**Summary and Outcome**

In 2008, the Second Section of the European Court of Human Rights (”the Court”) upheld that by setting legislative limitations on the damages awarded, Lithuania (“the State”) had failed to sufficiently protect the applicant’s right to private and family life under Article 8 of the European Convention of Human Rights (“the Convention”) in light of “outrageous abuse of press freedom”. In 2002, a major Lithuanian newspaper disclosed that the applicant’s husband was HIV-positive, and alleged that he had two children with another woman who also had the disease. The domestic courts agreed that his privacy and been violated and awarded him the maximum sum for non-pecuniary damage under domestic law. However, the applicant appealed against this decision by arguing that the adjudged sum of money was inadequate and that there was a violation of their right to an effective domestic remedy for the infringement of right to privacy.

The Court found that there was no public interest in publishing information about the husband’s HIV-positive status since disclosure of such information led to his family’s humiliation and social ostracism. Hence, while striking a balance between right to privacy and right to freedom of expression, the balance here lay in favor of right to privacy. The Court concluded that by limiting the amount of non-pecuniary damages awarded, the State had failed to redress the suffering of the applicant and did not provide her with the protection of privacy she could have legitimately expected. As a result, the Court awarded her the sum of EUR 6,500 (EUR 3,604 more than the maximum sum allowed in such circumstances under Lithuanian legislation) as sufficient compensation for the violation of her right to private and family life.

**Facts**

The case originated in an application by a Lithuanian national, Judita Armonienė (“the applicant”), on behalf of her late spouse Laimutis Armonas. On 31 January 2001, the *Lietuvos Rytas*, Lithuania’s biggest daily newspaper, printed a front-page article entitled "Pasvalys villages paralyzed by the fear of death: residents of the remote Lithuanian area shackled by the AIDS threat." [para. 6] This article published that Mr. Armonas is HIV-positive, and alleged that he was the father of two children of an unmarried woman named G. Biriuk, who was also HIV-positive.

As a result, Mr. Armonas sued the newspaper for non-pecuniary damages in the amount of 50,000 Lithuanian litai (“LTL”, or about EUR 14,460) for breaching his right to privacy. [para. 7] On 19 July 2001, the Vilnius City Third District Court (“District Court”) ruled in his favor. It found that the media outlet had failed to prove that Mr. Armonas was the father of G. Biriuk’s children; it had also published private information about Mr. Armonas’ state of health along with his full name and residence without his consent, or without having met a legitimate public interest in drawing society's awareness to the rising number of HIV cases in Lithuania. [para. 8] Hence, the District Court concluded that the article humiliated Mr. Armonas, caused him non-pecuniary damage, impacted his health, and negatively influenced his family life and reputation. [para. 8] However, since the newspaper had not publicized this information deliberately, under Article 54 § 1 of the Law on the Provision of Information to the Public, a maximum sum of LTL 10,000 (approximately EUR 2,896) allowed in such circumstances was awarded to Mr. Armonas. An appeal filed by him was dismissed by the Vinius Regional Court on 8 October 2001, which agreed with the District Court's reasoning. [para. 9] Mr. Armonas died on 15 April 2002.

On 24 April 2002, the Vinius Regional Court’s decision was upheld by the Supreme Court. It reiterated that under the Law on the Provision of Information to the Public, damages exceeding LTL 10,000 could be granted only if it were established that information had been published intentionally. In this instance, the newspaper had committed two violations by printing the article: first, it had published information which was not true and which debased Mr. Armonas’ honor and reputation, and, secondly, it had published data about his private life without his consent. [para. 11] However, the Supreme Court agreed with the lower courts’ conclusion that Mr. Armonas had failed to prove that the defendant had published information about him deliberately and, therefore, there was no ground to increase the amount of compensation for non-pecuniary damage fivefold. [para.11]

**Decision Overview**

The main issue to be analyzed by the Second Section of the Court was whether the State had fulfilled its positive obligation to secure respect for the applicant’s right to private and family life under Article 8 of the the Convention by examining the sum awarded in non-pecuniary damages by the domestic courts.

At the outset, the application was declared admissible. The Court noted that the private information published about Mr. Armonas’ state of health had affected the reputation of his family as well. In particular, it had affected the family’s opportunities to communicate with others and given the deteriorating relations with their neighbours, the family had to leave the village. [para. 29] Hence, the applicant was justified to submit an application in her husband’s stead. Moreover, as upheld in *Amuur v. France*, the Court also observed that a decision favorable to an applicant is not sufficient to deprive him/her of the status of a “victim” unless the national authorities have acknowledged it and then afforded redress for this breach of the Convention. In the present case, while the domestic courts had determined the violation of Mr. Armonas’ right to private and family life, the exact question of victim status as regards the redress for this violation was inextricably linked to the merits of the complaint. [para. 30] Thus, the Court proceeded to examine the same.

On the merits, the applicant argued that even though the domestic courts held that her family’s right to privacy had been seriously violated, they had been awarded derisory damages. She claimed that the national legislation did not provide an adequate remedy under Article 8 of the Convention since it limited the maximum amount of non-pecuniary damages to LTL 10,000 for an unintentional breach of privacy. [para. 31] In light of such a law, the newspaper could very well escape from paying large amounts of compensation for breaches of this kind, even though it had the financial strength to do so. Hence, such a low limit was conducive towards the violation of their right to privacy.

On the other hand, the Government of Lithuania submitted that under Article 8 of the Convention, providing unlimited compensation for non-pecuniary damage is not necessary for the State to fulfill its positive obligation to protect a person’s privacy. [para. 32] A wide margin of appreciation is enjoyed by the State in determining the measures which may be taken for the more suitable implementation of its obligations under this right. According to the Government, in the present case, the national courts duly recognized that there was no public interest in publishing information about the husband's private life, thereby holding the newspaper responsible for its unlawful actions and granting Mr. Armonas a fair sum in compensation. [para. 34]

The Court then proceeded to analyze the principles applicable to the immediate case. First, it recalled thatthe notion of "private life" within the meaning of Article 8 of the Convention is an expansive concept that includes, among other things, personal information relating to a patient. This had already been upheld previously in *I. v. Finland*. Further, the Court specified that in keeping with *Evans v. the United Kingdom [GC]*, states have a positive obligation to protect this right, which may include adopting measures that secure the right to private life even in the sphere of the relations between individuals. [para. 36].

A balance has to be struck between protecting an individual’s private life and the freedom of expression guaranteed under Article 10 of the Convention. The Court cited its judgment in *Von Hannover v. Germany*, whereby it was clarified that a fundamental distinction needs to be made between reporting facts – even if controversial – capable of contributing to a debate in a democratic society and making tawdry allegations about an individual’s private life. [para. 39] Protecting an individual’s private life is essential to ensure the overall development of every person, and this protection extends beyond the private family to include a social dimension as well. [para. 39] Moreover, protecting the confidentiality of a person’s health data, particularly his/her HIV status, is of utmost importance. As mentioned in *Z v. Finland*, such a disclosure can severely affect an individual’s private and family life, subjecting them to opprobrium and the risk of ostracism. [para. 40]

Applying the above principles to the present case, firstly, the Court noted that the publication of the article regarding the HIV-positive status of the applicant’s husband, as well as the allegation that he was the father of two children by another woman who was also suffering from AIDS, were purely private and therefore fell within the protection of Article 8. [para. 42] It was also acknowledged that the family lived in a small village rather than a city, which increased the negative impacts of such a publication and contributed to their public humiliation and social exclusion. In this respect, the Court agreed with the national courts' conclusions that there had been an interference with the family's right to privacy.

Secondly, the Court upheld that making public information about the husband's state of health and indicating his full name, surname, and residence did not correspond to any legitimate public interest. [para. 43] Such a publication did not contribute to any debate of general interest to society since its sole purpose was to satisfy the prurient curiosity of a particular readership. Hence, the balance here lay in favor of the individual’s right to privacy, and the State had an obligation to ensure that the husband was effectively able to enforce that right against the press. [para. 43]

Thirdly, the Court specified that while Member States of the Council of Europe may set different financial limits on compensation for non-pecuniary damage, such limits must not be such as to deprive the individual of his or her privacy and thereby empty the right of its effective content. [para. 46] The present case was an instance of “outrageous abuse of press freedom”. Hence, the Court found that setting legislative limitations on the damages awarded had failed to adequately protect the applicant’s right under Article 8 of the Convention. This view was also supported by the subsequent abrogation of Article 54 § 1 of the Law on the Provision of Information to the Public by the new Civil Code, which removed the impugned ceiling on judicial awards of compensation. [para. 47] Therefore, the Court upheld violation of Article 8 of the Convention.

Finally, by taking into consideration that the applicant suffered non-pecuniary damage which was not sufficiently compensated by domestic courts, and by making an equitable assessment under Article 41 of the Convention, the Court awarded the applicant EUR 6,500 in damages. [para. 52]

Judge Zagrebelsky (dissenting)- The judge disagreed with the majority that there had been a violation of Article 8 of the Convention in the immediate case. He considered that the right to protection of one's reputation as entrenched in Article 8 must have been weighed against the interest in free discussion of matters of public interest. To fulfill its positive obligations related to securing respect for private life, states enjoy a margin of appreciation in determining the measures that can be undertaken to adequately protect this right. [para. 2].

The Judge considered that it was not a task of the Court to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken under their power of appreciation. In order to meet its positive obligations under Article 8 of the Convention, civil measures may be taken against journalists and publishers in keeping with the principle of proportionality, but this should not dissuade the press from taking part in the free discussion of matters of public interest. [para. 2] If excessively large sums are awarded in damages, then the Court may find a violation of Article 10.

The judge noted that the domestic courts had upheld the violation of the husband’s right to privacy, and had also awarded damages in keeping with the maximum limit permissible under domestic law. [para. 3] According to him, the ceiling in the national legislation was not a matter of concern; on the contrary, it aimed to protect freedom of expression by minimizing the scope of judicial discretion exercised while awarding non-pecuniary damages. Hence, the domestic courts had struck a fair balance in this case by awarding significant compensation to protect the individual’s right to privacy, which was also not so disproportionate so as to interfere with the newspaper’s freedom of expression. Thus, there was no need for the Court to substitute its assessment for that of the domestic courts and, through its judgment, intervene in substance to correct their decisions. [para. 4]

Judges Popović and Tsotsoria (partly dissenting)- They voted against the amount awarded to the applicant since they deemed it excessive in respect of the violation found. In light of the balancing test between the rights to privacy and freedom of expression protected respectively under Articles 8 and 10 of the Convention, they considered that the applicant should have been awarded a lesser sum. [pg. 19]

**Decision Direction**

This case has a mixed outcome on freedom of expression. On the one hand, the Court agreed that there was an “outrageous abuse of press freedom”, and that no public interest was met by disclosing private information about the HIV-positive status of the applicant’s husband, thereby tilting the balance in favor of the applicant’s right to privacy even though the importance of freedom of expression was recognised. However, on the other hand, the Court also awarded a more extensive sum in satisfaction to the applicant than the one imposed by the national courts under the State's legislation, without sufficiently justifying why the awarded sum by the State was deemed derisory, which could potentially have a chilling effect on freedom of expression.