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## Case note on case *Rubio Dosamantes v Spain*, application no. 20996/10

### Case facts

On 21 February, the European Court of Human Rights (ECtHR) in Strasbourg ruled on the relationship between the right to private life and freedom of expression in case *Rubio Dosamantes v Spain*, holding that the Spanish courts had violated the applicant's right to private life.

In April and May 2005, Ms. Rubio Dosamantes, a popular Mexican singer known as Paulina Rubio, was the subject of three television shows in which details of her private life were discussed. The shows relied, among others, on first-hand information from her previous manager and touched upon her sexual orientation including rumours about her homosexuality, her bad relationship with her boyfriend and the role she had played in his drug use.

Ms. Rubio Dosamantes instigated civil proceedings before a Spanish court against her former manager F.B., the presenters and editors of the television programmes as well as the production companies and broadcasters, alleging the violation of her fundamental right to honour and private life. The Madrid court, ruling on first instance, dismissed her claims and the second instance court upheld the judgment. Both the Supreme Court and Constitutional Court declared Ms. Rubio Dosamantes appeals inadmissible and having exhausted national remedies, she made an application to the ECtHR claiming that the Spanish courts had violated her right to private life as guaranteed by Art. 8 European Convention on Human Rights (ECHR).

### Ruling

The ECtHR began by reiterating that the notion of privacy is broad, encompassing "elements relating to a person's identity, such as his or her name, image and physical and moral integrity" and underscoring that there is a "zone of interaction of a person with others, even in a public context, which may fall within the scope of private life". The publication of photos or, as in the case at hand, the broadcast of interviews dealing exclusively with intimate information may thus interfere with a person's fundamental right to private life even if that person is a public figure.

In determining whether the Spanish courts had applied the appropriate balance between the conflicting rights, i.e., the right to respect for private life (Art. 8 ECHR) and the right to freedom of expression (Art. 10 ECHR), the Court examined the criteria it had formulated in its earlier jurisprudence, notably in its 2012 decision in *Von Hannover v Germany*.<sup>1</sup>

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<sup>1</sup> Case of *Von Hannover v Germany* (No. 2), application nos. 40660/08 and 60641/08.

- *Contribution to a debate of general interest and the concept of public figure*

The Court acknowledged the public's right to certain information and considered whether the interviews related to matters which affect the public and are of interest to it. It made clear that such information would need to contribute to a debate of general interest that is not limited to the public's thirst for information about the private life of others or its sensationalism and voyeurism.

The Court observed that Ms. Rubio Dosamantes, although well-known in Spain, was not a public figure vested with official functions (such as a head of state) and that she benefited from a wider right to keep certain details private than political figures. Fame does not necessarily imply that a person's behaviour in the private sphere falls within the public interest. The Court found that the public does not have a legitimate interest in knowing the type of information that was distributed on TV, highlighting that the comments concerned exclusively intimate details and were, moreover of a salacious nature.

- *Prior conduct of the person concerned*

Once information is published by media outlets, the Court pointed out, it becomes widely available, thereby weakening protection under Art. 8.

The Spanish courts had held that the content of the interviews broadcast on TV had already been known to the public because rumours had spread from Latin America to Spain; they considered that since the applicant had not expressed her discontent the information was part of the public sphere and could be openly discussed.

The ECtHR did not follow this line of argument as the earlier comments had been made by third parties, rather than by the applicant herself. It also emphasized that the enhanced media attention did not give "*carte blanche*" to broadcasters to remove all protection against uncontrollable comments about her private life.

- *Content, form and consequences of the impugned programmes*

The Court recalled that when publishing information affecting a person's private life, it is incumbent on journalists as part of their duty of care to take into account, prior to the dissemination and in so far as possible, the impact of the information and pictures to be published. Certain details of private and family life deserve particularly careful protection and it is for journalists to take appropriate precautions when making them public.

The Court highlighted that spreading unverified rumours or broadcasting random comments on any possible aspect of a person's private life could not be considered as harmless. It is for national authorities, including programme producers to distinguish and strike a balance between information which presents a legitimate interest to the public and that which touches the heart of a person's life.

The Court was critical of the judgment rendered by the Madrid court which maintained that the applicant's right to honour was not violated as today a person's homosexuality is no longer considered shameful. The Court made clear that such analysis did not amount to a genuine balancing exercise between the conflicting rights. The national court should have examined whether the applicant's rights under Art. 8 ECHR had been infringed due to the broadcasting of discussions related to her private life, including her sexual orientation, and for which she was not invited to comment nor had she given her consent. It should then have

examined whether the infringement was justified by the defendant's rights under Art. 10 ECHR.

Moreover, the Madrid courts did not take into account the relevant criteria established by the Strasbourg Court, leading the latter to conclude that the former had failed to comply with its positive obligation under Art. 8 ECHR.

## Importance of the case

This case underpins the importance of the right to private life in today's society where information is susceptible to spreading instantly and globally, thus having a lasting damaging effect on a person's reputation and honour. The right to freedom of expression that is so essential for the functioning of modern democracies is nonetheless limited where the private life of celebrities is concerned.

The Court's decision is consistent with its jurisprudence in the two *Von Hannover* cases as well as in the *Hachette Filipacchi Associés* case<sup>2</sup> and it has established and consolidated the criteria for balancing different fundamental rights, notably Art. 8 and 10 ECHR.

Such criteria include a person's fame and his or her previous conduct. The Court underscored that even if information is already in the public domain without the person concerned having objected to its dissemination, this does not imply that the information is no longer private and individuals can no longer rely on their rights under Art. 8. Even if Ms. Rubio was subject to enhanced media attention, this did not give free reign to broadcasters to publish "unchecked and unlimited comments" about her private life.

Another criterion concerns the contribution to a debate of general interest. Although the public's right to be informed may extend to private aspects of public figures, including politicians and those exercising official state functions, the information in this case related exclusively to a person's private life and did not come within the sphere of any political or public debate. The broadcasting of intimate details for the sole purpose of satisfying the audience's curiosity is not justified. In the absence of a contribution to a debate of general interest, the balance is likely to tip in favour of Art. 8.<sup>3</sup>

It is thus of utmost importance that the media, in particular journalists, programme producers and editors, act with caution when reporting on famous persons' private lives. They are required to assess, *ex ante*, the implications of publishing details of a person's private life and provide a clear and solid public interest justification for their dissemination.

The Court has made clear that the media's particular responsibility in balancing the right to private life of the person(s) implicated and the right of the public to know certain information.

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<sup>2</sup> Cases *Von Hannover v Germany* (No. 1), application no. 59320/00; *Von Hannover v Germany* (No. 2), application nos. 40660/08 and 60641/08; *Couderc and Hachette Filipacchi Associés v France*, application no. 40454/07.

<sup>3</sup> See also Hugh Tomlinson's post on the InForm's blog, available at <https://inform.wordpress.com/2017/02/22/case-law-strasbourg-rubio-dosamantes-v-spain-tv-discussions-of-singers-sexuality-and-relationship-breach-article-8-hugh-tomlinson-qc/>.