[BG] Supreme Court of Cassation's decision on the right to refuse filming by journalists in the context of right to privacy

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In a recent decision, *Върховен касационен съд* (the Supreme Court of Cassation/ the Supreme Court) ruled on the boundaries between journalists' freedom, objectivity and dissemination of information, and the right of individuals not to be filmed without their consent.

The case was formed following a claim for compensation for non-pecuniary/moral damages brought by an individual against one of the national broadcasters which owns several TV channels, websites, etc.

The reason for the claim was video material, broadcast on one of the national television channels, in which the claimant (who was accused in ongoing criminal proceedings) was filmed, despite the fact that he had expressed an explicit disagreement to being filmed. In the material, a journalist is recording the claimant while he walks through the passage of the court and the latter clearly states that he does not want to be filmed and avoids the camera.

According to the claimant, the filming violated his right to respect for his private and family life and the right to privacy (which includes, among other things, the right to the protection of personal data), so he claimed compensation for moral damages.

The courts of first and second instance rejected his claim. They found that the filming of the claimant in a court building at the time when he was attending criminal proceedings on charges against him, did not violate his rights and did not result in damages for him.

The case therefore reached the Supreme Court which had to answer whether the filming, photographing, recording or similar actions, performed by a journalist/reporter, with respect to persons who expressly disagree, would constitute unlawful conduct.

The question was raised in context of the fundamental right to privacy stipulated in Article 32, paragraph 1 of *Конституция на Република България* (Constitution of the Republic of Bulgaria – the Constitution) – the latter states that the privacy of citizens is inviolable and everyone shall have the right to defence against illegal

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invasion into his personal and family life, and against encroachment onto his honor, dignity and reputation. Furthermore, Article 32, paragraph 2 of the Constitution, states that no one shall be followed, photographed, filmed, recorded or subjected to any other similar activity, without his knowledge or in spite of his expressed disapproval, except when such actions are permitted by law.

So, the Supreme Court analysed in detail the specifics of the right to privacy and the possible derogations. It also underlined that media and journalists could generally rely on the right to freedom of expression and opinion, and the right to seek, obtain and disseminate information regarding important topics and certain individuals, but these rights are not absolute and should not violate other absolute rights (such as the right to privacy). It clarified that the latter rights extend to the limits beyond which other constitutional values would be affected (such as the right to privacy). It also concluded that media and journalists could rely on the said rights unless they are used to abuse other rights.

In the particular case, the Supreme Court found that the recording/filming of the claimant constitutes an unlawful conduct and is in violation of the right to privacy due to the following:

The recording of the video and its broadcasting was carried out before the announcement and the entrance into force of a judgement, so it was in contradiction to the general presumption of innocence; The filming of video material with the participation of the claimant by a journalist, even in a public place such as the court building, in case when disagreement to the filming is clearly expressed, is unlawful; The actions of the media exceed the limits of the right to freedom of expression and opinion, and the right to seek, obtain and disseminate information; No specific laws permit the derogation from the absolute right to privacy, so the balancing test is in favor of the claimant. The Supreme Court analysed the most the relevant laws and concluded that there were no legal grounds to justify a derogation from the principle; The actions of the journalists could also not be justified based on the fact that the claimant was a public official at the time the proceedings took place.
Based on the above arguments, the Supreme Court found that the right to privacy of the defendant was violated and awarded a compensation in an amount of approximately EUR 500.

Решение № 13 от 14.09.2021 г. по гр. д. № 4896/2019 г. на Върховен касационен съд, 4-то гр. отделение

http://www.vks.bg/pregled-akt?type=ot-delo&id=9151BA100965C9B3C225875000223405

Decision № 13 of 14.09.2021 under civil case No. 4896/2019 of the Supreme Court of Cassation, 4th Civil Department

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