court did emphasise that a wedding has a public side. The Court agrees and finds reason to add that the publication of an article about a wedding cannot itself relate exclusively to details of a person's private life and have the sole aim of satisfying public curiosity in that respect (see, *Von Hannover (no. 2)*, cited above, § 110). It therefore considers that there was an element of general interest in the article about the applicants' wedding.

38. There is no information available to the Court about the applicants' conduct prior to the publication of the article. Nevertheless, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the article and the photographs at issue (see, *Von Hannover (no. 2)*, cited above, § 111). Similarly, the Supreme Court recognised that

the right to protection of privacy “is no weaker for well-known cultural personalities than it is for others”, despite the fact that their photographs are published in magazines and newspapers and on internet in connection with their professional lives.

39. The Court will now turn to the other relevant criteria under the Convention, namely the method of obtaining the information, its veracity, the circumstances in which the photographs were taken, content, form and consequences of the publication. It is not in dispute between the parties that the applicants did not consent to the publication of the photographs or the accompanying article, and that the photographer obtained the photographs by hiding and using a strong telephoto lens from a distance of approximately 250 meters. In the view of the Supreme Court, however, for the bridal couple:

“the situation would not have been any better if the photography had taken place somewhere closer, or from a place where the photographer and journalist could have been seen by the wedding party. This could have disturbed the whole wedding. Nor was the photography in the nature of a breach of confidence, as it would have been if for example any of the participants had published personal photographs taken during or in connection with the wedding. The situation would have been different if the photographs had been of events taking place in a closed area, where the subjects had reason to believe that they were unobserved”.

40. The Supreme Court went on to analyse paragraphs 59 and 68-69 in the judgment *Von Hannover v. Germany*, (no.1), cited above, and noted in particular that in that judgment, the way in which the photographs were published and the constant photography constituted harassment of the aggrieved party (similarly to the previous “Big Brother case” but unlike the present case) and also an invasion of privacy.

41. It also pointed out that neither the text nor the photographs in the disputed magazine article contained anything unfavourable to the applicants. It did not contain any criticism, nor was there anything in the content that could damage their reputation.

42. There were no photographs of the actual marriage ceremony. In the view of the Supreme Court, however, had there been photographs of the actual wedding ceremony, such a situation would clearly have had more personal significance than photographs showing the bridal couple arriving at or leaving the place where the wedding took place.

43. Moreover the Supreme Court examined the way the wedding was conducted and reiterated the principle set out in *Von Hannover v. Germany*, (no.1), cited above, that the concept of private life is comprehensible, and includes “a zone of interaction of a person with others, even in a public context, which may fall within the scope of ‘private life’. It thus noted that the wedding was organised in a very unusual way, for example with the arrival of the bride in an open boat and the presence of a men’s choir singing a hymn on the islet. Moreover, since the ceremony took place in an

area that was accessible to the public, easily visible, and a popular holiday location, it was likely to attract attention by third parties. The Court accepts the Supreme Court's view in this respect that these elements should also be given a certain amount of weight.

44. In the opinion of the Court, both the majority and the minority of the Norwegian Supreme Court carefully balanced the right of freedom of expression with the right to respect for private life, and explicitly took into account the criteria set out in the Court's case-law which existed at the relevant time. In addition, *de facto*, the Supreme Court assessed all the criteria identified and developed in the subsequent case-law, notably in *Von Hannover (no. 2)* and *Axel Springer AG*, both cited above. The Court therefore finds reason to point out that, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts" (see, *Von Hannover v. Germany (no. 2)*, cited above, § 107 and *Axel Springer AG v. Germany*, cited above, § 88).

45. In these circumstances, and having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, the Court concludes that the Supreme Court did not fail to comply with its obligations under Article 8 of the Convention. Accordingly, there has not been a violation of the said provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 16 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President