ECtHR: *Rodina v. Latvia*

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A lack of respect for the right to privacy, combined with an apparent negligence of the tenets of responsible journalism, can be pertinent reasons to justify an interference with journalistic reporting, as protected by Article 10 of the European Convention on Human Rights (ECHR). In the case of *Rodina v. Latvia*, the European Court of Human Rights (ECtHR) found a violation of Article 8 (right to privacy) ECHR because the Latvian courts had not sufficiently protected a doctor's family life and her good name and reputation after she had been exposed by a newspaper and a TV station as being part of a family scandal devoid of public interest.

In 2005, the Russian-language newspaper Čas (*Час*) published an article under the headline "A family drama". The article reported on a family dispute about the sale, by a doctor, Mrs Rodina, of an apartment that belonged to her mentally ill 74-year-old mother, and the alleged lack of caretaking and support that Mrs Rodina had given her mother while in hospital. The article was also published on the newspaper's Internet site, accompanied by a family photograph which had been provided by Mrs Rodina's mother. Mrs Rodina, together with her husband and son, brought proceedings before Riga City Court against the publisher and against two family members who had made some of the contested statements in the article. Mrs Rodina requested that fourteen statements in the article be declared false and that the publication of her family's photograph be declared unlawful. She further sought an order requiring the publisher to retract the false information, to publish a written apology for having published it, and to be compensated for non-pecuniary damage. Riga City Court found a violation of Mrs Rodina's right to privacy and reputation by the newspaper, but this decision was subsequently quashed by Riga Regional Court. The regional court fully dismissed Mrs Rodina's claim, including with regard to the family portrait, as the photograph had been published with the authorisation of her mother, and the portrait itself was neutral, thus not damaging to Mrs Rodina's honour and dignity. An appeal on points of law filed by Mrs Rodina was dismissed by the Senate of the Supreme Court.

In the meantime, in addition, a commercial TV station, TV3, broadcast a programme with a feature that portrayed a similar story to the one which had been published in the newspaper. Again, Mrs Rodina's claims were dismissed by the Latvian courts, the Supreme Court of the Senate mainly referring to the rights

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of the media and journalists to report and express value judgments about these kind of matters, based upon interviews and with a sufficient factual basis. Furthermore, it was found that there was no evidence that Mrs Rodina's honour and dignity had been offended.

Mrs Rodina complained before the ECtHR about the publication of her family story in the newspaper and its subsequent broadcast on television. She also alleged that the domestic courts had failed to protect her rights in both sets of civil proceedings. The ECtHR reiterated that in such cases, it is for the Court to determine whether the state, in fulfilling its positive obligations under Article 8 ECHR, has struck a fair balance between the applicant's right to respect for her private life and the right of the opposing party to freedom of expression, as protected by Article 10 ECHR. Moreover, Article 10, section 2 ECHR recognises that freedom of expression may be subject to certain restrictions which are necessary to protect the reputation or rights of others. The ECtHR referred to the relevant criteria for balancing the right to respect for private life against the right to freedom of expression, as developed in its earlier landmark judgments of 7 February 2012: *Von Hannover (no. 2) v. Germany* and *Axel Springer AG v. Germany* (IRIS 2012/3-1). These criteria are: the contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the news report; the prior conduct of the person concerned; the content, form and consequences of the publication; and, where appropriate, the circumstances in which the information or photograph was obtained.

The Court clarified what might constitute a subject of public interest: "The public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about." The ECtHR also reiterated that the protection afforded by Article 10 ECHR to journalists "is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism."

With regard to the degree of notoriety of Mrs Rodina and her prior conduct, the ECtHR found that she had not appeared in or been the subject of any prior publications in the mass media, and that, accordingly, as a private individual unknown to the public, Mrs Rodina could claim particular protection of her private life. With regard to the content of the article and TV feature, the Court observed that the disputed statements gave the impression that Mrs Rodina had acted in a morally reproachable manner by not providing sufficient support to her mother, and that they constituted serious intrusion into her private life. The ECtHR noted several factors which raised doubts as to whether the journalists had acted in

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good faith, in accordance with the tenets of responsible journalism, when reporting the story of the family dispute. The ECtHR emphasised “that special diligence should be exercised when dealing with matters which, albeit indirectly, relate to mental health, such as establishing of facts or disclosure of sensitive data. This applies, in particular, to journalists when exercising their freedom of expression and also to the domestic courts when carrying out their assessment in the balancing of the rights at stake.” The ECtHR expressed its doubts as to whether the journalists in this case had strived to provide accurate and reliable information or to find out what had happened, as the notion of responsible journalism would require. Furthermore, the Court accepted that a private dispute may be connected to an issue that is of importance for the general public, but that in this case, the journalists did not refer to any broader social issues when reporting on this family dispute, and the Court itself did not discern any contribution to a debate of public interest. With regard to the publication of the family portrait photograph, the ECtHR agreed with Mrs Rodina that the consent given by her mother could only relate to the publication of her mother’s photograph, not to that of Mrs Rodina. Although it concerned a neutral family portrait, the Court found that when such a photograph accompanied a story portraying an individual in a negative light, it constituted a serious intrusion into the private life of a person who does not seek publicity. The ECtHR was of the opinion that there were no particular reasons related to public interest behind the decision to publish the photograph without taking any particular precautions, such as masking or blurring her face. There was indeed nothing to suggest that the said photograph had any inherent informative value or was used for a good cause, apart from merely showing Mrs Rodina to the public. Therefore, the publishing of Mrs Rodina’s family photograph without taking any precautions could not be regarded as “contributing to any debate of general interest to society.” Finally, the ECtHR found unanimously that the domestic courts in both sets of civil proceedings had failed to strike a fair balance between Mrs Rodina’s right to respect for her private life under Article 8 ECHR and her relatives’ right to freedom of expression, as reported by the mass media, under Article 10 ECHR. Therefore, there has been a violation of Article 8 ECHR. Mrs Rodina was awarded a sum of EUR 9 800, partly for non-pecuniary damage, and partly for costs and expenses incurred before the domestic courts and the ECtHR.

Judgment by the European Court of Human Rights, Fifth Section, case of Rodina v. Latvia, Applications nos. 48534/10 and 19532/15, 14 May 2020.

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