**Summary and Outcome**

In 2008, the Second Section of the European Court of Human Rights (ECtHR) held that protection of the right to privacy as entrenched in Article 8 of the ECHR extended beyond the private family circle to include a social dimension. In 2002, a major Lithuanian newspaper disclosed that Ms. Armonienė's husband was HIV positive and that he had two children with another woman who also had the disease. Lithuanian courts awarded him the maximum sum for non-pecuniary damage. However, after Ms. Armonienė's husband passed away, she appealed the national court's decision arguing that the adjudged sum of money was inappropriate and there was a violation of her husband's right to an effective domestic remedy for the infringement of her right to privacy.

The ECtHR determined that protecting the confidentiality of a person's HIV status was especially important since disclosure of that information could lead to humiliation and the risk of ostracism. Furthermore, the ECtHR noted that such disclosure could dissuade people from undertaking voluntary HIV tests. Regarding the publication of Ms. Armonienė's HIV status, the Court held no public interest in disseminating such information. Instead, it found that the sole purpose of the publication was apparently to satisfy the readership's curiosity. The Court concluded that in such cases of an "outrageous abuse of press freedom," the severe legislative limitations on judicial discretion in redressing the damage suffered by the victim and thus on deterring the recurrence of such abuses had failed to provide Ms. Armonienė with the protection of privacy she could have legitimately expected. As a result, the Court determined that Ms. Armonienė suffered non-pecuniary damages that had not been sufficiently compensated and awarded her the sum of 6,500 euros, 3,604 euros more than the maximum sum allowed in such circumstances under Lithuanian legislation.

**Facts**

The case originated in an application by a Lithuanian national, Judita Armonienė, on behalf of her late spouse Laimutis Armonas. On 31 January 2001, the *Lietuvos Rytas*, a prominent Lithuanian 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." The publication read as follows: "Notoriously promiscuous, thirty-year-old Gitana Biriuk is already sick with this fatal disease ...An HIV-positive person lives in a village in the Pajiešmenys area. This [is] G. Biriuk, an unmarried mother of two children ...The father of G. Biriuk's two children is an inhabitant of Paiešmenių [village] - L. Armonas...Medics at the Pasvalys hospital confirmed that G. Biriuk is HIV-positive. The woman was taken to hospital with tuberculosis. Blood tests revealed that she was HIV-positive ...The woman [G. Biriuk] has already been diagnosed with AIDS - this is the last stage of the infection. The disease can last from a year up to ten years but finally ends with death...Laimis Armonas is HIV-positive...Last week ... the father of G. Biriuk's two children, living in Pajiešmenių village, was taken to Pasvalys hospital with a high fever...L. Armonas is another victim of AIDS...From the appearance of the patient [reference to L. Armonas] and the symptoms of the disease, the doctors suspected that he might be HIV-positive. The reply recently received from the AIDS center confirmed the suspicions." [para.6]

As a result, Mr. Armonas sued the newspaper for non-pecuniary damages for a breach of his right to privacy. On 19 July 2001, the Court ruled in his favor. The first instance court found that the media outlet had failed to prove the truthfulness of the published allegations as to Mr. Armonas's relationship with G. Biriuk. Likewise, the Court found that the information about his state of health and his full name and residence had been made public with his consent or met a legitimate public interest in drawing society's awareness to the rising number of HIV cases in Lithuania. Furthermore, the Court held that the article humiliated Mr. Armonas, and the publication related to his private life caused him non-pecuniary damage, impacted his health, and negatively influenced his family life and reputation. Thus the Court concluded that he had not proven that the newspaper had made the information about him public intentionally and therefore, under Article 54 § 1 of the Law on the Provision of Information to the Public, awarded the maximum sum allowed in such circumstances, 10,000 Lithuanian litai, approximately 2,896 Euros.

Mr. Armonas appealed to the Vilnius Regional Court. However, on 8 October 2001, the Court dismissed the appeal, agreeing with the lower Court's reasoning. On 15 April 2002, Mr. Armonas died.

On 24 April 2002, the Supreme Court upheld the appellate Court's decision. The Court stated that an award exceeding the amount by the legislation could be granted if it were established that information had been published intentionally. The Court further held that the newspaper committed two violations by printing the article: "first, it had published information which was not true and which debased the husband's honor and reputation, and, secondly, it had published data about his private life without his consent" [ para. 11]. Yet, the Court agreed with the lower instances that "the husband had not proved 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, as envisaged by Article 54 § 1 of the Law on the Provision of Information to the Public" [para.11].

**Decision Overview**

The main issue for the Second Section of the ECtHR to analyze was whether the sum awarded in damages was a violation of Ms. Armonienė's right to respect for her family’s private life as established in Article 8 of the European Convention of Human Rights (ECHR).

Relying on Artícles Articles 1, 8, and 13 of the Convention, Ms. Armonienė argued that, even though the domestic courts held that her 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 in light of Article 8 of the ECHR since it limited the maximum amount of non-pecuniary damages for a so-called "unintentional" breach of privacy by the mass media. Ms. Armonienė claimed that she had been directly affected by the failure of the State to protect her family's private life to the same or comparable extent as her late husband. Ms. Armonienė argued that due to the infringement of their rights, the whole family suffered severe moral and psychological trauma and had to move from their village.

However, the Court dismissed Ms. Armonienė's complaint under Article 1 of the ECHR, neither on Article 13 as to the absence of an effective domestic remedy is subsidiary to the complaint under Article 8 of the Convention that the State did not ensure respect for the private life of the applicant's family. The Court only found it appropriate to analyze her complaints solely under Article 8 of the ECHR.

As for Lithuania, the Government maintained that the application was manifestly ill-founded. The Government held that Ms. Armonienes's husband had not personally lodged the application in the present case, therefore argued that the widow did not have the requisite standing under Article 34 of the ECHR and thus considered the application incompatible *ratione personae* according to Article 35 §§ 3 and 4 of the ECHR. Further, the Government argued that Ms. Armoniene could not claim to be a victim of the infringement of Article 8 of the ECHR since the domestic courts had established the violation of his right to privacy and awarded adequate compensation. Additionally, the Government noted that Article 8 does not necessarily require the State to fulfill its positive obligation to secure respect for a person's private life. The Government claimed that States enjoy a wide margin of appreciation in defining the measures required for the more suitable implementation of their obligations.

According to the Government, in the present case, the national courts recognized that there was no public interest in publishing information about the husband's private life, thereby accepting the unlawful of the newspaper's actions. Further, the State considered that the Supreme Court had granted Mr.Armonas a fair sum in compensation.

Regarding the parties' allegations, The ECtHR started its analysis of the case by holding that the close relatives of Mr. Armonas, including his wife and their minor child, did have an interest of their own to ensure that his right to privacy was respected even if he died before the final domestic decision. The ECtHR held that "any statement violating this right not only affected the deceased's reputation but also that of his family" [para. 29]. The Court recalled the case of *Funke v. France* to explain that the link between the publication and the deceased was not exclusive and could be claimed that the article had no bearing on the applicant's personality. Thus, found Ms. Armonienė's that the applicant has the standing to bring the proceedings in her husband's stead.

In regards to the Government's argument that the husband could not have claimed to be a victim of a violation of Article 8 of the ECHR, the Court referred to its case of *Amuur v. France* to underscore that "a decision or measure favorable to an applicant is not in principle sufficient to deprive him or her of the status of a "victim" unless the national authorities have acknowledged, either expressly or in substance and then afforded redress for, the breach of the Convention" [para. 30].

Further, the Court found that the question of victim status concerning the redress for this violation was bonded to the complaint's merits. Consequently, the Court considered that both queries should be joined and examined together. Lastly, the Court held that the applicant's complaint was not manifestly ill-founded within Article 35 § 3 of the Convention as claimed by the Government.

The Court then analyzed the applicable principles to the immediate case. First, it recalled that, as it had previously held in the case of *Niemietz v. Germany,* the notion of "private life" within the meaning of Article 8 of the ECHR must be understood as an expansive concept that includes, among other things, the right to establish and develop relationships with other human beings. Additionally, the Court referred to the cases of *Dudgeon v. the United Kingdom* and *I. v. Finland* to highlight that private life encompasses elements such as sexual life and personal information relating to a patient. Further, the Court recognized that even though the objective of Article 8 is "essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference" [para. 36].

More, the Court recalled its judgment in the case of *Von Hannover v. Germany* to stress whether the issue is analyzed in terms of a positive duty on the State to take appropriate measures to secure the applicant's rights under paragraph 1 Article 8 of the Convention, or in terms of interference by a public authority to be justified under paragraph 2. Yet, the ECHR stressed that the notion of respect in positive obligations is not clear-cut but varies in each case and is subject to the criterion of a wide margin of appreciation.

Further, the Court stressed that, as remarked in its decision in the case of *Shevanova v. Latvia*, Article 8 must be interpreted in such a way as to guarantee not rights that are theoretical or illusory but rather practical and effective.

Concerning the relationship between private life and the right to freedom of expression guaranteed by Article 10 of the ECHR, the Court noted that there is a fundamental distinction between reporting facts, even when controversial, capable of contributing to a debate in a democratic society and those consisting of allegations about an individual's private life. Additionally, the Court held that personal data protection, including medical history, is essential to a person's respect for private and family life as guaranteed by Article 8. Furthermore, the Court stressed that the confidentiality of health data was a vital principle in the legal systems and necessary in cases of a person's HIV status. The Court referenced its decision in the case of *Z v. Finland* to emphasize that the "disclosure of such data may dramatically affect his or her private and family life, as well as the individual's social and employment situation, by exposing that person to opprobrium and the risk of ostracism" [para. 40].

The Court then examined whether, in the instant case, the State had fulfilled its positive obligation to secure respect for Ms. Armonienė's right to respect for private and family life.

First, the Court noted that the publication of the article regarding Ms. Armonienė's husband's HIV-positive status, 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. The Court took particular attention to the fact that the family lived in a small village rather than a city, which increased the possibility of public humiliation and exclusion from the small town's social life. In this respect, the Court agreed with the national courts' conclusions that there had been an interference with the family's right to privacy.

Second, the Court examined whether there was a public interest that justified the publication of this kind of information about Ms. Armonienė's husband. In the Court's view, the publication, which made public information about the husband's State of health and indicated his full name, surname, and residence, had the sole purpose of satisfying the prurient curiosity of a particular readership and thus did not contribute to any debate of general interest to society.

Given that the balance lay in favor of the individual's right to privacy, the Court held that the State had an obligation to guarantee that Ms. Armonienė's husband was able to enforce that right against the press effectively. Also, the Court remarked that the publication of such details in the most influential national daily newspaper could harm the willingness of others to take voluntary tests for HIV. In such context, the Court considered of paramount importance that domestic Law provides appropriate safeguards to discourage any disclosure and the further publication of personal data.

Third, the Court held that even though the Member States of the Council of Europe may regulate questions of compensation for non-pecuniary damage differently, as well as the fact that the imposition of financial limits is not in itself incompatible with a State's positive obligation under Article 8 of the Convention. The Court agreed that a State enjoys a certain margin of appreciation in deciding how to interpret “respect” for private life in particular circumstances. However, the Court stated that facts such as the economic situation of the State should be taken into account when determining the sum of compensation. According to the ECtHR, such limits must not be such as to deprive individuals of their privacy and thereby empty the right of its effective content. The Court cited its case of *Cumpǎnǎ and Mazǎre v. Romania* to underscore that the imposition of heavy sanctions on press transgressions could have a chilling effect on the exercise of the necessary guarantees of journalistic freedom of expression under Article 10 of the Convention. However, the Court found that in the present case, which was "an outrageous abuse of press freedom", the severe legislative limitations on "judicial discretion in redressing the damage suffered by the victim and sufficiently deterring the recurrence of such abuses failed to provide the applicant with the protection that could have legitimately been expected under Article 8 of the Convention" [para.47]. Moreover, the Court held that such a view has since been endorsed as the ceiling on judicial awards of compensation contained in Article 54 § 1 of the Lithuanian Law on the Provision of Information to the Public was repealed in July 2001 by the new Civil Code. Thus, the Court rejected the Government's preliminary objection to Ms. Armonienė's victim status and concluded that the State had failed to secure her right to respect her family's private life under Article 8 of the Convention.

Finally, regarding the application of Article 41 of the Convention, the Court considered that Ms. Armonienė suffered non-pecuniary damages that had not been sufficiently compensated by finding a violation of Article 8 of the Convention. Thus the Court awarded Ms. Armonienė the sum of 6,500 euros.

Judge Zagrebelsky expressed a dissenting opinion. Judge Zagrebelsky disagreed with the majority that there had been a violation of Article 8 of the ECHR in the immediate case. He considered that the right to protection of one's reputation as entrenched in Article 8 of the Convention must have been weighed against the interest in free discussion of matters of public interest. He considered there are different ways of securing respect for private life and that the nature of the State's obligation depends on the aspect of private life concerned.

He then stated that "the choice of measures calculated to secure compliance with that positive obligation falls within the Contracting States' margin of appreciation" [para.2]. However, in Judge Zagrebelsky's view, "Contracting States have a certain margin of appreciation in assessing whether such a need exists, but that margin goes hand in hand with European supervision"[para.2]. Judge Zagrebelsky 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. Therefore Judge Zagrebelsky believed that the judgment should have pondered whether the reasons utilized by the national authorities to justify the interference were "relevant and sufficient" and whether the measure complained of was "proportionate to the legitimate aims pursued" [para. 2].

Regarding the possible collision of freedom of expression and privacy, Judge Zagrebelsky held that in light of the second paragraph of Article 10 of the ECHR, the exercise of the freedom of expression carries duties and responsibilities. Yet, in his view, such duties and responsibilities may be of some importance where there is a risk of damage to a person's reputation referred to by name or impairment of the "rights of others".

Moreover, Judge Zagrebelsky believed that although States have the power to regulate the exercise of freedom of expression in such a way as to ensure the appropriate protection of the reputation of individuals by law, Sates must avoid taking measures that would likely generate a chilling effect on the media. In his opinion, huge sums in damages and the lack of proper and adequate safeguards against disproportionate awards could lead the Court to find a violation of Article 10 of the ECHR.

For Judge Zagrebelsky the ceiling in the national legislation was not a matter of concern; on the contrary, he claimed it aimed to protect freedom of expression from possible interference.

On the one hand, he esteemed that "the exclusion of disproportionate awards of damages is prompted by the need to avoid interfering with freedom of expression. On the other hand, an order to pay an insignificant level of compensation might constitute failure to protect the victim's right to respect for his or her private life [...] [e]xcept in extreme cases at one end of the spectrum or the other, I find it difficult to accept that the Court should substitute its assessment for that of the domestic courts and, through its judgment, intervene in substance to correct their decisions". [para. 4].

In his opinion, the amount awarded as compensation for non-pecuniary damage did not seem so disproportionate to enable the Court to find that Ms. right to privacy was not protected at a national level. He deemed that "unlike the practice in Article 10 cases, in a case concerning Article 8, consideration of the economic power of the opponent does not seem relevant since it is not a question of punitive damages but of assessing the damage actually suffered by the applicant" [para. 5].

Judges Popović and Tsotsoria expressed a partly dissenting opinion. They voted against the amount awarded to Ms. Armonienė in satisfaction since they deemed it excessive regarding 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 ECHR, they considered that the applicant should have been awarded a lesser sum.

**Decision Direction**

This case contracts freedom of expression since the ECtHR awarded a more extensive sum in satisfaction to the applicant than the one imposed by the national courts under the State's Legislation without justifying why the awarded sum by the State was deemed derisory.