European Court of Human Rights : Avram and other v Moldova

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In a judgment of 5 July 2011 the European Court of Human Rights found that five women broadcast on national television in a sauna romp with police officers should have received higher financial compensation for the breach of their privacy. This judgment became final on 5 October 2011.

The applicants in this case are five young women, all friends, who complained about the broadcasting on Moldovan national television of an intimate video footage showing them in a sauna with five men, four of whom were police officers. At the time, three of the applicants were journalists, the first two for the investigative newspaper Accente. The women claimed that they first had contact with the police officers when the editor in chief of Accente was arrested on charges of corruption and that, from that point on, the officers provided them with material for their articles. One of the applicants had even become romantically involved with one of the officers. The footage was used in a programme on national television about corruption in journalism and notably in the newspaper Accente. It showed the applicants, apparently intoxicated, in a sauna in their underwear, with two of them kissing and touching one of the men and one of them performing an erotic dance. The faces of the men were covered in the video, whereas those of the applicants were not. The video was paused from time to time in order to allow the women to be recognized more easily. The applicants alleged in particular that the video had been secretly filmed by the police officers and used to try to blackmail them into not publishing an article on illegalities at the Moldovan Ministry of Internal Affairs. Indeed the video was send to the National Television Service only after the first two applicants had had the article published in their newspaper.

The five applicants brought civil proceedings both against the Ministry of Internal Affairs, for arranging the secret filming and giving documents of a private nature to national television, and against National Television, for then broadcasting the images of a private nature. They requested compensation for a breach of their right to respect for their private and family life under Article 8 of the European Convention. In August 2008 the Supreme Court of Justice in Moldova gave a final ruling in which it dismissed the complaint against the Ministry of Internal Affairs concerning the secret filming on account of lack of evidence. It held, however, that the Ministry was responsible for handing documents of a private nature

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concerning Ms. Avram over to the National Television Service and that National Television was then responsible for the broadcasting of the sauna scene, in breach of Article 8 of the Convention. The Supreme Court ordered the National Television Service to pay each applicant EUR 214 and the Ministry of Internal Affairs a further EUR 214 to Ms. Avram, these being the maximum amounts allowed under Article 7/1 of the Moldovan old Civil Code by way of compensation for damage to a person's honour or dignity.

Relying on Article 8 of the Convention (right to respect for private and family life), the applicants complained that the domestic authorities had failed to properly investigate the secret filming in the sauna and that the compensation awarded to them for the broadcasting was not proportionate to the severity of the breach of their right to respect for their private lives. In its judgment, the European Court reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which includes, inter alia, the right to establish and develop relationships with other people. It encompasses elements such as sexual life, the right to live privately and away from publicity and unwanted attention. The Court sees no reason to depart from the conclusion of the national courts, which acknowledged that there had been interference with the applicants' right to privacy in respect of both the secret filming and the broadcasting of the video on television and the defamation. The Court furthermore made clear that a State that awards compensation for a breach of a Convention right cannot content itself with the fact that the amount granted represents the maximum under domestic law. The Court found that the amounts awarded by the Supreme Court of Justice to the applicants were too low to be considered proportionate with the gravity of interference with their right to respect for their private lives, taking into account that the broadcasting of the video on national television had dramatically affected the private, family and social lives of the applicants. There has, accordingly, been a breach of Article 8 of the Convention. In terms of compensation for non-pecuniary damage the Court awarded sums between EUR 4,000 and 6,000 to each of the applicants. The Court also awarded them jointly with a sum of EUR 1,500 for costs and expenses.

Judgment by the European Court of Human Rights (Third Section), case of Avram and others v Moldova, No. 41588/05 of 5 July 2011

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