European Court of Human Rights: *Vučina v. Croatia*

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In *Vučina v. Croatia,* the European Court of Human Rights (ECtHR) has held that the level of seriousness associated with the erroneous labelling of a photograph in a lifestyle magazine and the inconvenience the named person may have suffered did not give rise to an issue under Article 8 of the European Convention on Human Rights (ECHR), neither in the context of the protection of the applicant's image nor of her honour and reputation. The ECtHR dismissed the complaint that the domestic courts had failed to protect the applicant's image and honour, also observing that the Croatian judicial authorities had provided effective protection by awarding the applicant damages and ordering a correction of the erroneously published information by an Internet portal.

The applicant in this case was Diana Vučina who brought a civil action against the publisher of the lifestyle magazine Gloria, seeking damages in respect of the erroneous labelling of her photograph. The magazine had published a photograph of Mrs. Vučina that had been taken during a popular music concert in Split. The photograph was small in size and depicted her clapping. The caption to the photograph gave the name of A.K. – the wife of Ž.K., the then Mayor of Split. The same page contained several other photographs of various celebrities who had attended the concert, and the captions to those photographs indicated their names. Following the publication of her photograph and the accompanying erroneous indication of her name, Mrs. Vučina asked Gloria to print a correction. However, she received no reply from the magazine, nor was the published information rectified. In court, Mrs. Vučina submitted that she, as a doctor of medicine and a university lecturer, and her real husband, as a university professor, were very active in the social life of Split, and that following the publication of her photograph in Gloria, people had started approaching her, addressing her by the Mayor's wife's name, and taking photographs of her. She argued that it was difficult to express all the unpleasantness that she and her family had suffered and that her personality rights, honour and reputation had been infringed by the publication of the erroneously labelled photograph.

After the Municipal Court found that there had been a breach of Mrs. Vučina's personality rights, in appeal, Split County Court dismissed her civil action, holding in particular that, irrespective of the controversies surrounding the Mayor, there were no negative connotations in Mrs. Vučina being identified as his wife in the photograph published in Gloria, and that the published information was incapable

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of giving rise to public denigration. Shortly afterwards, the Constitutional Court dismissed Mrs. Vučina's constitutional complaint as unfounded, endorsing the reasoning of Split County Court. Meanwhile, an Internet portal used the photograph from Gloria, again erroneously identifying Mrs. Vučina as the Mayor's wife. The picture accompanied an article that discussed the details of an extra-marital affair in which the Mayor had allegedly engaged, as well as certain alleged irregularities concerning his business dealings, with which his wife was also associated. The Internet portal was obliged by court order to publish a correction and pay damages to Mrs. Vučina. Mrs. Vučina complained under Article 8 ECHR of a breach of her right to respect for her private life by virtue of the failure of the domestic courts to protect her image from being erroneously attributed to another person in a lifestyle magazine. She stressed that the reporters of the magazine Gloria had acted contrary to the relevant professional standards and had not verified the information concerning her identity before publication of the impugned photograph. Moreover, the magazine had not acted in good faith, as it had failed to correct the erroneous labelling of her photograph and to provide her with an apology.

The ECtHR first reiterates that, in order for an issue to arise under Article 8 ECHR, as regards the effects of the publication of a photograph on a person's private life, honour or reputation, the impugned situation affecting that person's private life must reach a certain threshold of severity or seriousness. In its preliminary determination as to whether the impugned situation affecting Mrs. Vučina's private life had attained the requisite level of seriousness under Article 8 ECHR, the ECtHR takes into consideration the following criteria: the manner in which the photograph had been obtained; the nature of the publication; the purpose for which the photograph was used and how it could be used subsequently; and the consequences of the publication of the photograph for the applicant. The ECtHR observes in particular that the taking of Mrs. Vučina's photograph in a public place at a public event and its subsequent publication in itself raises no particular issue under Article 8 ECHR. However, the key issue in the present case is not the fact that the photograph was taken and published but the fact that the magazine had made an error in the designation of the applicant's name by confusing her name with that of the Mayor's wife. The ECtHR is of the opinion however that the photograph and the article it illustrated (amongst other pictures of celebrities) was not denigrating towards Mrs. Vučina. In so far as the impugned photograph was later used by an Internet portal in a manner that could have been damaging to Mrs. Vučina's right to respect for her private life, the ECtHR finds it important that the domestic courts provided effective protection to Mrs. Vučina by awarding her damages and ordering a correction of the erroneously published information. Mrs. Vučina was therefore able to forestall any sufficiently serious adverse consequences for her private life arising in connection with the published information. Although the ECtHR does not lose sight of the fact that obviously the publisher of Gloria unjustifiably refused to provide an apology and a correction of the erroneous information, it observes that Mrs. Vučina had the possibility of

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asking the domestic courts to issue an order for a correction and apology, which could have served as an appropriate and justified avenue for her grievances. Mrs. Vučina, however, failed to do so, and instead only sought an award of damages from the publisher, which the County Court found to be unjustified. The ECtHR sees no grounds for calling the County Court's findings into question. Having regard to the context in which the publication of the article in question and Mrs. Vučina's photograph was made the ECtHR cannot find that the very fact that the Mayor's wife's name was placed next to Mrs. Vučina's photograph amounted to a sufficiently serious intrusion into her private life. As the ECtHR is unable to find that the false impression created by the impugned photograph was objectively capable of creating any negative public perception of Mrs. Vučina and hence did not raise an issue under Article 8 ECHR, it dismissed Mrs. Vučina's complaint as incompatible *ratione materiae* with the ECHR.

ECtHR First Section, Vučina v. Croatia, Application no. 58955/13, decision of 24 September 2019, notified in writing on 31 October 2019

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