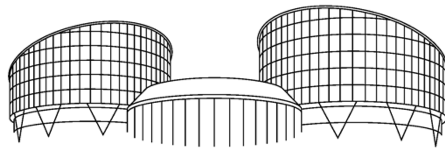

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RODINA v. LATVIA

(Applications nos. 48534/10 and 19532/15)

JUDGMENT

Art 8 • Private life • Publication of the family story of an unknown doctor in a newspaper and its subsequent broadcast on television at the initiative of her relatives • Journalistic report of a family dispute highly critical of the doctor • Serious intrusion into private life • Lack of domestic courts' examination of the disputed statements as a whole in the context • Doubts as to the journalists having acted in good faith, in accordance with the tenets of responsible journalism • Absence of contribution to a debate of public interest for the reporting of the story and the publishing of the family photograph in the newspaper without taking any precautions • Domestic courts' failure to strike a fair balance between the applicant's right under Art 8 and her relatives' right to freedom of expression, as reported by the mass media, under Art 10

STRASBOURG

14 May 2020

FINAL

14/08/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Rodina v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Mārtiņš Mits,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 48534/10 and 19532/15) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms Irina Rodina ("the applicant"), on 17 August 2010 and 27 December 2011 respectively;

the decision to give notice of the complaint under Article 8 to the Latvian Government ("the Government") and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 15 April 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

The case concerns the applicant's allegations that her rights, as guaranteed by Article 8 of the Convention, were breached on account of the publication of her family story in a newspaper (application no. 48534/10), as well as its subsequent broadcast on television (application no. 19532/15) and the Latvian courts' failure to protect her rights in two sets of civil proceedings.

THE FACTS

1. The applicant was born in 1954 and lives in Riga. She is a doctor with at least twenty-five years' work experience. She was working in the State Blood Donor Centre as the head of the Audit Department at the material time.

2. The applicant was represented by Ms I. Nikuļceva, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case may be summarised as follows.

I. DISPUTED ARTICLE IN A NEWSPAPER

5. On 31 January 2005 the Russian-language newspaper *Čas* (*Час*) published an article, written by A.P., entitled "An apartment sets a family at loggerheads" (*Квартира рассорила семью*). It was published on the fourth page, under the column "Society" and the headline "A family drama". The article was also published on the newspaper's Internet site.

6. The introductory part of the article read as follows:

> "[The applicant's mother] has two daughters and one would think that the 76-year-old lady was guaranteed a carefree old age. Yet, the circumstances of her life have taken a different turn. The family problems are not clear-cut (*неоднозначны*), and it is difficult to establish on which side the truth lies. We are providing the story told by an elderly lady and the narrative of her relatives."

7. The applicant was not mentioned by her full name in the article; she was referred to as "the elder daughter". However, the article contained her maiden name, her mother's full name, the first names of her father, sister and niece, as well as her profession and place of residence and her photograph (see paragraph 10 below).

8. The article stated that the applicant had taken her mother to a psychiatric hospital and in the meantime sold her mother's apartment in Purvciems; after her mother's health improved, the applicant had refused to take her out of the hospital or to support her; although the applicant herself was a doctor, her mother could not afford to buy medication; and the applicant's mother had been advised to bring a claim for financial support against the applicant in the competent courts, while the applicant had brought proceedings to have her mother declared legally incapable.

9. The concluding part of the article read as follows:

> "We contacted the elder daughter by telephone and invited her to express her attitude towards the situation in the family. She replied that there was no way she would comment on her sick mother's behaviour. Upon her insistent appeal (*uzstājīgs lūgums*), we are not disclosing the name and surname of the elder daughter in the article."

10. The article was accompanied by a relatively big family photograph (portrait), which had been provided by the applicant's mother. It showed the applicant, her mother and father, her husband and son, her sister and her niece.

11. According to the applicant, prior to the publication of the article, the journalist had called and asked comments on the situation in the family (see paragraph 9 above). She had not been informed that the article would be accompanied by the family photograph. The applicant had expressed the wish to see the draft article. As the journalist had refused it, she had gone to the newspaper's premises. As her request for a meeting was refused, she had made the following declaration to the editor-in-chief of the newspaper but received no response:

> "I hereby inform you that I am categorically against the planned publication of the article written by A.P. because it concerns my private life and interprets events from the viewpoint of my mother ([who is] 76 years old and mentally ill), and reveals information about my personal data and that of my family members. What is more, A.P. has absolutely refused to show me the article before its publication."

II. FIRST SET OF CIVIL PROCEEDINGS

12. On 10 November 2005 the applicant, together with her husband and son, brought proceedings against the publisher, the applicant's sister N.Ļ. and her niece's husband J.K. (who had made some of the contested statements) before the Riga City Centre District Court (*Rīgas pilsētas Centra rajona tiesa*). The applicant requested that fourteen statements in the article be declared false and that the publication of her family's photograph be declared unlawful. She further sought an order requiring the publisher to retract the false information and publish a written apology for having published it. She also sought compensation for non-pecuniary damage.

13. The applicant relied on the Law on the Press and Other Mass Media (see paragraphs 58-60 below) and sections 1635 and 2352a of the Civil Law (see paragraphs 54-56 below).

14. She also referred to the right to private life as protected by the Constitution (*Satversme*), without referring to a specific Article, and other "human rights instruments", citing Article 17 of the 1966 International Covenant on Civil and Political Rights (the "ICCPR"), which protects privacy, honour and reputation.

15. The contested statements read as follows:

1) The article's headline: "An apartment sets a family at loggerheads".

2) Introductory statement by journalist A.P.:

> "...and one would think that the 76-year-old lady was guaranteed a carefree old age. Yet, the circumstances of her life have taken a different turn."

3) Statement by the applicant's mother:

> "... the elder daughter started to ask me and my husband to privatise [our] two-bedroom apartment in Purvciems in her name ... The elder daughter replied that she needed her inheritance. So to say, [while] I and [her father] helped [the applicant's sister] to pay back a loan for an apartment [in Imanta], but [allegedly the applicant] had to pay for [her] apartment [in Ziepniekkalns] alone."

4) Statement by the applicant's mother:

> "... and I did not see her for two months".

5) Statement by the applicant's mother:

> "While [the applicant's father] was still alive, [the applicant] did not help [us], but she did not throw us out either."

6) Statement by the husband of the applicant's niece J.K.:

> "[The applicant's mother] was strongly affected by her husband's death. She was left alone in the apartment, she suffered from depression..."

7) Statement by the husband of the applicant's niece J.K.:

"The elder daughter took care of her mother in the spring – she sent her to receive medical treatment in a mental hospital ..."

8) Statement by the husband of the applicant's niece J.K.:

"Owing to treatment and medicine provided by doctors, the depression disappeared. In the summer the elder daughter took [her mother] to live with her in Ziepniekkalns."

9) Statement by the husband of the applicant's niece J.K.:

"... meanwhile she changed her mother's declared place of residence – she 'moved' her from the flat in Purvciems to [the one in] Ziepniekkalns. Before long, the mother was sent to the hospital again."

10) Statement by the husband of the applicant's niece J.K.:

"... a question arose: who would pay the additional charges and place her in a retirement home. Knowing that [the mother's] apartment had been registered in the name of her elder daughter, we expected some help from her."

11) Statement by the husband of the applicant's niece J.K.:

"... [the applicant's] reaction was completely the opposite: she did not want to place her mother in the retirement home, nor did she want to pay any money".

12) Statement by the applicant's sister N.Ļ.:

"[The elder] sister is ready to do anything to avoid paying maintenance (*алименты*) to our mother, but the mother is spending barely 20 Latvian lati (LVL) [approximately 28 euros (EUR)] per month for her medicine. Yet, the elder sister is giving her only LVL 10 [approximately EUR 14]."

13) Concluding statement by the journalist A.P.:

"... and invited her to express her attitude towards the situation in the family".

14) Concluding statement by the journalist A.P.:

"Upon her insistent appeal...".

16. On 6 June 2007 the Riga City Centre District Court partly granted the applicant's claim against the publisher under, *inter alia*, sections 1635 and 2352a of the Civil Law, but dismissed it in so far as it concerned the other defendants. The court established that the applicant's mother had periodically resided with each daughter. Both of them had provided for her. The applicant's parents had transferred one apartment to each daughter. While there had been disagreement within the family about the amount of maintenance for and living conditions of the applicant's mother, there was no proof that the applicant did not care for her or had refused to provide for her. Having analysed the article in its entirety, the court found that the text of the article had gone beyond the views expressed by the family members. The article had contained unjustified conclusions provided in the form of statements of fact. The true information had been presented in an overly negative form. Moreover, the newspaper's employees – as professionals – should have treated the views expressed by the applicant's mother with a

degree of criticism because they had been aware that proceedings for the removal of her legal capacity had been pending.

17. While the court established that the defendants (J.K. and N.Ļ.) had not disseminated false information, the article by itself had been damaging to the applicant's honour and dignity on account of its strictly negative and denigrating nature. The court did not accept the journalist's argument that the disputed article would not have been published had the applicant expressly requested it. The court dismissed the publisher's argument that the disputed article had reported on an issue of public interest. It held that in order to achieve such an aim, it would have been sufficient to report on that issue without identifying the person concerned against her wishes.

18. In the court's view, the fact that the article had been accompanied by the photograph was one of the most important legal grounds for the applicant's claim – it had infringed the fundamental human right to private life and, consequently, also damaged honour and dignity. The court went on to conclude that the applicant was clearly identifiable by means of the published photograph. The court further referred to Article 96 (right to private life) and Article 89 (protection of human rights) of the Constitution as well as Article 8 of the Convention. A photograph contained personal and even intimate information about an individual (the court referred to *Von Hannover v. Germany* (no. 59320/00, ECHR 2004-VI). The court reasoned that the applicant, who was a doctor, was not a public figure subject to wider limits of acceptable interferences with private life.

19. The court concluded that the applicant's right to private life had been infringed:

> "The testimonies of both parties ... conflict as regards the nature of the family dispute; however, the court considers that [those differences] are not relevant in the circumstances because the breach of the [applicant's] rights was caused not so much by the situation itself and its description by one party in the newspaper, but rather [the breach of the applicant's rights] resulted from the publication of the article in general, as it was tendentious and offensive and contained identifying information.
>
> Everyone has the right to express their opinion freely, for example by buying advertising space in a newspaper ... In such a case, the newspaper cannot be held liable. However, having considered the nature of the information included in the disputed article that is provided in the form of a statement [of fact] [but] does not contain facts provided by the interviewed persons or [report their] direct speech, the court establishes liability of [the publisher] pursuant to section 1635 of the Civil Law."

20. In the operative part of the judgment, referring to, among other things, Articles 89 and 96 of the Constitution and sections 1635 and 2352a of the Civil Law, the court concluded that four of the contested statements (see statements nos. 1, 2, 9 and 12, quoted in paragraph 15 above) were false and violated the applicant's right to respect for her honour and dignity.

21. On 27 May 2009 the Riga Regional Court (*Rīgas apgabaltiesa*) quashed the aforementioned judgment and dismissed the applicant's claim

under, *inter alia*, section 2352a of the Civil Law. It was undisputed that the impugned article contained statements made by the journalist (statements nos. 1-2, 13-14), the applicant's mother (statements nos. 3-5), the husband of the applicant's niece (statements nos. 6-11) and the applicant's sister (statement no. 12). It went on to analyse each of those statements save for statement no. 13 in relation to which the applicant had withdrawn her claim during the proceedings in the first-instance court.

Statements nos. 1 and 2 had reflected the journalist's opinion; their truthfulness could not be proved.

Statements nos. 3-5 had been made by the applicant's mother; their truthfulness need not be proved (she was not a defendant). The appellate court rejected the applicant's argument that as the newspaper had been informed about her mother's illness it had to bear responsibility for information disseminated by her. At the time of publication the applicant's mother had had full legal capacity and thus could express her own opinion. She had been stripped of her legal capacity only on 4 January 2006.

Statements nos. 6 and 8 had reflected the opinion of J.K. that the applicant's mother suffered from depression. That was not factual information about a medical diagnosis. Moreover, it could not damage the applicant's honour and dignity.

Statement no. 7 had not been cited in its entirety. Having analysed the article as a whole, the court held that the phrase "sent her to receive treatment" had not been used in a negative sense. The article stated that the applicant cared for her mother and that her mother's health had improved. The court held that the applicant's honour and dignity could not be damaged by inaccurate information as to how many times her mother had been treated in a hospital and who had placed her there.

Statement no. 9 had been true. The case materials indicated that in 2004, while her mother had been in hospital, the applicant had sold the apartment in Purvciems, where her mother had previously resided.

Statement no. 10 had reflected the opinion of J.K. Although the applicant had indicated that her mother had never owned the apartment in Purvciems, that did not mean that this statement was false – it did not contain a direct reference to her mother as the owner of the apartment. Moreover, the statement could not damage the applicant's honour and dignity.

Statements nos. 11 and 12 had reflected the opinions of J.K. and N.Ļ. about family-related matters. The case materials indicated that on 20 December 2004 the applicant's mother had brought proceedings against the applicant claiming maintenance; these had been examined by the courts at three different levels of jurisdiction.

Statement no. 14 was not false and could not damage the applicant's honour and dignity.

22. The appellate court concluded that the impugned statements could not be regarded as false and that they had not damaged the applicant's honour and dignity. Although the applicant considered the opinions

expressed in those statements to be unacceptable, their truthfulness could not be verified as they were neither true nor false. The appellate court fully dismissed the applicant's claim. The first-instance court had examined the context of the article but not each of the disputed statements separately and had not distinguished information (*ziņas*) from value judgments.

23. In so far as the publication of the photograph was concerned, the appellate court held:

> "Likewise, the [applicant's] allegation about the unlawful use of the family photograph and other identification data is not justified ... It is not disputed that the family photograph was provided and permission to use it given by [the applicant's mother]. The said photograph was neutral, by itself it could not damage the [applicant's] honour and dignity. Therefore, the [appellate court does not consider] that the appellant was not authorised to publish that photograph. [The applicant's] allegation about the unlawful use of identifiable data relating to other individuals is unsubstantiated – it has not been shown which particular identifiable data was unlawfully used."

24. The applicant lodged an appeal on points of law. She argued, *inter alia*, that the statements had to be analysed not only grammatically but also in their context, taking into account the status of the person who was being criticised, the contribution to a debate of public interest and the aim of the publication. Publication of the family photograph had also infringed her private life and damaged her honour and dignity. She also argued that the appellate court had applied section 2352a of the Civil Law incorrectly and that it had failed to apply section 1635 of the Civil Law, sections 21 and 28 of the Law on the Press and Other Mass Media and Article 17 of the ICCPR.

25. On 18 February 2010 the Senate of the Supreme Court (*Augstākās tiesas Senāts*) in a preparatory meeting (*rīcības sēde*) adopted a decision (case no. SKC-444/2010) refusing to institute proceedings on points of law on the grounds that the lawfulness of the appellate court's judgment could not be called into question and that the case could not contribute to the development of well-established case-law. In response to the applicant's submissions, it held:

> "The [above-mentioned] references are aimed at establishing the circumstances of the case and obtaining a re-evaluation of the evidence in accordance with the views of [the applicant].
>
> [The applicant] had based her claim on section 2352a of the Civil Law (as in force at the material time). In accordance with that provision, everyone has the right to apply to a court for the retraction of information harmful to their honour and dignity, unless the person who disseminated the information proves its veracity.
>
> For a claim to be granted on those legal grounds, it is a prerequisite for the claimant to prove that the disseminated information has injured his or her honour and dignity. If the defendants disagree with such a claim, it is their responsibility to submit evidence that the information [was] true.

> However, the disputed article, which was published in the newspaper *Čas* and on the newspaper's Internet site, does not contain such information, as [the appellate court] duly established."

III. DISPUTED FEATURE ON TELEVISION

26. On 4 November 2005, at 7.55 p.m., a Latvian commercial television channel, TV3, broadcast a programme entitled "No time for taboos" (*Bez Tabu laiks*). During that programme, a short feature about the conflict in the applicant's family was aired.

27. That feature portrayed a similar story to the one which had been published in the newspaper ten months earlier. It was described as being about a family scandal: while her mother had been in hospital, the applicant was said to have sold her mother's apartment.

28. The applicant was mentioned twice by her full name in the disputed feature. Not only her mother's personal data (such as information about her state of health) but also the applicant's personal data (such as her national identity number and home address) were briefly broadcast. The family photograph, which had previously been published in the newspaper (see paragraph 10 above), was also broadcast.

29. A journalist, A.D., stated that the applicant had sold her mother's apartment while her mother had been in a psychiatric hospital. After her mother had been released from hospital, she had had nowhere to live. The applicant had applied to the domestic courts for an assessment of her mother's psychiatric condition and had sought to be her guardian. Moreover, a power of attorney had been issued so that the applicant could act in her mother's stead.

30. For the purposes of the feature, the journalist had interviewed the applicant's sister and mother. Extracts of that footage were broadcast. The feature also showed the applicant's mother living in poor conditions. During the feature the journalist briefly broadcast and read out the conclusions of a psychiatric report concluding that the applicant's mother suffered from vascular dementia.

31. According to the applicant, prior to the broadcast of the feature, on 4 November 2005 at around 11 a.m. the journalist had called and informed her of the planned broadcast of the feature. The applicant had asked the journalist to postpone the broadcast for at least one day or to interview a neighbour, but the journalist had refused. The applicant had refused an interview because she had not been ready, could not leave her workplace and, in any event, had not wished to publicly comment on her ill mother's state of health. An extract of their telephone conversation was nevertheless broadcast.

IV. SECOND SET OF CIVIL PROCEEDINGS

32. On 20 December 2005 the applicant brought proceedings against the television channel TV3 and her sister, N.Ļ., before the Riga City Zemgale District Court (*Rīgas pilsētas Zemgales rajona tiesa*). On 13 November 2006 she supplemented her claim by also bringing it against journalist A.D. and the television production company.

33. The applicant requested that eight statements (see paragraph 38 below) be declared false and offensive to her honour and dignity. She further sought an order requiring the defendants to retract the false information in the programme "No time for taboos" and to issue an apology for having broadcast it. She also sought compensation for personal and non-pecuniary damage (*personiskais un morālais kaitējums*).

34. The applicant pointed out that both the newspaper article containing her family photograph and the telephone conversation with the journalist had been broadcast in the television feature without her consent, although she did not raise a separate claim about the family photograph and the telephone conversation in the concluding part of her statement of claim. She had been easily identifiable owing to the broadcasting of her family photograph.

35. The applicant also alleged that the journalist had failed to take into account that she would be bringing proceedings against the publisher of the newspaper article.

36. The applicant relied on the Law on the Press and Other Mass Media, the Radio and Television Law (see paragraphs 58-63 below), and sections 1635 and 2352a of the Civil Law (see paragraphs 54-56 below).

37. She also referred to the right to private life as protected by the Constitution, without referring to a specific Article, and other "human rights instruments", citing Article 17 of the ICCPR, which protects privacy, honour and reputation.

38. The contested statements read as follows:

1) Statement by journalist A.D.:

> "[The applicant's mother] was strongly affected by her husband's death; the old lady suffered from serious depression and ended up in a psychiatric hospital."

2) Statement by journalist A.D.:

> "While the lady was being treated [in hospital], her elder daughter, Irina Rodina, apparently believing that her mother would not survive, sold for LVL 15,000 [approximately EUR 18,685] the apartment that had been privatised [and registered] in her name but which had belonged to her mother."

3) Statement by journalist A.D.:

> "[When] the mother was [released] from hospital, she would not have had a place to [stay] if she had not had another daughter, N., a son-in-law and [their] daughter."

4) Statement by the applicant's sister N. Ļ.:

> "[The applicant's mother] was left alone on the street like [a homeless person], without an apartment, home or anything".

5) Statement by journalist A.D.:

> "The old lady did not receive a single penny from her elder daughter for the sold apartment."

6) Statement by journalist A.D.:

> "A court forced the elder daughter to pay maintenance of LVL 20 [approximately EUR 28] per month, but she, apparently disagreeing with such a decision, requested that the court order her mother to undergo a forensic psychiatric assessment."

7) Statement by the applicant's sister N. Ļ.:

> "[The mother] does not need legal guardianship. [The applicant] is trying to obtain it in order to avoid paying maintenance."

8) Statement by journalist A.D.:

> "Besides, there is another interesting fact. While the lady was undergoing psychiatric assessment, [the applicant] managed to arrange for a general power of attorney [to be issued by her mother]. For [the benefit of] whom? Of course, for the elder daughter, meaning that she could do anything in her mother's name."

39. On 23 September 2008 the Riga City Zemgale District Court dismissed the applicant's claim. It accepted the defendant's argument that "No time for taboos" was an informative news programme, which was devoted to issues of importance to the general public, and that its content was generated by private individuals. The disputed feature was generated by those who wished to express their opinions about the applicant's actions. It complied with the requirements laid down in the Law on the Press and Other Mass Media. Having viewed the disputed feature in the courtroom, the court held that it had contained opinions expressed by the applicant's mother and sister which had been based on certain facts about a family dispute. The journalist had briefly provided her comments on that issue on the basis of the information received.

40. The court analysed each of the disputed statements save for statement no. 1, in relation to which the applicant had withdrawn her claim.

Statement no. 2 had reflected the journalist's opinion, which had been based on information provided by the applicant's mother and on the fact that the applicant had sold the apartment.

Statement no. 3 had contained the journalist's assessment of the situation, which had been made on the basis of information provided by the applicant's sister and mother, who had expressed their opinions about what had happened.

Statement no. 4 had reflected the opinion of the applicant's sister about her mother's living conditions.

Statement no. 5 had been true.

Statements nos. 6 and 7 could not damage the applicant's honour and dignity. They had been based on the opinions of the applicant's sister and mother.

Statement no. 8 had contained a factual statement that a general power of attorney had been issued. The journalist had not suggested that the applicant had forged that document.

41. The court concluded that the journalist and the applicant's sister had expressed their opinions, which, in turn, had been based on facts and factual statements made by the applicant's mother. The court reiterated that information had to be distinguished from opinions. The truthfulness of an opinion could not be verified. Everyone had the right to express their opinion freely. Irrespective of how unacceptable they might be perceived as being, opinions could be neither true nor false. For a claim to be granted under section 2352a of the Civil Law, which was the legal ground on which the applicant had relied, the following conditions had to be met: (i) the disseminated statements had to contain factual information, and (ii) that information had to be false. Those conditions had not been met in the applicant's case.

42. On 13 October 2008 the applicant lodged an appeal. She argued that the first-instance court had failed to analyse the context of the feature. Not only had it been offensive to her honour and dignity, but it had also directly interfered with her private life as she had never sought public exposure. The applicant contended that the journalist's actions in recording and broadcasting their telephone conversation without her consent had been unlawful, but noted that that issue "was not directly subject to the civil law". The applicant further reiterated that her personal data had been disclosed without her consent. In that respect, she referred to the fact that during the broadcast, the journalist had displayed the newspaper article showing her photograph, accompanied by the following subtitle: "Irina Rodina, the elder daughter".

43. On 28 June 2010 the Riga Regional Court in essence upheld the aforementioned judgment, but provided its own reasons for dismissing the applicant's claim. The court accepted the defendant's argument that "No time for taboos" was an informative news programme which was devoted to issues that were important to society. Anybody could generate content by informing the programme's producer of any topical issues and processes in society, as well as of upsetting events and problems in their personal lives and in the lives of others.

44. The assessment of the impugned statements by the Riga Regional Court and its conclusions largely resembled those provided by the Riga City Zemgale District Court (see paragraphs 39-41 above). The Riga Regional Court noted that at the time of broadcast the applicant's mother had had full legal capacity and thus could express her own opinion. She had been stripped of her legal capacity only on 4 January 2006. In addition, the Riga Regional Court dismissed as unsubstantiated the applicant's allegation that

her personal data had been broadcast without her consent when the newspaper article with her photograph was shown, accompanied by the subtitle: "Irina Rodina, the elder daughter". In that regard, the Riga Regional Court noted that the applicant's claim in respect of the newspaper article had already been dismissed by the appellate court and that proceedings on points of law had been refused (see paragraphs 21 and 25 above), but provided no further reasons.

45. On 9 August 2010 the applicant lodged an appeal on points of law. She referred to an analytical report prepared by the Supreme Court on domestic case-law in relation to civil protection for honour and dignity (see *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, §§ 51-52, 12 July 2007). The applicant argued that the appeal court had not assessed the various factors noted by the Court in those cases, or the impugned feature as a whole. When examining her claim about the disclosure of personal data, the appellate court had not applied the relevant provisions of the Personal Data Protection Law. She noted that the appellate court had referred to the civil proceedings concerning the publication of the article, but had failed to take into account that her name had not been disclosed in that article.

46. On 31 March 2011 the applicant and her sister signed an out-of-court settlement in the presence of a public notary, who certified the authenticity of their signatures. The applicant's sister admitted that statements nos. 4 and 7 (see paragraph 38 above) had offended the applicant's honour and dignity. She had disseminated that information (along with the information published in the newspaper article) under the influence of her son-in-law, J.K. She regretted that and apologised to the applicant. She was of the view that the journalist A.D. had portrayed the family situation in an overly negative light. The applicant accepted her sister's apology and expressed a wish to withdraw her claim and terminate the civil proceedings against her sister. She did not wish to withdraw her claims against the other defendants.

47. On 31 March 2011 that settlement was submitted to the Supreme Court. It was added to the case material and sent for examination at a preparatory meeting.

48. On 4 July 2011 the Senate of the Supreme Court in a preparatory meeting adopted a decision (case no. SKC-509/2011) refusing to institute proceedings on points of law on the grounds that the lawfulness of the appellate court's judgment could not be called into question and that the case could not contribute to the development of well-established case-law.

49. The Senate of the Supreme Court referred to its well-established case-law, whereby section 2352[1] of the Civil Law protected any assertions and statements, irrespective of whether they were considered as information (*ziņas*) or opinions. They provided the following reasons:

> "It stems from the Court's case-law that an unjustified opinion can also offend one's honour and dignity. For example, in its judgment of [24 February 1997] in the case of *De Haes and Gijsels v. Belgium* [the Court] held that an opinion may [turn out to be] excessively offensive, in particular in the absence of any factual basis. It means that a

court must establish if there were any circumstances as such or any actions taken by a victim him/herself, which might have contributed to creating such opinion. As concerns opinions that shock and disturb, [the Court] in its judgment of 1 July 1997 in the case of *Oberschlick v. Austria (No. 2)* held that the freedom of expression protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. However, an opinion must not be expressed in a rude manner.

Therefore, within the meaning of section 2352[1] of the Civil Law damage to one's honour and dignity may be caused not only by disseminating false information, but also by [providing] an unjustified opinion (*nesamērīgs viedoklis*). The opinion must be deemed unjustified, if, firstly, it has no factual basis, and, secondly, it has been expressed in a rude manner ([they referred to domestic case-law, e.g., SKC-172/2005, SKC-276/2009, and SKC-198/2010])."

50. The Senate of the Supreme Court held that the appellate court had been right to dismiss the applicant's claim. In establishing whether the contested opinions had been justified, the appellate court had taken into account the established facts (the sale of the apartment, the mother's stay in hospital, the power of attorney issued by the mother, the proceedings instituted by the mother to receive maintenance, and the applicant's application to a domestic social welfare authority). The appellate court had rightly concluded that the contested opinions had been shaped by the specific circumstances and the applicant's actions. The Senate of the Supreme Court held that the contested opinions had been justified even though they had contained value judgments. Those opinions had not offended the applicant's honour and dignity within the meaning of section 2352[1] of the Civil Law. The Senate of the Supreme Court dismissed the applicant's argument that the appellate court had failed to examine the disputed feature as a whole. It held that the appellate court had examined all the evidence before it and had viewed the video recording of the disputed feature.

51. In response to the applicant's argument that the appellate court had not examined whether there had been an interference with her private life, the Senate of the Supreme Court held that the appellate court had been right not to examine the alleged interference. The applicant had brought a claim for the retraction of information which had offended her honour and dignity; she had not brought a claim in respect of an interference with her private life. The claimant had only sought compensation for non-pecuniary damage in connection with the publication of false information. Therefore, in accordance with section 192 of the Civil Procedure Law, the appellate court had not had legal grounds to examine the applicant's arguments about the alleged interference with her private life.

52. Lastly, the Senate of the Supreme Court did not examine the out-of-court settlement concluded by the applicant and her sister (see paragraph 46 above) because it did not have the competence to examine it at that stage of proceedings.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION

53. The relevant parts of Articles 89, 92, 95 and 96 of the Constitution (*Satversme*) provide:

> "89. The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia."
>
> "92. ... Any person whose rights are violated without justification has a right to commensurate compensation ..."
>
> "95. The State shall protect human honour and dignity ..."
>
> "96. Everyone has the right to the inviolability of his or her private life ..."

II. CIVIL LAW

54. Before the amendments of 1 March 2006, section 1635 of the Civil Law (*Civillikums*) provided as follows:

> "Any infringement, that is, any unlawful act which by its nature has caused damage, gives the victim the right to seek compensation from the person who has caused it, in so far as he or she may be held responsible for that act.
>
> Note: the concept of an act is understood in the broad sense and encompasses not only actions but also omissions."

55. After the amendments of 1 March 2006, section 1635 provides as follows:

> "Any infringement, that is, any unlawful act which by its nature has caused damage (including non-pecuniary damage), gives the victim the right to seek compensation from the person who has caused it, in so far as he or she may be held responsible for that act.
>
> Non-pecuniary damage should be understood to mean any physical or mental suffering resulting from the infringement ...
>
> Where the unlawful act under the second paragraph of this section takes the form of a criminal offence against the life, health, morals, sexual integrity, freedom, honour or dignity of a person, against the family or against a minor, it is presumed that the victim has suffered mental harm as a result of such an act. In all other cases the victim must prove the existence of non-pecuniary damage.
>
> Note: the concept of an act is understood in the broad sense and encompasses not only actions but also omissions."

56. Section 2352a (since 1 March 2006 this section has been named 2352^1, hereinafter referred to as section 2352^1 on all occasions) of the Civil Law provides as follows:

> "Everyone has the right to bring proceedings to have information which offends his or her honour and dignity retracted if the disseminator of the information cannot prove that the information is true.

If information that offends a person's honour and dignity has been published in the press, in the event that such information is not true it shall also be retracted in the press. If information that offends a person's honour and dignity has been included in a document, that document shall be replaced. In other cases a court shall determine the procedure for retraction.

Anyone who unlawfully offends a person's honour and dignity orally, in writing or by deed, shall provide financial compensation. A court shall determine the amount of such compensation."

III. CIVIL PROCEDURE LAW

57. Section 192 of the Civil Procedure Law (*Civilprocesa likums*) lays down one of the fundamental principles of civil procedure of *non ultra petita* in the following terms:

"The court must rule on the subject-matter of the claim and on the legal grounds as indicated in the claim, not beyond the limits of what has been claimed."

IV. LAW ON THE PRESS AND OTHER MASS MEDIA

58. Section 7(4) of the Law on the Press and Other Mass Media (*likums Par presi un citiem masu informācijas līdzekļiem*) prohibits the use of mass media for the purposes of interfering in a person's private life; such interference must be punished in accordance with the law. Section 7(5) of that Law prohibits the publication of information that offends the honour and dignity of a person or slanders a person. Section 25 of that Law lays down obligations of journalists, which include, among others, an obligation to provide only truthful information.

59. Under section 21(1) of that Law, as worded at the material time, persons were entitled to require the mass media to retract information published about them if that information was not true. Following the amendments of 25 November 2005 it was expressly stipulated in that Law that in "other cases" persons were entitled to require that an apology be issued. Under section 21(5), the mass media had to retract the published information if they had no proof of its veracity. In the event of a dispute, an application could be made to a court for such information to be retracted (and in other cases, after the amendments of 25 November 2005, an apology to be issued).

60. Section 28 of that Law provides that the mass media shall compensate, in accordance with the law, damage, including non-pecuniary damage, caused to a person by the publication of false information, by slander or by the violation of that person's honour and dignity, and by the publication of information, which is prohibited by law.

V. RADIO AND TELEVISION LAW (EFFECTIVE UNTIL 10 AUGUST 2010)

61. Section 17(2) of the Radio and Television Law (*Radio un Televīzijas likums*) provided that a broadcasting organisation had to ensure that facts and events were reported in a fair, objective and comprehensive manner, complying with the general principles of journalism and ethics. Comments had to be separated from information (*ziņas*) and their authors had to be named.

62. Section 36(1) provided that persons were entitled to require a broadcasting organisation to retract information published about them if that information was not true.

63. Section 38 provided that a broadcasting organisation had to compensate for damage, including non-pecuniary damage, caused to a person by broadcasting information harmful to their honour and dignity, unless the organisation proved that the information was true.

THE LAW

I. JOINDER OF THE APPLICATIONS

64. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

65. The applicant complained about the publication of her family story in the newspaper and its subsequent broadcast on television. She also alleged that the domestic courts had failed to protect her rights in both sets of civil proceedings. The Court will examine the applicant's complaints under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

66. The Government contested those arguments.

A. Admissibility

1. Application no. 48534/10 concerning the first set of civil proceedings

67. The Government did not raise any objections.

2. *Application no. 19532/15 concerning the second set of civil proceedings*

(a) The parties' submissions

(i) The Government

68. The Government argued that the applicant had not exhausted domestic remedies because she had not raised a separate claim in respect of the alleged interference with her private life in the second set of civil proceedings. She had to rely on the legal grounds as enshrined in Article 96 (the right to private life) in conjunction with Article 92 (the right to compensation) of the Constitution.

69. Firstly, a claim on the grounds of section 2352[1] of the Civil Law, which the applicant had raised, was narrower in scope compared to a claim on the grounds of Article 96 of the Constitution. The applicant's claim had related to one specific aspect of a person's private life, namely, one's honour and dignity.

70. Secondly, the Government referred to the Supreme Court's conclusion that the appellate court had not had the competence to examine the alleged interference with the applicant's private life by applying the principle of *non ultra petita* (see paragraphs 51 and 57 above).

71. The Government explained that the applicant could have raised several claims within the same set of proceedings: she could have complained of an interference with her honour and dignity (section 2352[1] of the Civil Law) and of an interference with her private life (Article 96 of the Constitution). Their reading of the case material indicated that the applicant had simply sought the protection of her honour and dignity. Their conclusion stemmed not only from the specific claims the applicant had raised (see paragraph 33 above) but also from the very nature of her submissions. However, the Government admitted that the domestic courts had been obliged to identify the legal basis of a claim themselves, irrespective of which specific legal grounds the applicant had relied on in her claim.

72. In any event, and in view of the Supreme Court's ruling of 4 July 2011, the applicant could have instituted another set of civil proceedings claiming interference with her private life (see paragraph 51 above). She had failed to do so.

(ii) The applicant

73. The applicant disagreed. She noted that a person's "reputation" forms part of his or her personal identity and psychological integrity and therefore also falls within the scope of his or her "private life" and that Article 8 therefore applies. In her civil claim, she had relied not only on section 2352[1] of the Civil Law but also on provisions which protect the right to private life (see paragraph 37 above).

74. Furthermore, she had relied on section 1635 of the Civil Law. Claims to protect private life in the Latvian legal system could also be argued on the grounds of section 1635, which was a general ground for any claim for compensation for non-pecuniary damage in civil proceedings (see paragraphs 54-55 above).

75. The applicant disagreed with the Government's interpretation of her submissions before the domestic courts. While she had not raised a claim about unlawful interference with her private life in the concluding part of her statement of claim, it had clearly followed from her submissions throughout the domestic proceedings that she had been dissatisfied with the fact that her full name, photograph and telephone conversation had been broadcast without her consent and that she wished to receive compensation in that respect. Moreover, those issues had been discussed at length before the appellate court in the second set of civil proceedings. The applicant agreed with the Government that the domestic courts were obliged to identify the legal basis of a claim, but arrived at the opposite conclusion. The applicant was of the opinion that she had raised a claim about an interference with her private life. Accordingly, the domestic courts had been obliged to examine it.

76. In support of her argument, the applicant referred to a case where the Senate of the Supreme Court had handed down its judgment just three months earlier (no. SKC-161/2011, a judgment of 20 April 2011). The claimants in that case had argued that a photograph which had been published in a newspaper had offended their honour and dignity. The Senate of the Supreme Court had considered that, by virtue of a reference to section 1635 of the Civil Law and Article 96 of the Constitution, their claim had also concerned an infringement of their right to a private life.

77. In any event, the applicant argued that her claim concerning the airing of the impugned statements and her claim to protect her private life were closely connected and could not be separated. She would not have been able to claim compensation if her identity had not been revealed during the broadcast.

(b) The Court's assessment

78. The purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. Under the Court's case-law it is not always necessary for the provisions of the Convention to be explicitly raised in domestic proceedings provided that the complaint has been raised "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach. However, as the Court's case-law bears out, genuinely affording a Contracting State the opportunity of preventing or redressing an alleged

violation requires taking into account not only the facts but also the applicant's legal arguments, for the purposes of determining whether the complaint submitted to the Court has indeed been raised beforehand, in substance, before the domestic authorities (see, for a recent authority, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018, with further references).

79. The Court observes that the parties disagree about existing remedies in the Latvian legal system for the claim to protect the right to private life. The Government's position is that Article 96 of the Constitution protects the right to private life, the latter being broader than the right to honour and dignity under section 2352[1] of the Civil Law. The applicant, for her part, alleges that section 1635 of the Civil Law, to which she referred in her claim, also form legal grounds for the claim to protect the right to private life.

80. The Court can accept that the applicant did not raise a separate claim about her right to private life on the legal grounds referred to by the Government (see paragraph 68 above). In particular, the applicant does not appear to have claimed that her private life was breached specifically because of the broadcasting of her full name, family photograph and telephone conversation with the journalist or that the broadcasting of that data was otherwise unlawful. Instead, her claim was centred on the retraction of statements which had offended her honour and dignity (see paragraphs 33-34, 42 above, and contrast with the applicant's claim in the first set of civil proceedings as concerns the family photograph, see paragraph 12 above). Although the applicant attempted to raise the above-mentioned aspects of the right to private life before the appellate court, her submissions in that regard were considered to be submitted belatedly and were not examined (see paragraph 51 above). Consequently, the Court is precluded from examining whether her right to private life was breached on account of the broadcasting of her full name, family photograph and telephone conversation with the journalist because the domestic courts in the second set of civil proceedings considered that these aspects had not been properly raised before them. That being said, the Court is not precluded, for the reasons set out below, from taking the above-mentioned aspects of the right to private life into account to the extent that they are intrinsically linked with the other parts of the contested statements, and thus relevant for the assessment of damage to the honour and dignity as claimed by the applicant and as examined by the domestic courts in the second set of civil proceedings.

81. The question that the Court has to answer in the present case is whether the applicant gave the domestic courts an opportunity to redress the breach of her rights as alleged by her. The applicant's statement of claim indicates that she brought the claim for the retraction of statements which had offended her honour and dignity, as enshrined in section 2352[1] of the

Civil Law (see paragraph 33 above). The domestic courts examined the case precisely from that angle.

82. Domestic case-law, referred to by the Senate of the Supreme Court when examining the applicant's appeal on points of law, indicates that the right to honour and dignity, as enshrined in section 2352[1] of the Civil Law, protected individuals not only against false statements, but also against unjustified opinions. In accordance with that case-law, an unjustified opinion under section 2352[1] of the Civil Law may cause damage to one's honour and dignity if it lacks factual basis and if it has been expressed in a rude manner (see paragraph 49 above). In determining that issue, the context in which the disputed statements were made is particularly important (see paragraphs 105 and 119 below). The applicant consistently raised the question of the context with the domestic courts throughout the second set of civil proceedings (see paragraphs 42 and 45 above).

83. Bearing in mind the scope of protection under section 2352[1] of the Civil Law as interpreted by the Senate of the Supreme Court and that honour and dignity forms part of private life of an individual, the Court considers that the applicant gave the domestic courts an opportunity to examine all aspects which were crucial for her claim in relation to honour and dignity.

84. The Government's objection must therefore be dismissed.

3. *Conclusion*

85. The Court notes that the applicant's complaints are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

86. The applicant argued that the domestic courts in both sets of civil proceedings had not carried out a balancing exercise in conformity with the criteria laid down in the Court's case-law (she referred to *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 108-13, ECHR 2012).

87. The applicant maintained that she was not a public figure; she was one of many doctors in Latvia. Her private life could not be a subject of interest for the general public. Prior to the publication of the newspaper article, information about the applicant had never appeared in the mass media. Prior to the broadcast of the television feature, she had informed the journalist that her family story had been misrepresented in the newspaper article and that she would be bringing proceedings.

88. As to the content of the media reports, they had contained unfavourable and partly false information about the applicant's relationship with her mother. They had created an image of the applicant as an ungrateful elder daughter. The issues raised were deeply personal; they directly concerned the applicant, her mother and their relationship.

89. In relation to the form, the applicant argued that the disputed statements had been taken out of their context. They had been reported as statements of fact and had been strictly negative. They conveyed an opinion that the criticism of the applicant had been well-founded and that she was indeed an ungrateful elder daughter. Even value judgments had to have a sufficient factual basis.

90. The applicant considered that the respective journalists had not acted in good faith. Both journalists had been informed of her mother's mental-health issues and of the pending proceedings concerning the removal of her legal capacity. At the time of the television broadcast, the conclusions of the psychiatric report on the applicant's mother had already been available and the first-instance court had already handed down its judgment (11 October 2005). That judgment was upheld on appeal (4 January 2006). Both journalists had failed to verify the underlying facts. The applicant dismissed as overly formalistic the approach taken by the domestic courts in order to conclude that the applicant's mother still had legal capacity at the material time.

91. As to the consequences, after the publication of the newspaper article, the applicant had received negative comments from her colleagues (J.K. had distributed copies of the article to them in person) and acquaintances, her career development had stopped and she had not been able to get involved in any political activity as a result. The newspaper *Čas* had been the leading newspaper for Russian-speaking readers in Latvia in print and also online. The television channel TV3 had been the second most viewed television channel in Latvia. "No time for taboos" had been one of the most viewed television programmes on that channel.

92. Neither the newspaper article nor the television feature had contributed to any debate of public interest. The subject matter remained an internal, private family dispute. The article and television feature had both been mainly aimed at satisfying the interests of the applicant's relatives, mainly those of J.K. The applicant referred to the terms of the settlement whereby her sister had admitted that she had been influenced by him (see paragraph 46 above).

93. The applicant admitted that the respective journalists had contacted her before the media reports had been made public, but considered that they had not acted in good faith. As regards the newspaper article, she had been asked to comment on the situation in general but not on specific allegations. She had refused to do so and had objected to the publication of her personal data (see paragraph 11 above). In relation to the television feature, the

journalist had not provided a genuine opportunity for the applicant to express her opinion on the situation (see paragraph 31 above).

94. Lastly, the applicant had not given her consent for the publication of her photograph in the newspaper article. It was irrelevant that the photograph itself had not been insulting, as she had had a right to control the use of her own image in all instances.

(b) The Government

95. The Government submitted that the domestic courts in both sets of proceedings had properly carried out a balancing exercise and that the press had acted within the boundaries of their "duties and responsibilities" and within acceptable limits.

96. The Government agreed that the applicant had not been a politician or public figure, but she had emphasised during the domestic proceedings that she had been a well-known doctor.

97. As to the content, the applicant's name had not been disclosed in the article, thus she could not have been identified by the general public; only her closest circle could have identified her. No negative associations could have been formed in the mind of an independent and neutral reader as a result of seeing the photograph. The media reports had been prepared at the initiative of the applicant's relatives – her mother and her niece's husband. They had sought public exposure of their internal family matters and their story, which had mainly concerned her mother. The television feature had disclosed only those aspects of the applicant's private life which had been closely linked with those aspects of the private life of her sister and mother, which the latter had wished to make public.

98. In relation to the form, the Government admitted that the domestic courts had primarily focused on whether the disputed statements were true or false. Had the information turned out to be false, its retraction could have been ordered and damages awarded under domestic law. Some of the disputed statements had had sufficient factual basis and some had been considered to be opinions, which were not subject to verification.

99. The Government agreed that diligent journalists ought to give a person the opportunity to comment (they referred to *Mitkus v. Latvia*, no. 7259/03, § 136, 2 October 2012). Both journalists had sought the applicant's opinion prior to the media reports being published. The Government submitted that the applicant had objected only to the publication of her name, not to the article as such. In the course of both sets of civil proceedings the applicant had been offered an opportunity to make her side of the story public, but she had not taken that opportunity. In their view, both journalists had acted in good faith and in compliance with the tenets of responsible journalism.

100. Moreover, the applicant had failed to demonstrate any negative consequences caused by the media reports.

101. As to the question whether there had been a debate of public interest, the Government was of the view that the media reports had addressed acute social problems that had been of interest to the general public. If the mass media were to be precluded from publishing issues having a social dimension and reflecting relationships among ordinary people or the everyday life of the general public, this would nullify any discussion of those very issues and would considerably limit the freedom of the press and the right of the public to receive information.

102. Lastly, as regards the photograph published in the newspaper article, it had been the applicant's mother who had provided it and consented to its publication. The photograph had been neutral, as it had merely shown the whole family, without any further details of the applicant's private life.

2. *The Court's assessment*

(a) General principles

103. In cases of the type being examined here, what is in issue is not an act by the State but the alleged inadequacy of the protection afforded by the domestic courts to the applicant's private life. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Von Hannover (no. 2)*, cited above, § 98). It is then for the Court to determine whether the State, in fulfilling its positive obligations under Article 8 of the Convention, has struck a fair balance between the applicant's right to respect for her private life and the right of the opposing party to freedom of expression protected by Article 10 of the Convention. Moreover, paragraph 2 of Article 10 recognises that freedom of expression may be subject to certain restrictions necessary to protect the reputation or rights of others.

104. Relevant criteria for balancing the right to respect for private life against the right to freedom of expression may be: the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication and, where appropriate, the circumstances in which the information or photograph was obtained (see *Von Hannover (no. 2)*, cited above, §§ 109-13, and *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 90-95, 7 February 2012). As a matter of principle, the rights guaranteed by Article 8 and Article 10 deserve equal respect and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of

the Convention or under Article 8 of the Convention (see *Von Hannover (no.2)*, cited above, § 106, and *Axel Springer AG*, cited above, § 87).

105. The Court has emphasised that the definition of what might constitute a subject of public interest will depend on the circumstances of each case. The public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. In order to ascertain whether a publication relates to a subject of general importance, it is necessary to assess the publication as a whole, having regard to the context in which it appears (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 162, 8 November 2016).

106. The Court has also underlined the importance of obtaining the consent of the persons concerned, and the more or less strong sense of intrusion caused by a photograph. Another factor in the Court's assessment is the purpose for which a photograph was used and how it could be used subsequently (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 86, ECHR 2015 (extracts), with further references).

107. Where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement; if there is not, that value judgment may prove excessive. In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Morice v. France* [GC], no. 29369/10, § 126, ECHR 2015, with further references).

108. The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, as well as the need to prevent the disclosure of information received in confidence, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Indeed, the protection afforded by Article 10 of the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016, with further references).

109. It is relevant to this assessment that the audiovisual media often have a much more immediate and powerful effect than the print media (see

Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, § 79, ECHR 2004-XI).

(b) Application of these principles to the present case

110. The instant case concerns two sets of civil proceedings instituted by the applicant against her relatives, who had provided their account of rather sensitive family-related matters, and against the mass media, which had reported on that story in the newspaper (the first set of civil proceedings) and on television (the second set of civil proceedings). Accordingly, the case involves the balancing of the applicant's rights under Article 8 of the Convention against her relatives' rights, as reported by the mass media, under Article 10 of the Convention.

111. Although the applicant's full name was not disclosed in the newspaper article, the Court considers, contrary to the Government's submissions, that the article contained identifiable information such as her maiden name, names of her relatives and, most importantly, her photograph in a private context. The Court finds that the applicant was clearly identifiable in the television feature owing to her full name and the same photograph being broadcast. However, the Court's analysis of the publication of the family photograph in the present case is limited to the newspaper article and the first set of civil proceedings only (see paragraph 80 above).

112. The Court's role in this case consists primarily in verifying whether the domestic courts whose decisions are contested by the applicant in both sets of civil proceedings struck a fair balance between the rights at stake and ruled in accordance with the criteria established by it for that purpose (see paragraph 104 above). Certain criteria may have more or less relevance given the particular circumstances of the case (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 166, 27 June 2017).

(i) The degree of notoriety of the person and her prior conduct

113. The Court observes that the domestic courts in both sets of civil proceedings did not explicitly assess how well known the applicant was, but that from their reasoning it is obvious that they regarded the applicant as a private individual. The Court considers that it is, in principle, primarily for the domestic courts to assess how well known a person is (see *Axel Springer AG*, cited above, § 98). The Court finds that the applicant's profession as such did not call for particular public scrutiny, she was one of many doctors in Latvia. It is not disputed that the applicant is not a well-known person of contemporary society; nor are there any indications that she had sought the limelight in any way (see, by contrast, *Faludy-Kovács v. Hungary*, no. 20487/13, §§ 30-31, 23 January 2018).

114. The Court finds, and this is not disputed, that the applicant had not appeared in or been the subject of any prior publications in the mass media. Accordingly, as a private individual unknown to the public, the applicant could claim particular protection of her private life (see, for example, *Gurgenidze v. Georgia*, no. 71678/01, § 40, 17 October 2006, and *Bremner v. Turkey*, no. 37428/06, § 78, 13 October 2015).

(ii) Subject and content, form and consequences of the media reports

115. The Court notes that both media reports were made at the initiative of the applicant's relatives. The subject touched upon rather sensitive family-related matters: care for the applicant's elderly mother, who had been ill, and the sale of a flat. While the parties disagreed as to who had been the main focus of the media reports, the Court finds that those media reports did not relate to analytical or investigative journalism. The journalists made public the applicant's relatives' account of the family dispute. The Court notes that the media reports were highly critical of the applicant. The disputed statements gave the impression that she had acted in a morally reproachable manner by not providing sufficient support to her mother. Respectively, they constituted serious intrusion into the applicant's private life.

116. The Court observes that more personal information about the applicant was disclosed and more serious allegations were made against her during the television broadcast (see paragraphs 28-30 above). Those allegations were made at primetime on a popular television channel and they had been seen by a wide audience.

117. The Court notes that the domestic courts in both sets of civil proceedings examined the contested statements one by one and distinguished between statements of fact and value judgments. The Court does not see any reason to disagree with those findings. However, the Court must also take into account the context in which those statements were made (see *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, § 84, 12 July 2007).

118. The Court observes that only the first-instance court in the first set of civil proceedings examined the impugned publication as a whole, noting the overly negative tone, and the context in which the impugned statements had been made, including the reliability of the applicant's mother's views (see paragraph 16 above), but its judgment was later quashed. All other domestic courts in both sets of civil proceedings assessed each of the disputed statements separately. The Court cannot subscribe to the argument that the viewing of the disputed feature in a courtroom and the evaluation of all evidence is sufficient to conclude that an analysis of the context has been made (see paragraph 50 above).

119. The context in which the disputed statements were made is particularly important in a case such as this, where the applicant's mother

and other relatives were actively seeking publicity, but the applicant was firmly against it. The Court rejects the Government's argument that the applicant had only objected to the publication of her name in the disputed article. The case materials reveal that she had objected to the publication of the article as a whole and had informed the newspaper accordingly (see paragraph 11 above).

120. The Court notes several factors which raise doubts as to whether both journalists acted in good faith, in accordance with the tenets of responsible journalism (see paragraph 108 above), when reporting the story of the dispute in the applicant's family.

121. Both journalists were aware of the fact that proceedings were pending concerning the legal capacity of the applicant's mother. Moreover, by the time the television feature was broadcast the applicant's mother's legal capacity had already been removed by the first-instance court. The Court considers that this was an important element which had to be taken into account when reporting on the dispute within the applicant's family. The Court agrees with the applicant that the domestic courts' assessment in the second set of proceedings was overly formalistic in that regard (see paragraph 90 above).

122. In that connection, the Court considers that special diligence should be exercised when dealing with matters which, albeit indirectly, relate to mental health, such as establishing of facts or disclosure of sensitive data. This applies, in particular, to journalists when exercising their freedom of expression and also to the domestic courts when carrying out their assessment in the balancing of the rights at stake.

123. The Government emphasised that both journalists had contacted the applicant prior to making the media reports and asked her to comment. However, as concerns the newspaper article the journalist A.P. had not asked her to comment on specific allegations made by the applicant's relatives but rather to comment on the family dispute in general terms. Nor had the journalist A.P. informed her that the article in question would be accompanied by the family photograph. The Court finds it striking that, on the one hand, the journalist A.P. met the applicant's relatives and showed them the draft article, but, on the other hand, refused to meet the applicant and show her the draft. As regards the television feature, the journalist A.D. contacted the applicant on the very day of the broadcast without giving her a real opportunity to prepare her point of view or to supplement material that had been already prepared (see paragraph 31 above). This raises doubts as to whether both journalists strived to provide accurate and reliable information or to find out what had happened as the notion of responsible journalism would require.

124. The Court is not persuaded by the Government's argument that the applicant was subsequently offered an opportunity to express her opinion in the newspaper and on television. The applicant did not wish to have any kind of public discussion about her family matters. Thus, she did not ask to

be given the right to reply (see, by contrast, *Jacubowski v. Germany*, 23 June 1994, §§ 12-13, Series A no. 291-A).

125. Lastly, the Court disagrees with the Government that the applicant had failed to demonstrate any negative consequences of the media reports. The Court considers that the applicant's submissions in this regard are sufficient to show that she was affected (see paragraph 91 above).

(iii) Contribution to a debate of public interest

126. In view of the fact that the applicant was a private individual and both media reports related to a private sphere (see paragraphs 113 and 115 above), the Court considers that significant reasons had to be put forward to justify that those media reports contributed to a debate of public interest (see paragraph 105 above). This criterion is particularly relevant in cases such as the present one. The Court also recalls that the public interest cannot be reduced to the public's thirst for information about the private life of others, or to the reader's wish for sensationalism or even voyeurism (see, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés*, cited above, § 101).

127. The Court notes in this regard that no public-interest related reasons for reporting on the family dispute may be inferred from the domestic courts' rulings in both sets of civil proceedings. Whilst the first-instance court in the first set of civil proceedings briefly referred to an unspecified public interest (see paragraph 17 above), the higher courts – after having quashed the judgment by the first-instance court – did not refer to any. In the second set of civil proceedings, the domestic courts accepted that the television programme "No time for taboos" reported on issues that were important to the general public (see paragraphs 39 and 43 above). However, they did not refer to any grounds as to why the family dispute should be brought to the attention of the wider public.

128. The Government argued that the impugned media reports concerned acute social problems. The Court is unable to accept that argument. It is evident that they related to a purely private sphere: the dispute in the applicant's family over care for her elderly mother, who had been ill. It is undisputed that those media reports were made at the initiative, in the interest and on the basis of the views of the applicant's relatives. The story was not portrayed as an example of a wider political or social problem (see, by contrast, *Kunitsyna v. Russia*, no. 9406/05, 13 December 2016, where the disputed publication concerned the lack of specialist care facilities for elderly people in a specific region).

129. The Court accepts that a private dispute may be connected to an issue that is of importance for the general public. However, both journalists did not refer to any broader social issues when reporting on this family dispute and the Court does not discern any contribution to a debate of public interest.

(iv) Circumstances in which the family photograph was obtained concerning the first set of civil proceedings

130. As already noted above, the Court's analysis of the publication of the family photograph in the present case is limited to the newspaper article and the first set of civil proceedings only (see paragraphs 80 and 111 above). It is not disputed that the family photograph was provided by the applicant's mother, who herself had wished it to be made public. The Court agrees with the applicant that the consent given by the applicant's mother could only relate to publication of her own photograph, not that of the applicant.

131. The Court accepts that the photograph was not taken without the applicant's knowledge; it did not show her in an unfavourable light (see *Couderc and Hachette Filipacchi Associés*, cited above, § 135). The family photograph in the present case merely showed all the family members. However, the Court considers that even a neutral photograph accompanying a story portraying an individual in a negative light constitutes a serious intrusion into the private life of a person who does not seek publicity.

132. The Court notes that the applicant's features were clearly visible and distinguishable in the family photograph. Since the newspaper article also mentioned her maiden name and names of her relatives, she was easily identifiable by her colleagues, acquaintances and other persons.

133. The Court sees nothing in the case materials to substantiate particular public-interest related reasons for the decision to publish the photograph in the newspaper without taking any particular precautions, such as masking or blurring her face (see, *mutatis mutandis*, *Peck v. the United Kingdom*, no. 44647/98, § 80, ECHR 2003-I, and *Kahn v. Germany*, no. 16313/10, § 74, 17 March 2016). As regards, in particular, the fact that the applicant was not well known, there is nothing to suggest that the said photograph had any inherent informative value or was used for a good cause, apart from merely showing the applicant to the public (see *Gurgenidze*, cited above §§ 59-60). It appears that the journalist A.P. did not explore the possibilities of publishing the article without the photograph of the applicant or taking the above precautions in accordance with the tenets of responsible journalism.

134. In such circumstances, the publishing of the applicant's family photograph in the newspaper without taking any precautions cannot be regarded as contributing to any debate of general interest to society (see, *mutatis mutandis*, *Bremner*, cited above, § 81).

(v) Conclusion

135. In the light of the above-mentioned considerations, the Court finds that the domestic courts in both sets of civil proceedings failed to strike a fair balance between the applicant's right to respect for her private life under Article 8 of the Convention and her relatives' right to freedom of

expression, as reported by the mass media, under Article 10 of the Convention. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of both sets of civil proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

137. The applicant claimed 21,428.57 euros (EUR) (application no. 48534/10) and EUR 14,285 (application no. 19532/15) in respect of non-pecuniary damage.

138. The Government considered those claims exorbitant and unfounded.

139. The Court accepts that the applicant must have suffered some non-pecuniary damage. Ruling on an equitable basis and in view of a double violation, it awards the applicant EUR 6,500 under that head.

B. Costs and expenses

140. The applicant also claimed EUR 4,626.97 (application no. 48534/10) and EUR 1,361.40 (application no. 19532/15) for the costs and expenses incurred before the domestic courts and before the Court.

141. As regards application no. 48534/10, the Government contested the applicant's claim in so far as it related to expenses incurred by her husband and son, who had been parties to the first set of civil proceedings but were not applicants in the present case. They also contested the invoices presented as costs in relation to unspecified translation services.

142. As regards application no. 19532/15, the Government did not contest the applicant's claim and noted that she had submitted the relevant documents.

143. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 2,500 (application no. 48534/10) and EUR 1,300 (application no. 19532/15), totalling EUR 3,800 for costs under all heads. It rejects the remainder of the applicant's claim for costs and expenses.

C. Default interest

144. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,800 (three thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik — Síofra O'Leary
Deputy Registrar — President