*News report on the wedding of the president of a parliamentary party and his wife*

decision number: Pfv.IV.20.613/2021/4.

date: 16 February 2022

decision-making body (final): Curia (final)

**1. Summary and Outcome**

On 20 January 2019, the defendant (an online news portal) published on its website and on the same day in its news programmes broadcast on its television channel, images and footage of the plaintiffs’ wedding, wedding party and the related preparations. The plaintiffs claim that the disclosure of the recordings violated their right to privacy.

On the basis of the action brought by the plaintiffs, the Metropolitan Court of Budapest acting at first instance found that the defendant had infringed the plaintiffs' right to privacy by publishing the recordings of the wedding and related events in the above-mentioned internet article and in news broadcasts published on the same day, without the plaintiffs' consent. Following the appeal by the defendant, the Budapest Court of Appeal, which heard the appeal at second instance, reversed the judgment of the court of first instance and dismissed the action in its entirety. The Curia found the plaintiffs’ petition for review against the judgment to be unfounded and it. The Curia held that the presentation of the images in the article without the consent of the plaintiffs did not result in a disproportionate infringement of their right to privacy, as opposed to the exercise of the fundamental rights to freedom of expression and of the press, which guarantee the free discussion of public affairs.

**2. Facts**

The defendant’s television service published on its website on 20 January 2019 an article entitled “The wife of the President of Jobbik posed with a Nazi salute at her wedding photo shoot”, and in its news programmes broadcast on the defendant’s television channel, it published video footage of the plaintiffs’ wedding in 2016, its preparations and the wedding party. According to the facts of the case, the plaintiffs are spouses, the second plaintiff being the president of Jobbik, an opposition party known for its radical right-wing views, while the first plaintiff is his wife. The images show the first plaintiff posing with a Nazi salute for a photographer who was commissioned for the event, and later homophobic and racist jokes were made in the footage made of the wedding party. The plaintiffs claimed that the wedding ceremony and the wedding party were not public affairs and that the images and video footage made were not part of their public activities, as they captured the most intimate moments of their lives. They wished to share the most private events only with their invited guests and did not give their consent to their disclosure to the public at large.

In their opinion, by publishing these moments of their private life on the Internet and on television, the defendant violated Section 8(2) of Act LIII of 2018 on the Protection of Privacy, according to which “[the] right to privacy may be violated by the abuse of personal data, secrets, images, audio recordings which the individual wishes to retain and preserve in particular in connection with their private life, or by the violation of honour and reputation.”

The Metropolitan Court of Budapest acting at first instance found that the defendant had violated the plaintiffs' right to privacy by publishing the images and footage of their wedding and wedding preparations. In addition to the establishment of the violation, the court ordered the defendant to provide the plaintiffs with an apology for the infringement in the form of a private letter within 15 days, and also gave the plaintiffs the right to make the letter public. The defendant was also ordered to pay aggravated damages (compensation for injury to feelings) of 500,000 HUF (Hungarian forints) per person to the plaintiffs. The court found that the first plaintiff is not a public figure, and that although the second plaintiff is a public figure, since his wedding is not related to his public role, he does not have a duty of higher tolerance in this regard. The court of first instance was of the opinion that, even for public figures, it was absolutely necessary to ensure the protection of privacy, private life, private home, private conversations and private correspondence, home and family. The wedding is an absolutely protected event in the private sphere of the spouses, into which the defendant has unlawfully intruded. The court of first instance concluded, on the basis of testing the collision between the respect for privacy and freedom of expression and of the press, that the defendant had infringed the plaintiffs’ right to privacy by disclosing the image without their consent.

The defendant filed an appeal against the decision of the court of first instance, on the basis of which the Budapest Court of Appeal, as the court of second instance, reversed the judgment of the court of first instance and dismissed the action in its entirety. In the view of the Court of Appeal, the exercise of the right to privacy cannot constitute an abuse of rights, nor can it be used to claim protection for conduct not protected by law. The foundations of the legal system would be called into question if conduct that is prohibited or condemned by law on the basis of these principles of interpretation were nevertheless protected by a specific provision of substantive law. The Court of Appeal considered that the protection (the level of protection) provided by the Act on the protection of privacy must be assessed differently between the four walls of the home – in which case the need to protect the private sphere and the need to prevent external intrusion cannot be called into question – and at an event taking place in the circumstances of the present case, which took place at an external venue. The Court of Appeal emphasised that if an expression (act) does not fall within the scope of the freedom to exercise a fundamental right, that expression is not covered by the constitutional protection of the fundamental right. Therefore, the act performed by the first plaintiff, as interpreted by the defendant, does not fall within the scope of the protection of privacy even if it is performed by someone in a family or friendly circle and is tolerated by the law within the limits of privacy.

The plaintiffs brought a petition for review of the final judgment before the Curia, asking the Curia to repeal the final judgment and uphold the judgment of the court of first instance.

**3. Decision Overview**

The Curia first took a position on the claim of the plaintiffs that Hungary's Fundamental Law clearly identifies the protection of privacy as the primary fundamental right to be protected. In relation to the level of protection of fundamental rights, the Curia stated that, on the one hand, events in the private and family sphere do not always fall under the protection of Article VI(1) of the Fundamental Law, and on the other hand, “when assessing the conflict between the right to privacy and other rights protected at the same level, in particular freedom of expression (...), the courts must balance the exercise of two rights protected at the same level, bearing in mind the necessity and proportionality of the restriction” (statement of reasons, paragraph [31]). The plaintiff’s position is therefore unfounded.

As regards the public interest nature of the information subject to the procedure, the Curia found that the article was intended to show that the leadership of the political party concerned, contrary to its public communication, also promoted extremist, national socialist ideas. The published article, as well as the images and footage in the television news summaries, presented both the Nazi salute of the first plaintiff and the homophobic and racist remarks made at the wedding party, which were intended as a joke by the participants, that were intended to support the image suggested of the party. The Curia found that none of the images and footage presented in connection with the wedding, the preparations leading up to the wedding and the wedding party could be considered arbitrary, as all of it was closely related to the substance of the news report, which was a matter of public interest (statement of reasons, paragraph [34]). According to the “Guidelines of the Constitutional Court, public debate does not only mean political debate in the narrow sense, but also the discussion of all issues of social importance. The mere interest of information (the public’s curiosity) would not provide a basis for restricting Articles II and VI of the Fundamental Law, but ensuring the possibility of democratic debate would {Constitutional Court decision No. 26/2019 (VII. 23.), statement of reasons, paragraphs [27], [29]}”.

The judgment then reviewed the ECtHR's practice on the collision between freedom of expression (Article 10 ECHR) and the right to privacy (Article 8 ECHR), including primarily the Court’s approach to the use of images without consent. In this respect, it stated that in determining whether there is an infringement, the following must be taken into account: the contribution of the communication to the public debate, how well-known the person concerned is, the subject of the press communication, the previous conduct of the person concerned, the circumstances in which the image was taken and the content, form and consequences of the communication. Among the elements to be examined is whether a substantive link can be established between the article and the image presented, and whether the content of the article is related to the latter (Von Hannover v. Germany cases (No. 1, 2 and 3); Verlagsgruppe News GmbH. and Bobi v. Austria; Österreichischer Rundfunk v. Austria). By analogy with the question examined under these proceedings, the Curia has also referred to the circumstance that a news report on the conviction of a politician’s spouse can also be considered a matter of public interest (Karhuvaara and Iltalehti v. Finland).

Based on the well-established practice of the Constitutional Court and the ECtHR outlined above, the Curia had to decide on the question whether “the protection of privacy, including family life, was fairly balanced against the importance and news value of the matter of public interest, or whether the news in question had an independent information value that would promote public debate. It must also be taken into account that the public’s curiosity or hunger for gossip alone does not establish the public interest nature of a matter {Constitutional Court decision No. 3212/2020 (VI. 19.), statement of reasons [58]}”.

Although the images and footage included in the news report were not taken at a public event, they did not show events in an intimate family setting, in complete exclusion of the outside world. Regarding the way and circumstances in which the recordings were made, it was also established that the recordings were planned in advance and commissioned by the plaintiffs (the plaintiffs had commissioned a third party not party to the case to make the recordings). On the basis of the criteria outlined above, the Curia also had to bear in mind that “the image (about the plaintiffs’ wedding and wedding party) accompanying the communication covering a matter of public debate is merely the scene of the event justifying the subject of the communication. The defendant substantiates its report by showing what happened there, which cannot be credibly shown in any other way, merely descriptively” (statement of reasons, paragraph [39]).

With regard to the question of the public figure status of the first plaintiff, the Curia stated that the mere fact of being a close relative to a public figure (in this case a politician, party leader, member of parliament) does not in itself establish public figure status, and “a relative of a public figure (and his or her relative) may only be subject to a duty of higher tolerance of expression on the basis of their personal involvement in the public affair concerned” (statement of reasons, paragraph [39]). However, in the present case, this circumstance was established, the extremist worldview of the first plaintiff, conveyed by her gesture imitating a Nazi salute, formed the central element of the news report, and thus, according to the Curia, she was presented as an “ad hoc public figure” in the present case. Finally, the Curia assessed the conduct of the first plaintiff, in which it confirmed the court of second instance that “the interpretation of the law cannot make the glorification of any totalitarian [in this case: national socialist] regime acceptable conduct [Constitutional Court decision No. 4/2013 (II. 21.), Constitutional Court decision No. 16/2013 (VI. 20.)]”.

On the basis of the above, the Curia found that the presentation of the images in the article without the consent of the plaintiffs did not result in a disproportionate infringement of their right to privacy as opposed to the exercise of the fundamental rights to freedom of expression and of the press, which guarantee the free discussion of public affairs, and therefore upheld the final judgment.

**4. Decision Direction**

When assessing the conflict between the right to privacy and other rights protected at the same level, in particular freedom of speech and freedom of expression, the courts must balance the exercise of two rights protected at the same level, bearing in mind the necessity and proportionality of the restriction. The fact of having a close family relationship with a well-known public figure does not in itself constitute a qualification as a public figure. A relative of a public figure may only be subject to a duty of higher tolerance of expression on the basis of their personal involvement in the public affair concerned.

**5. Global Perspective**

**Related International and/or regional laws**

* [Von Hannover v. Germany, no. 59320/00](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61853%22]}), judgment of 24 June 2004
* [Von Hannover v. Germany (No. 2.), no. 40660/08 and 60641/08](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-109029%22]}), judgment of 7 February 2012
* [Von Hannover v. Germany (No. 3.), no. 8772/10](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-139651%22]}), judgment of 19 September 2013
* [Verlagsgruppe News GmbH. and Bobi v. Austria, no. 59631/09](file:///D:\Munka\Downloads\CASE%20OF%20VERLAGSGRUPPE%20NEWS%20GMBH%20AND%20BOBI%20v.%20AUSTRIA.pdf), judgment of 4 December 2012
* [Austrian Round Funk v. Austria, no. 35841/02](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2235841/02%22],%22itemid%22:[%22001-78381%22]}), judgment of 7 December 2006
* [Karhuvaara and Iltalehti v. Finland, no. 53678/00](D://Munka/Downloads/KARHUVAARA%20and%20Kustannusosakeyhtio%20Iltalehti%20v.%20FINLAND.pdf), judgment of 16 November 2004

**National standards, law or jurisprudence**

* [Fundamental Law of Hungary](https://njt.hu/jogszabaly/2011-4301-02-00) Article VI(1), Article IX
* [Act LIII of 2018 on the Protection of Privacy](https://njt.hu/jogszabaly/2018-53-00-00) Sections 1 and 8
* [Act V of 2013 on the Civil Code](https://njt.hu/jogszabaly/2013-5-00-00) Section 2:44 (1)-(3)
* [Constitutional Court decision No. 3308/2020 (VII. 24.)](https://public.mkab.hu/dev/dontesek.nsf/0/8edd52cdfd8f4fbac12585220061d26c/$FILE/3308_2020%20AB%20hat%C3%A1rozat.pdf)
* [Constitutional Court decision No. 3212/2020 (VI. 19.)](https://public.mkab.hu/dev/dontesek.nsf/0/4fc4889e4b7fe064c125827400595d6a/$FILE/3212_2020%20AB%20hat%C3%A1rozat.pdf)
* [Constitutional Court decision No. 26/2019 (VII. 23.)](https://public.mkab.hu/dev/dontesek.nsf/0/941bcfa23422d718c12583140059471e/$FILE/26_2019%20AB%20hat%C3%A1rozat.pdf)
* [Constitutional Court decision No. 7/2014 (III. 7.)](https://alkotmanybirosag.hu/ugyadatlap/?id=DCAE82809F3037D2C1257BBF001BABA1)
* [Constitutional Court decision No. 16/2013 (VI. 20.)](https://alkotmanybirosag.hu/ugyadatlap/?id=471A890F1114884FC1257ADA00525728)
* [Constitutional Court decision No. 4/2013 (II. 21.)](https://alkotmanybirosag.hu/ugyadatlap/?id=E1E95AF7B7C1A24EC1257ADA00524F2E)

**6. Case Significance**

The decision establishes a binding or persuasive precedent within its jurisdiction.

**7. Official Case Documents**

Decision Summary (in Hungarian): https://kuria-birosag.hu/sites/default/files/hirlevel/hirlevel2203.pdf

Full decision can be found here (in Hungarian): https://eakta.birosag.hu/anonimizalt-hatarozatok