European Court of Human Rights: Faludy-Kovács v. Hungary

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On 23 January 2018, the European Court of Human Rights (ECtHR) delivered its judgment in the case of Faludy-Kovács v. Hungary, concerning media coverage of a non-political public figure who had "actively sought the limelight", and the extent of her right to reputation.

The applicant in the case was the widow of the well-known Hungarian poet, György Faludy. In 2008, the Helyi Téma newspaper published a front-page article, with a photograph of the applicant and her late husband, with the headline "Trampling on the memory of Faludy. The widow does anything for the limelight". The article concerned an interview the applicant had given to another newspaper in which she revealed she wanted to have a child who would be a blood relative of both her and her late husband, and explained that she envisaged her own sister and her late husband's grandson being the parents of that child.

The applicant lodged a civil action against the publisher of Helyi Téma under Article 78 of the (old) Hungarian Civil Code, alleging a violation of her right to reputation. The Budapest Regional Court ordered a public apology and obliged the publisher to pay EUR 2,000 in damages. The court held that the statement that she had trampled on her husband's memory had infringed her right to reputation and dignity. However, the Budapest Court of Appeal reversed the previous judgment and held that the headline had not been a statement of fact but a value judgment expressed in connection with the applicant's own "peculiar" statements. The court also found that the headline could not have infringed the applicant's reputation since her own statements had been irrational and undignified, putting György Faludy's grandson in an embarrassing situation. The Kúria (the Hungarian Supreme Court) subsequently dismissed an appeal by the applicant, finding that the headline had constituted a value judgment concerning the unusual manner in which the applicant intended to start a family.

The applicant made an application to the ECtHR, claiming a violation of her right to reputation under Article 8 of the European Convention on Human Rights (ECHR). The main question for the Court was whether the domestic courts had struck a fair balance between the journalist's right to freedom of expression under Article 10 of the ECHR and the applicant's right to have her reputation respected under Article 8 of the Convention. Firstly, the Court held that the applicant, in her

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capacity as the widow of György Faludy and a well-known person in contemporary society, was a public figure and that she inevitably and knowingly exposed herself to public scrutiny. Secondly, the Court held that the applicant had actively sought the limelight so, having regard to the degree to which she was known to the public, her "legitimate expectation" that her private life would not attract public attention and would not be commented on was hence reduced. Thirdly, regarding the content, form and consequences of the publication, the Court held that the headline merely related to the applicant's own statements, as reproduced in the accompanying article, and did not contain unsubstantiated allegations. The fact that the headline had employed an expression which, to all intents and purposes, had been designed to attract the public's attention cannot in itself raise an issue under the Court's case-law. The Court considered that the headline introducing the statements of the applicant had to be considered as a matter of editorial choice that had been intended to provoke a reaction.

Fourthly, the information to which the journalist had reacted had been expressed voluntarily by the applicant in the course of an interview, and had not been acquired in circumstances unfavourable to her. Finally, regarding the contribution of the article to a debate of public interest, the Court noted that the domestic courts had reached their conclusions without going into an analysis of whether the article had concerned an issue of legitimate public interest. However, in the Court's view, in the circumstances of the present case, where the applicant gave an interview about her family plans clearly for the purposes of satisfying the curiosity of a certain readership, the question of whether the accompanying expression in issue covered a subject of public interest is of minor relevance. Thus, the absence of this element in the domestic courts' reasoning did not have an effect on the balancing exercise that they have conducted.

In the light of the foregoing, the Court held that domestic courts had struck a fair balance between the journalist's freedom of expression under Article 10 of the Convention and the applicant's right to have her reputation respected under Article 8. The potential negative consequences that the applicant might have suffered after the publication of the headline were not so serious as to justify a restriction on the right to freedom of expression guaranteed by Article 10. Thus, there had been no violation of Article 8 of the Convention.

Judgment by the European Court of Human Rights, Fourth Section, case of Faludy-Kovács v. Hungary, Application no. 20487/13 of 23 January 2018

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