

## Minor's right to privacy balanced against a broadcaster's freedom of expression. The case of IVȚ vs Romania

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**ABSTRACT.** This case study discusses the recent judgment of the European Court of Human Rights (ECtHR) in the case of I.V.Ț. v. Romania 01.03.2022 (application no. 35582/15). The ECtHR assessed the Romanian's State fulfillment of its obligation to protect the right to private life of minors as guaranteed by article 8 of the European Convention on Human Rights (ECHR) and how the national courts balanced the right to privacy against media's right to freedom expression as stipulated by article 10 ECHR.

**Keywords:** IVȚ vs Romania, privacy, minor, violation of article 8, freedom of expression

### The case

Covering the event of the tragic death of a school pupil falling off a train during a school trip, when accompanied by school staff, a reporter of a Romanian television channel interviewed several students, including IVȚ, about their opinion regarding the death. Although did not take part in the school trip, the reporter interviewed her, age 11 at the time, in front of her school, without obtaining prior consent from parents, close relatives, or

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teachers, all not present when the interview took place. The reporter questioned the IVT if she had spoken to her schoolmates about the school trip if any of her schoolmates had confided in her whether a schoolteacher had been in proximity to the victim when the tragic event had occurred, and if any similar events had taken place at the school before, amounting to an interview about events that occurred in her absence, during which she was sharing indirect information from other under-aged students accounts of the events. Another question voiced inquiries regarding her personal opinion of the schoolteachers who had accompanied the pupils on the school trip.

IVT shared with the reporter that, based on information shared by the schoolmates present during a school trip, the victim had felt unwell. The applicant couldn't recall additional details shared by other students but suggested that the girl might have felt ill and leaned on the train door or was pushed. IVT voiced her belief that the absence of a schoolteacher near the victim played a role in the tragedy, emphasizing the importance of enhanced care and security for students by stating that schoolteachers "should have taken better care." With regards to similar incidents, IVT stated that none had occurred at her school but mentioned an incident in another school during a trip. The interview was broadcast that day, without inquiring any further consent from parents or teachers. A transcript was posted on the channel's website titled "Schoolmates of the girl who fell out of the train are shocked. The pupil was going to the toilet when the tragedy occurred". Following the broadcast of the interview, IVT suffered from the negative attitude of students, staff, and the school authorities towards her. According to the statement of the facts<sup>2</sup>, her mother was summoned to the school to give a written declaration that she would prevent her daughter from making any other statements in front of journalists. The mother also made apologies and gave explanations to all of the schoolteachers.

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<sup>2</sup> Case of IVT v Romania, available at <https://hudoc.echr.coe.int/eng?i=001-215919>, consulted 11.11.2022

## **An analysis of the relevant national legal provisions**

The relevant legal framework includes provisions of the Romanian Constitution, Civil Code, Audiovisual Act as well as the Code on the Regulation of Audiovisual Content.

According to the Romanian Constitution, freedom of expression, the right to information, and the protection of children and young people are enlisted as fundamental rights of citizens. Article 49 paragraph 1 of the Constitution about the Protection of children and young people) stipulates that "Children and young people shall enjoy special protection and assistance in the pursuit of their rights." This particular right correlates with the State's positive obligation to ensure its effective enjoyment, even when the exercise of these rights needs to be balanced against other fundamental rights such as freedom of expression and the right to information. Protection of minors for example is stipulated as a limit to the exercise of the right to access any information of public interest, under Article 31 Paragraph 3 of the Constitution which states that "The right to information shall not be prejudicial to the measures of protection of young people or national security." Another expression of the State's positive obligation to ensure effective enjoyment of the right can be identified by referring to the constitutional provisions about freedom of expression and mass media's liability in tort cases. Although Article 30 of the Constitution stipulates that "freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable", pursuant paragraph 6<sup>th</sup> of the same article we identify that the dignity, honor, privacy of a person and the right to one's image are stipulated as effective limits of freedom of expression. In the spirit of enabling access to accurate and relevant information, public and private media institutions are bound, according to Article 31 paragraph 4 of the Constitution to "provide correct information to the public opinion," Consequentially, according to paragraph 8 of article 30 of the Constitution, "Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offenses of the press shall be established by law."

Although some attempts for a separate law addressing media's liability have been made, Romania doesn't currently have a law on the mass media<sup>3</sup>. The criminal offenses about defamation and insult are no longer in force, and the protection of a person's dignity and right to image, as well as the right to privacy, are currently regulated by the provisions of the Civil Code, into force since October 2011. Article 71 of the Civil Code stipulates the fact that everyone has the right to privacy and the fact that the only potential limitations imposed on the right to privacy are the ones that are permitted by the law and the international treaties Romania has signed. The right to dignity, stipulated by Article 72 of the Civil Code, is structured similarly, allowing for interference with its exercise if these interferences are either consensual or they are permitted by law or by the international treaties Romania has ratified. The Civil Code doesn't provide a legal definition for "dignity", but it refers to its two components, namely "honor" and "reputation." Considering the absence of a legal definition, specialists suggested<sup>4</sup> that the interpretation of the terms "honor" and "reputation" should be given by referring to their common language understanding. The definitions provided by explanatory dictionaries of the language distinguish a person's "honor" as an individual's self-respect, while "reputation" pertains to the respect and appreciation that the community holds for that individual. A person's right to own image is stipulated by Article 73 of the Civil Code and includes, in paragraph 2, the definition: "physical appearance or the voice of a person." The exercise of this right allows its holder to prohibit or prevent the reproduction, in any manner, of the physical appearance or voice or, as the case may be, to prohibit the use of such a reproduction. The exercise of these rights is limited similarly to the exercises of the rights to privacy and dignity, therefore any person who chooses to actively protect their image must respect freedom of expression, as it is regulated by law or international

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<sup>3</sup> S. Jureau, Considerations on the recent Romanian legal developments related to criminalization of defamation, in *Studia Universitatis Babeș-Bolyai-Ephemerides* 58 (1), pg 71-81

<sup>4</sup> Mihai Dan, Libertatea de exprimare si Noul Cod Civil, *Active Watch*, Bucuresti, 2014, p. 7, available at [libertatea\\_de\\_exprimare\\_si\\_noul\\_cod\\_civil\\_v10.pdf](#) (activewatch.ro), consulted 9.11.2022

conventions and pacts regarding human rights that Romania ratified. Therefore, consequently to closely consulting the provisions of the Civil Code, the infringement of the right to one's image can be permitted in either of the following two circumstances: the person's consent or a reason that can be justified by either the provisions of the international treaties that Romania ratified or the jurisprudence derived by the courts in this regard, most notably the situations encountered in the jurisprudence of the ECHR, which allow the achievement of the right to respect for private and family life, a right provided for in article 8 from the Convention. A relevant provision that must be mentioned is the presumption of consent stipulated by Article 76 of the Civil Code. Consent is presumed in the situation where the said person himself puts his appearance or voice to the disposition of a natural person or legal entity of which he is aware that he is carrying out his activities in the field of public information, for example, in the case of a televised interview given to the media. However, to be validly given, consent must be expressed by a person bestowed with the legal capacity to consent, either age and mental capacity-based, or, in the case of the under-aged, by parents or tutors. Article 74 of the Civil Code provides a list of acts that may be considered damaging to one's private life, including the broadcasting of news or reports in audiovisual media without the consent of the person concerned.

Since the Civil Code provides for potential exceptions and limits to freedom of speech, as well as the right to privacy, dignity, and own image, as stipulated by international treaties or arising from their interpretation offered by competent courts via jurisprudence, it is important to observe that article 11 of the Romanian Constitution stipulates on the relationship between international law and national law the fact that the Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is a party to, whilst observing that the Treaties ratified by Parliament, according to the law, are part of national law. Article 53, about the potential restriction on the exercise of certain rights or freedoms, in complete alignment with the exceptional situations stipulated by the ECHR, stipulates that "the exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for the defense of national security, of public order, health, or morals, of the citizen's rights and freedoms;

conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.”

However, the most relevant national provisions regarding this case, in our opinion, are those of the Audiovisual Act (Law no. 504/2002, enacted on 11 July 2002, entered into force on 22 July 2002) complemented by the relevant provisions of National Audiovisual Council’s (NAC) Decision no. 220/2011 of 24 February 2011 regarding the Code on the Regulation of Audiovisual Content. Title II about the “Protection of minors” of NAC Decision no. 220/2011 provided, under article 2, the recommendation that the audiovisual media service providers should respect the principle of the superior interest of the minor. Complementing the provisions of the Constitution and the Civil Code, article 3 stipulated the following: “The minor has the right to the protection of his or her public image, [and] his or her intimate, private and family life.”. Accordingly, “the terms under which the minor can participate in an audiovisual program shall take into account the age-specific sensibility, vulnerability in general and the minor’s personality, in particular.”. The legal text prioritizes, in paragraph 3 of the same article, the right of the minor to his or her private life and private image over the need for information, especially in the case of a minor in a difficult position. Article 5 of the same NAC decision explicitly prohibits the broadcasting of programs featuring minors aged under 14 who re-enact offenses, abuses, or dramatic events, as well as broadcast interviews or statements given by a minor under 14 in connection with dramatic events in the community or family that he or she has witnessed.

Article 7 stipulated the fact that the minor, the parents, or the legal representative must be informed about the rights of the minor before he or she is filmed or recorded, and the participation of a minor under 14 old in audiovisual programs is possible only with his/her consent, or with the parent’s consent or the consent of another legal representative, if applicable.

NAC Decision no. 220/2011 includes relevant provisions regarding the protection of human dignity and of the right to one's image", stipulating under article 30 the obligation of the audiovisual media service providers to respect fundamental human rights and freedoms, including private life, the right to honor and reputation, and a person's right to their image. Since public interest may be taken into consideration by journalists as an exception, article 31 provides criteria based on which problems, facts, or events that influence a community or society, may be considered of justified public interest. Such information should contribute to the prevention of or the proof of committing a criminal offense, the protection of health or public safety, or cast a light on reports of false allegations or cases of incompetence that may be relevant to the public. However, according to the provisions of Article 32, "No right conferred by law may be exercised excessively and unreasonably, contrary to good faith to harm or defraud another person, or to take advantage of people's ignorance or good faith." However, therefore there are limits to the extent to which the interest of the public should be used as a justification for the violation of private life. Although the right to one's image should not hinder finding the truth in issues of justified public concern, the mere mentioning of the right to information is insufficient if a justified public concern cannot be proven.

### **Legal proceedings at the national level**

In 2013 IVT initiated legal proceedings against the holding company responsible for the television channel, seeking compensation. Ploiești District Court ruled in her favor and awarded damages amounting to 200,000 Romanian lei (approximately 40,436 euros) due to the absence of parental consent. Specifically, the court determined that even with facial blurring, the plaintiff could still be identifiable. However, in 2014, the decision of the Ploiești District Court was overturned by the Prahova County Court which justified its decision by citing journalistic freedom and the public interest, asserting that the company should not bear responsibility for the actions of individuals within the school community. The plaintiff filed an appeal on

points of law in 2015, which was subsequently dismissed by the Ploiești Court of Appeal that upheld the County Court's rationale, emphasizing that obtaining parental consent would not have altered the situation.

### **Assessment, analysis, and decision of the ECtHR**

The ECtHR underlined in its approach to the topic the complementarity of the positive and negative obligations of the signatory parties of the ECHR, stating the fact that article 8 of the ECHR does not stipulate only the negative obligation for the state to abstain from arbitrarily interfering in the private life of individuals but that this provision also imposes positive obligations "inherent in effective respect for private and family life". Therefore, the ECtHR considered that the State's positive obligations under Article 8 must "take into account the particular vulnerability of young persons" such as minor children.

In its decision on March 1, 2022, the European Court of Human Rights (ECtHR) initiated its analysis by recognizing the necessity to assess the fair balance between I.V.Ț.'s entitlement to the protection of her private life under Article 8 of the European Convention on Human Rights (ECHR) and the rights of the private broadcasting company and journalists to disseminate information, as safeguarded by Article 10 of the ECHR. The ECtHR referred to the criteria set in its jurisprudence, quoting prior decisions such as *Axel Springer AG v. Germany* or *Dupate v. Latvia*. The recommended factors that need to be taken into account when balancing the right to a private life against freedom of expression, are the "contribution to a debate of public interest; the degree of the 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".

In its assessment of the circumstances and legal arguments of the case, the ECtHR affirmed that the contribution of a broadcast news report to a public debate is a crucial factor to consider. However, in the case of I.V.Ț., who was a minor, the absence of parental consent, a requirement that had not been fulfilled, needed careful consideration. The ECtHR highlighted that

the regulations of the National Audiovisual Council explicitly prioritized the minor's right to private life and image over the need for information, particularly when dealing with a minor in a challenging situation. The Court also emphasized that even if a news report contributes to a public debate, the disclosure of private information, such as the identity of a minor witnessing a dramatic event, must be within editorial discretion and justified. This was particularly significant in I.V.Ț.'s case, where doubts were expressed about the relevance of a child's opinions who had not witnessed the event in question.

Concerning the conditions of the interview, the ECtHR noted that I.V.Ț.'s parents or legal representative had never given consent to broadcast the interview. The Court regarded prior parental consent not merely as a formal requirement but as a safeguard for protecting the young girl's image. The ECtHR underlined that media reporting revealing information about a young child's identity could significantly jeopardize their dignity and well-being, given their increased vulnerability, which warranted special legal safeguards.

The Court observed that domestic courts had found I.V.Ț. suffered severe distress and anguish after the broadcast, indicating serious repercussions on her well-being and private life. It concluded that the higher domestic courts had superficially conducted the balancing exercise between I.V.Ț.'s right to private life and the TV channel's freedom of expression, deviating from the criteria outlined in the Court's case law.

Considering factors such as I.V.Ț.'s young age, lack of notoriety, the minimal contribution of the broadcast to a public debate, and the particular interest of a minor in the effective protection of her private life, the ECtHR deemed these reasons strong enough to substitute its view for that of the domestic courts. Consequently, the ECtHR concluded that the domestic authorities had violated Article 8 of the European Convention on Human Rights by failing to fulfill their positive obligations to protect I.V.Ț.'s right to respect for her private life.

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