European Court of Human Rights: I.V.Ț. v. Romania

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The European Court of Human Rights (ECtHR) has delivered a judgment on the protection of minors when giving an interview on television, without parental consent. It found that the domestic courts had failed to protect a young girl's private life as guaranteed by Article 8 of the European Convention on Human Rights (ECHR), emphasising the particular vulnerability of young people in such a context and the lack of prior consent by parents, relatives or teachers. In particular, the ECtHR came to the conclusion that the domestic courts had only superficially balanced the young girl's right to private life (Article 8 ECHR) and the broadcaster's right to freedom expression (Article 10 ECHR).

An 11-year old school girl had answered some questions posed by a TV-journalist following the tragic death of a schoolmate during a school trip, in which the girl herself had not participated. The girl stated, among other things, that she had heard that the deceased pupil had fallen out of a train without a teacher present. In particular, she said, regarding the presence of teachers, "there should have been better care for pupils to keep them safe". Extracts from this interview were integrated into the television channel's report about the tragic event and on the television channel's website. As a result of the broadcasting of the interview, the girl was bullied and the reactions she received caused her emotional stress. The mother of the child brought civil proceedings against the licence holder of the television channel for breach of the child's privacy and right to her image, but her claims were dismissed by the higher domestic courts.

Before the domestic courts, the pupil, Ms I.V.Ț., alleged that, following the television report, she had been recognised by her schoolmates and teachers and subsequently suffered from their hostile attitudes towards her. Her mother was summoned to the school to give a written declaration that she would prevent I.V.Ț. from making any other statements in front of journalists. I.V.Ț.'s mother also made apologies and gave explanations to all of the schoolteachers. In the civil proceedings against the TV-station, the higher domestic courts found that the journalists of the TV-station had not acted wrongly in so far as they had been covering a subject of public interest, and that the adverse attitude of the school teachers and schoolmates towards the pupil following the broadcast of her interview was not imputable to the journalists.

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In its judgment of 1 March 2022, the ECtHR started from the premise that the present case required an examination of the fair balance that had to be struck between I.V.Ț.'s right to the protection of her private life under Article 8 ECHR and the private broadcasting company and journalists' right to impart information as guaranteed by Article 10 ECHR. The ECtHR referred to the criteria for balancing the protection of private life and freedom of expression: the contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the report; the prior conduct of the person concerned; the content, form and consequences of the publication; and the circumstances in which images were taken. The ECtHR also referred to the State's positive obligation to take into account the particular vulnerability of young people, while the task of audio-visual media service providers of imparting information necessarily included "duties and responsibilities", as well as limits which the media had to impose on itself spontaneously. Wherever information bringing into play the image of a person is at stake, journalists are required to take into account, in so far as possible, the impact of the information, pictures or video recordings to be published prior to their dissemination. The ECtHR reiterated that while the essential object of Article 8 ECHR is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there might also be positive obligations inherent in effective respect for private and family life. These obligations might involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves. Moreover, individuals who lacked legal capacity, such as minor children, were particularly vulnerable, and this aspect needed to be integrated in the State's positive obligations under Article 8 ECHR.

The ECtHR confirmed that the contribution to a debate of public interest made by the broadcast news report is indeed an essential criterion to take into consideration. However, I.V.Ț. had been a minor and so the requirement of parental consent – which had never been obtained – had to be weighed against it. The ECtHR noted in particular that the relevant National Audiovisual Council regulations stated "the right of the minor to his or her private life and private image prevail[ed] over the need for information, especially in the case of a minor in a difficult position". Even where a news report made a contribution to a public debate, the disclosure of private information – such as the identity of a minor who had witnessed a dramatic event – must not exceed editorial discretion, and had to be justified. Those considerations were more important in the present case, where the ECtHR expressed doubts as to the relevance to a debate of public interest of the opinions of a child who had not even witnessed the event in question. As regards the conditions under which the interview in question was conducted, the ECtHR observed that I.V.Ț.'s parents or legal representative had not at any time given their consent to the broadcast of the interview. In that respect, the prior parental consent had to be considered as a safeguard for the protection of the young girl's image, rather than as a mere formal requirement. The ECtHR also

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considered that media reporting that disclosed information concerning a young child's identity could jeopardise the child's dignity and well-being even more severely than in the case of an adult, given their greater vulnerability, which attracted special legal safeguards. It also observed that the domestic courts had found that I.V.Ț. had suffered from severe distress and anguish following the broadcast. Hence it appeared that the broadcast had had serious repercussions on I.V.Ț.'s well-being and private life and that her allegations on that point were not appear ill-founded or frivolous. The Court concluded that the higher domestic courts had only superficially engaged in the balancing exercise between I.V.Ț.'s right to private life and the TV-channel's freedom of expression, and that that exercise was not carried out in conformity with the criteria laid down in the Court's case-law as mentioned above. In the Court's view, the above considerations – especially on the young age and the lack of notoriety of I.V.Ț., on the little contribution that the broadcast of her interview was likely to bring to a debate of public interest and on the particular interest of a minor in the effective protection of her private life – are sufficiently strong reasons to substitute its view for that of the domestic courts. Therefore the ECtHR concluded that there has been a violation of Article 8 ECHR by the domestic authorities, failing to comply with their positive obligations to protect I.V.Ț.'s right to respect for her private life.

Judgment by the European Court of Human Rights, Fourth Section, in the case of I.V.Ț. v. Romania, Application no. 35582/15, 1 March 2022

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