



Article 8 of the Convention protects certain events of private and family life, obliging journalists to show prudence and precaution in reporting them

In today's **Chamber** judgment¹ in the case of [Rubio Dosamantes v. Spain](#) (application no. 20996/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a complaint by the pop singer Paulina Rubio that her honour and reputation had been harmed by remarks made on television about her private life.

The Court found that Ms Rubio's fame as a singer did not mean that her activities or conduct in her private life should be regarded as necessarily falling within the public interest. The fact that she could have benefitted from media attention did not authorise TV channels to broadcast unchecked comments about her private life.

The Court reiterated that certain events of private and family life were given particularly careful protection under Article 8 of the Convention, meaning that journalists had to show prudence and precaution when talking about them. Thus the spreading of unverified rumours or the limitless broadcasting of random comments on any possible aspect of a person's daily life could not be seen as harmless.

The national authorities should have assessed the TV programmes in question, to distinguish between and to weigh in the balance those matters which were intimately part of Ms Rubio's private life and those which might have had a legitimate public interest.

Principal facts

The applicant, Ms Paulina Rubio Dosamantes, is a Mexican national who was born in 1971. She is a pop singer who is very well known in Spain under the name of Paulina Rubio. She complained that her reputation and private life had been harmed by remarks made by the media.

In April and May 2005 Ms Rubio's former manager gave interviews on three television programmes concerning various aspects of the singer's private life.

In May 2005 Ms Rubio brought a civil action seeking protection of her right to honour and to privacy, against her former manager and various television presenters and staff members, television production companies and television stations. She complained about the content of certain programmes broadcast in April and May 2005, alleging that some of the comments made during the programmes had breached her fundamental rights.

In a judgment of 19 February 2007 the Madrid first-instance court dismissed Ms Rubio's claims. The court found that the comments concerning the drug use of Ms Rubio's boyfriend, R.B., had related solely to the state of their relationship and had not alleged that Ms Rubio had incited him directly to take drugs. As to the references to Ms Rubio's sexual orientation, the court considered that they had

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

not impugned her honour, as homosexuality should no longer be considered shameful and Ms Rubio herself had tacitly consented to the debate on the subject. Lastly, the court found that the remarks concerning Ms Rubio's alleged ill-treatment of R.B. were likewise not damaging to her reputation.

Ms Rubio appealed. In a judgment of 29 October 2007 the Madrid *Audiencia Provincial* upheld the judgment complained of. In May 2009 an appeal on points of law by the applicant was declared inadmissible by the Supreme Court. Ms Rubio then lodged an *amparo* appeal with the Constitutional Court, which was also declared inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant alleged that the remarks made about her during various television programmes had impugned her honour and breached her right to respect for her private life.

The application was lodged with the European Court of Human Rights on 8 April 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Luis **López Guerra** (Spain),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that in various television programmes, frivolous comments had been expressed about certain aspects of Ms Rubio's private life. Those comments concerned mainly her sexual orientation or her allegedly stormy relationship with her partner, including the claim that she had humiliated him and encouraged him to take drugs.

The Court observed that the domestic courts had based their decisions merely on the fact that Ms Rubio was famous. The fact that she was a well-known public figure as a singer did not mean that her activities or conduct in her private life should be regarded as necessarily falling within the public interest. The Court was of the view that the television programmes in question, based as they were on strictly private aspects of Ms Rubio's life, did not have any public interest that could legitimise the disclosure of the information, in spite of her fame, as the public had no legitimate interest in knowing certain intimate details about her private life. In the Court's opinion, it was clear that the guests on the programme only mentioned and discussed the singer's private life, focussing on details that were considered to be lewd.

Even assuming that there had been a public interest, in parallel to the commercial interest of the television channels in broadcasting the programmes, the Court found that those interests were trumped by a person's individual right to the effective protection of his or her privacy.

As to the conduct of Ms Rubio, who had allegedly spoken openly and publicly about her relationship with R.B. and who must have known that there were many rumours about her in the media, the Court reiterated that any information brought to public attention by the person in question ceased

to be secret and became freely available. The Court observed in the present case that, according to the first-instance court, the question of the applicant's sexual preferences had no longer been confined to the sphere of her private life well before the broadcasting of the programmes, and the commentators had merely talked about rumours that had been known for a long time in Latin America. According to the judgment of the first-instance court, the remarks had not breached the applicant's right to respect for her private life, since they had concerned aspects of her life which were already in the public domain and Ms Rubio herself had not previously objected to that disclosure. In that court's view, Ms Rubio's relationship with R.B. had been public knowledge for some time. The Court nevertheless found that the fact that Ms Rubio could have benefitted from such media attention did not authorise the TV channels in question to broadcast unchecked and unlimited comments about her private life.

The Court reiterated that certain events of private and family life were given particularly careful protection under Article 8 of the Convention, meaning that journalists had to show prudence and precaution when talking about them. Thus the spreading of unverified rumours or the limitless broadcasting of random comments on any possible aspect of a person's daily life could not be seen as harmless. The national authorities had therefore had a duty to assess the TV programmes in question, in order to distinguish between and to weigh in the balance those matters which were intimately part of Ms Rubio's private life and those which might have had a legitimate public interest.

The Court observed that the national authorities had not carefully weighed those rights and interests in the balance, but had merely taken the view that the comments in question had not impugned Ms Rubio's honour. They had not examined the criteria to be taken into account in order to make a fair assessment of the balance between the right to respect for freedom of expression and the right to respect for a person's private life.

Having regard to the margin of appreciation afforded to the authorities when it came to weighing up the various interests, the Court found that they had failed in their positive obligations to ensure the protection of Ms Rubio's privacy. There had therefore been a violation of Article 8 of the Convention.

Just satisfaction (Article 41)

Ms Rubio had not submitted any request for just satisfaction within the time-limit, merely mentioning in her application an estimated amount in respect of the alleged damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.