

Summer School with Moot Court 2013 in Hạ Long

The Caroline Judgments

Two proceedings:

1. Case von Hannover v. Germany
(no. [59320/00](#)), judgment of 24 June 2004
Caroline I
2. Case von Hannover v. Germany
(no. [40600/08](#) and 60641/08), judgment of 7 February 2012
Caroline II

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The Caroline Judgments

Proceedings

Applicants: Caroline von Hannover
(Caroline I); Caroline and Ernst August
von Hannover (Caroline II)

Government: Germany

Application: German court decisions have
infringed Art. 8 ECHR

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The Caroline Judgments

Proceedings

Individual application, Art. 34 ECHR



ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

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The Caroline Judgments

Proceedings

Rules of Court

- rules of procedures
- allocation of section of the court, Rule 52 § 1
- observations on the merits filed by the parties, Rule 59 § 1

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The Caroline Judgments

The Facts

The people involved

Caroline von Hannover

sister of Albert II, Prince of Monaco

married to Ernst August, Prince of
Hanover since 1999

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The Caroline Judgments

The Facts

The people involved

Vincent Lindon

French actor,

lover of Princess Caroline from 1990

to 1995

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The Caroline Judgments

The Facts

The people involved

Andrea Casiraghi

born 1984,

eldest son of Caroline

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The Caroline Judgments

The Facts

The people involved

Pierre Casiraghi

born 1987,

younger son of Caroline

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The Caroline Judgments

The Facts

The people involved

Charlotte Casiraghi

born 1986,

daughter of Caroline

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The Caroline Judgments

The Facts

The people involved

Ernst August von Hannover
married to Caroline since 1999

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Caroline I

The Facts

The press involved

- Burda publishing company
- Heinrich Bauer publishing company

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Caroline I

The Facts

The photos in question

1. The first series of photos
 - a) Caroline and Vincent at the far end of a restaurant.
 - b) Caroline on a Horseback and Caroline with her children Andrea and Pierre
 - c) Caroline with her children Charlotte, Andrea and Pierre as well as Caroline on private occasions such as shopping

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Caroline I

The Facts

The photos in question

2. The second series of photos
 - a) Caroline on skiing holiday in Switzerland
 - b) Caroline and Ernst August at a horse show and leaving her house in Paris
 - c) Caroline and Ernst August playing tennis or putting their bicycles down

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Caroline I

The Facts

The photos in question

3. The third series of photos

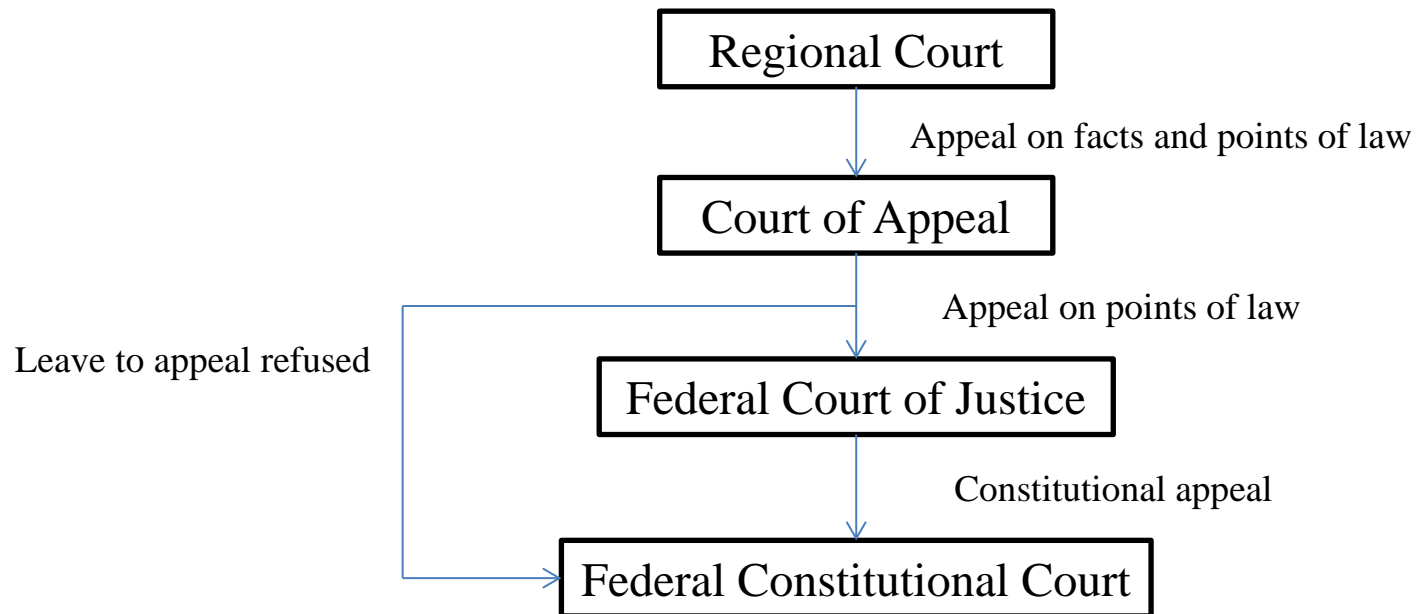
Caroline at Monte Carlo Beach Club dressed in a swimsuit and wrapped in a bathing towel, tripping and falling down - photos taken from afar.

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Caroline I

The Proceedings in the German courts

Appeal stages (German private law)



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Caroline I

The Proceedings in the German courts

1. The first set of proceedings

a) Hamburg Regional Court, 4 February 1993

→ application to injunction rejected

b) Hamburg Court of Appeal, 8 December 1994

→ application to injunction rejected

c) Federal Court of Justice, 19 December 1995

→ injunction against pictures 1. a) in restaurant granted

d) Federal Constitutional Court, 15 December 1999

→ injunction against pictures 1. b) and c) with her children granted

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Caroline I

The Proceedings in the German courts

2. The second set of proceedings

a) Hamburg Regional Court, 26 September 1997

→ application to injunction rejected

b) Hamburg Court of Appeal, 10 March 1998

→ application to injunction rejected

c) Federal Court of Justice – no judgment

→ leave to appeal on points of law refused by Court of Appeal

d) Federal Constitutional Court, 4 April 2000

→ injunction rejected

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Caroline I

The Proceedings in the German courts

3. The third set of proceedings

a) Hamburg Regional Court, 24 April 1998

→ application to injunction rejected

b) Hamburg Court of Appeal, 13 October 1998

→ application to injunction rejected

c) Federal Court of Justice – no judgment

→ leave to appeal on points of law refused by Court of Appeal

d) Federal Constitutional Court, 13 April 2000

→ injunction rejected

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Caroline I

Before the European Court of Human Rights

The photos in question

1. The first series of photos
 - a) *Caroline and Vincent at the far end of a restaurant. – ruled out*
 - b) Caroline on a Horseback and *Caroline with her children Andrea and Pierre - ruled out*
 - c) *Caroline with her children Charlotte, Andrea and Pierre – ruled out* as well as Caroline on private occasions such as shopping

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Caroline I

Before the European Court of Human Rights

The photos in question

2. The second series of photos
 - a) Caroline on skiing holiday in Switzerland
 - b) Caroline and Ernst August at a horse show and leaving her house in Paris
 - c) Caroline and Ernst August playing tennis or putting their bicycles down

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Caroline I

Before the European Court of Human Rights

The photos in question

3. The third series of photos

Caroline at Monte Carlo Beach Club dressed in a swimsuit and wrapped in a bathing towel, tripping and falling down - photos taken from afar.

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Caroline II

The Facts

The press involved

- Ehrlich & Sohn publishing company
- WZV publishing company

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Caroline II

The Facts

The photos in question

1. Photos published in *Frau im Spiegel*
 - a) Caroline and Ernst August walking in St. Moritz during their skiing holiday followed by an article on her father's serious illness.
 - b) Caroline and Ernst August out for a walk in St. Moritz in a busy street.
 - c) Caroline and Ernst August in a chair lift in Arlberg followed by an article on the Rose Ball hosted by her.

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Caroline II

The Facts

The photos in question

2. Photos published in *Frau Aktuell*

Basically identical to picture and article under 1 a).

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Caroline II

The Proceedings in the German courts

1. The first set of proceedings
 - a) Hamburg Regional Court, 29 April 2005
 - injunction granted
 - b) Hamburg Court of Appeal, 31 January 2006
 - judgment overturned, application to injunction rejected
 - c) Federal Court of Justice, 19 December 1995
 - injunction against pictures 1. b) und c)
 - d) Federal Constitutional Court, 15 December 1999
 - judgement of Federal Court of Justice confirmed

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Caroline II

Before the European Court of Human Rights

The photos in question

1. Photos published in *Frau im Spiegel*

- a) Caroline and Ernst August walking in St. Moritz during their skiing holiday followed by an article on her father's serious illness.
- b) *Caroline and Ernst August out for a walk in St. Moritz in a busy street – ruled out.*
- c) *Caroline and Ernst August in a chair lift in Arlberg followed by an article on the Rose Ball hosted by her – ruled out.*

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Caroline II

Before the European Court of Human Rights

The photos in question

2. Photos published in *Frau Aktuell*

Basically identical to picture and article under 1 a).

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Caroline I and II

The relevant provisions

The German Civil Code – Law of Torts

Section 823

Liability in damages

- (1) Anyone intentionally or negligently trespassing, contrary to law, on the life, body, health, freedom, property or any other right of another party shall be liable for the damage thus incurred to that other party.
- (2) The same duty affects anyone breaching a law aiming to protect another party. If, according to the contents of such law, a breach thereof is also possible without culpability, then liability in damages only occurs in case of culpability.

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Caroline I and II

The relevant provisions

The German Civil Code – Law of Torts

Section 1004

Claim for removal and injunction

- (1) If the ownership is interfered with by removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction.
- (2) The claim is excluded if the owner is obliged to tolerate the interference.

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Caroline I and II

The relevant provisions

The German Copyright (Arts Domain) Act

§ 22 Images can only be disseminated with the express approval of the person concerned.

Bildnisse dürfen nur mit Einwilligung des Abgebildeten verbreitet oder öffentlich zur Schau gestellt werden. Die Einwilligung gilt im Zweifel als erteilt, wenn der Abgebildete dafür, daß er sich abbilden ließ, eine Entlohnung erhielt. Nach dem Tode des Abgebildeten bedarf es bis zum Ablaufe von 10 Jahren der Einwilligung der Angehörigen des Abgebildeten. Angehörige im Sinne dieses Gesetzes sind der überlebende Ehegatte oder Lebenspartner und die Kinder des Abgebildeten und, wenn weder ein Ehegatte oder Lebenspartner noch Kinder vorhanden sind, die Eltern des Abgebildeten.

§ 23 An exception applies particularly where the images portray an aspect of contemporary society

(1) Ohne die nach § 22 erforderliche Einwilligung dürfen verbreitet und zur Schau gestellt werden:

1. Bildnisse aus dem Bereiche der Zeitgeschichte;
2. Bilder, auf denen die Personen nur als Beiwerk neben einer Landschaft oder sonstigen Örtlichkeit erscheinen;
3. Bilder von Versammlungen, Aufzügen und ähnlichen Vorgängen, an denen die dargestellten Personen teilgenommen haben;
4. Bildnisse, die nicht auf Bestellung angefertigt sind, sofern die Verbreitung oder Schaustellung einem höheren Interesse der Kunst dient.

unless that publication does interfere with a legitimate interest of the person concerned.

(2) Die Befugnis erstreckt sich jedoch nicht auf eine Verbreitung und Schaustellung, durch die ein berechtigtes Interesse des Abgebildeten oder, falls dieser verstorben ist, seiner Angehörigen verletzt wird.

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Caroline I and II

The relevant provisions

German Basic Law (German Constitution)

Article 1 § 1

“The dignity of human beings is inviolable. All public authorities have a duty to respect and protect it.”

Article 2 § 1

“Everyone shall have the right to the free development of their personality provided that they do not interfere with the rights of others or violate the constitutional order or moral law [*Sittengesetz*].”

Article 5 §§ 1 and 2

“1. Everyone shall have the right freely to express and disseminate his or her opinions in speech, writing and pictures and freely to obtain information from generally accessible sources. Freedom of the press and freedom of reporting on the radio and in films shall be guaranteed. There shall be no censorship.

2. These rights shall be subject to the limitations laid down by the provisions of the general laws and by statutory provisions aimed at protecting young people and to the obligation to respect personal honour [*Recht der persönlichen Ehre*].”

Article 6 §§ 1 and 2

“1. Marriage and the family enjoy the special protection of the State.

2. The care and upbringing of children is the natural right of parents and a duty primarily incumbent on them. The State community shall oversee the performance of that duty.”

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Caroline I and II

The relevant provisions

European Convention on Human Rights

ARTICLE 8

Right to respect for private and family life

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.

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Caroline I and II

The relevant provisions

European Convention on Human Rights

ARTICLE 10

Freedom of expression

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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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Caroline I and II

The Proceedings in the German courts

Law applied by German Courts

