

European Court of Human Rights: RTBF v. Belgium (no. 2)

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For the second time, the public broadcasting organisation of the French Community in Belgium (*Radio-télévision belge de la communauté française* — RTBF) successfully invoked its right to freedom of expression before the European Court of Human Rights (ECtHR) (see also IRIS 2011-6/1). In view of the importance of the media in a democratic society, and of the domestic authorities' limited margin of appreciation in respect of a television programme about a subject of considerable public interest, the ECtHR found that the Belgian courts had not balanced in a pertinent way the right to respect for private life and the presumption of innocence with RTBF's right to freedom of expression and journalistic reporting on a matter of public interest. The ECtHR found that the reasons put forward by the domestic courts had not been sufficient to establish that the interference complained of by RTBF had been necessary in a democratic society. Therefore the ECtHR concluded that Belgium had violated RTBF's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerned a civil judgment against RTBF by the Belgian courts for having breached the right to respect for private life (as protected by Article 8 ECHR) and the right to be presumed innocent (as protected by Article 6 ECHR), following a report broadcast by RTBF about a couple alleged to be involved in sexual exploitation. RTBF was ordered to pay each spouse EUR 1 in respect of non-pecuniary damage.

In January 2006, RTBF broadcast a 52-minute report on the role of a couple (Mr and Ms V.) in organising private wrestling matches with the participation of girls and young women who were partially undressed. The events had been recorded and commercialised as sex videotapes. Previews of the report, including some footage, were also shown on RTBF television news. At the time the programme was broadcast, a judicial investigation into the events in question was pending, although no charges against Mr and Ms V. had yet been brought. After a girl had lodged a formal complaint with the police, an RTBF journalist who was already investigating the matter, was informed by a judicial source about a search that was due to be carried out at the home of Mr and Ms. V. The journalist and his team were waiting for the police officers as they arrived to conduct the search and filmed Mr V. at the door of his home as the police officers entered. Later in an interview with the RTBF journalist, Mr and Ms V. confirmed that they arranged gatherings which they described as "female wrestling matches", involving young

women who were often naked. According to Mr and Ms V. the young women had agreed to participate and to be filmed during those matches. They denied that anything illegal took place during these events, while they acknowledged a certain form of libertine conduct between consenting adults. Mr and Ms V. considered that they had been insulted by the RTBF news coverage, and applied to the Belgian courts seeking compensation for the damage they had allegedly sustained as a result of what they described as “a trial by media”.

The Namur Court of First Instance granted their claim in part, while the Liège Court of Appeal upheld the judgment against RTBF and ordered it to pay each of the spouses EUR 1 in respect of non-pecuniary damage. The judgment emphasised the lack of neutrality and the sarcastic tone of the report, and found that the filming of the search at the home of Mr and Ms V. had amounted to a violation of their right to privacy. It also found that the RTBF news coverage of the case had breached the presumption of innocence of Mr and Ms V. and that the journalist had not acted in accordance with the basic principles of journalistic ethics. The Court of Cassation dismissed RTBF’s appeal. In 2014 Mr V. was sentenced to 18 months’ imprisonment, suspended, for several offences, including some related to the activities denounced by RTBF. A mere finding of guilt was pronounced against Ms V. in respect of some of the alleged offences.

Relying on Article 10 ECHR, RTBF lodged an application with the ECtHR, arguing that the civil judgment against it had represented an unjustified interference with its right to freedom of expression. The ECtHR found that the civil judgment against RTBF had indeed constituted an interference with the right to freedom of expression, while that interference had had a legal basis, and had pursued the aim of the protection of reputation. Hence to be in accordance with Article 10 § 2 ECHR the remaining and crucial question was whether the interference had been necessary in a democratic society within the framework of the balancing of the right to privacy and reputation under Article 8 ECHR and the right to freedom of expression under Article 10 ECHR. First, the ECtHR noted that the RTBF news coverage of the events concerned a matter of public interest. The RTBF programme had referred to the existence of a particular aspect of the sex industry, and the involvement of several young girls, at least one of whom had been a minor at the relevant time. The programme also reported on the authorities’ lack of trust in the girls’ statements and the difficulties encountered by these girls in seeking protection. Given the importance of the issues raised in the report and the lack of an official statement by the investigating authorities, the public had had an interest in being informed of the pending proceedings, including in order to be able to exercise its right of scrutiny over the functioning of the criminal justice system and, where necessary, to be alerted to the potential danger for girls who were likely to associate with Mr and Ms V. Given this context of a television programme on a subject of major public interest, the Belgian authorities had had only a limited margin of appreciation in determining whether there had been a pressing social need to take the measure complained of.

Although Mr and Ms V. did not have the status of a public figures, they had agreed to be interviewed by the RTBF journalist, thus agreeing to be placed in the spotlight of the news coverage about the case. Hence, the legitimate expectation that their private life would be effectively protected had been limited. Furthermore the manner in which the RTBF journalist had obtained the information could not be regarded as unfair, while his good faith had not been in issue. The report and news coverage had had a sufficient factual basis, and the style and means of expression used by the journalist corresponded to the nature of the issues raised in the report. Importantly, the Belgian courts had not established that the RTBF report had had an impact on the direction of the investigation or the decisions taken by the investigating courts. At no point had the journalist asserted that the charges on which the search of Mr and Ms V.'s home had been based had been proven or that the couple had committed the offences under investigation. Indeed in the RTBF report and news items viewers had been reminded that the investigation was ongoing and that the couple were presumed innocent. The ECtHR found that the report in question had merely described a state of suspicion against Mr and Ms V., without exceeding the threshold of that suspicion. Lastly, the ECtHR considered that, although the penalty imposed on the RTBF had been lenient, it could have had a chilling effect and that in any event it had been unjustified. The ECtHR concluded that the reasons put forward by the Belgian courts had not been sufficient to establish that the interference complained of had been necessary in a democratic society. It found that there was no reasonable relationship of proportionality between, on the one hand, the restrictions on the RTBF's right to freedom of expression entailed by the measures imposed by the domestic courts and, on the other, the legitimate aim pursued, namely the protection of the reputation of others. For these reasons, the ECtHR, unanimously, came to the conclusion that there had been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu le 13 décembre 2022 dans l'affaire RTBF c. Belgique (n° 2), requête n° 417/15

Judgment by the European Court of Human Rights, Second Section, in the case of RTBF v. Belgium (no. 2), Application no. 417/15, 13 December 2022

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