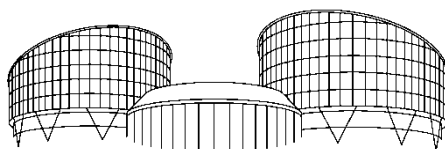


La Corte EDU sul diritto alla privacy (CEDU, sez. I, sent. 1 luglio 2021, ric. n. 7796/16)

Con la decisione resa al caso in esame, la Corte EDU ha deciso il ricorso presentato da un cittadino slovacco contro il suo Paese, eccependo la violazione del suo diritto alla vita privata *ex art. 8 CEDU*. In sintesi, i fatti dai quali si è originata la questione riguardano la divulgazione di alcune registrazioni video realizzate da un giornalista che, fingendosi una potenziale madre surrogata, aveva risposto ad un annuncio del ricorrente, intenzionato a diventare padre biologico attraverso la maternità surrogata, pratica non regolata dalla legge slovacca. Successivamente, un giornale nazionale pubblicava un articolo dal titolo “Commercio di bambini non ancora nati”, accompagnato dalla pubblicazione di foto del ricorrente ottenute di nascosto. Il ricorrente presentava, perciò, due ricorsi a tutela della sua integrità personale l’uno contro la televisione, l’altro contro il quotidiano. La stessa Corte d’appello aveva ritenuto violati i diritti del ricorrente per via della trasmissione di registrazioni video e audio ottenute illegalmente. Mentre veniva respinto il ricorso contro il giornale sulla base della circostanza che l’articolo mirava ad informare i lettori su questioni di interesse pubblico.

Di qui il ricorso alla Corte EDU per lamentare la violazione del diritto alla *privacy*. Nella specie, il ricorrente, sebbene non contestasse al giornale la pubblicazione di un articolo sulla maternità surrogata di certa rilevanza pubblica, sosteneva non vi fosse alcuna necessità sociale di illustrare tale argomento utilizzando la propria storia, che rivelava la sua identità e altri momenti della sua vita privata. In proposito, la Corte di Strasburgo ha rammentato che la nozione di “vita privata” è un concetto ampio che si estende a una serie di aspetti relativi all’identità personale, e l’immagine costituisce uno dei principali attributi della personalità, poiché rivela caratteristiche uniche ed irripetibili della persona. Posta tale premessa, la Corte EDU ha sottolineato come, nella specie, il diritto alla vita privata dovesse essere bilanciato con il diritto di informazione. Come altrove chiarito, in casi del genere deve essere opportunamente valutato il grado di notorietà della persona interessata; l’oggetto della relazione; il precedente comportamento dell’interessato; il contenuto, la forma e le conseguenze della pubblicazione; e le circostanze in cui sono state scattate le fotografie. La decisione ha analizzato la questione ripercorrendo ciascuno dei profili appena menzionati e, così facendo, la Corte è giunta a constatare che il ricorrente non aveva personalmente cercato alcuna esposizione pubblica, tanto più che l’annuncio sul giornale aveva carattere anonimo. La pubblicazione dell’articolo sul giornale mirava sì ad informare i lettori sulla controversa questione di interesse pubblico della maternità surrogata, ma ciò non senza un’adeguata valutazione degli interessi in gioco. In tale contesto, la Corte ha ribadito che il compito di fornire informazioni include necessariamente “doveri e responsabilità”, nonché limiti che la stampa deve imporsi spontaneamente, soprattutto se l’interessato non ha rivelato le informazioni e non ha acconsentito

alla loro divulgazione. Sicché sulla base di quanto precede, la Corte ha ritenuto che i giudici nazionali non hanno valutato secondo un ragionevole giudizio di bilanciamento tra il diritto alla vita privata e la libertà di espressione, e, per queste circostanze, ha concluso che lo Stato sia venuto meno ai suoi obblighi positivi ai sensi dell'articolo 8 della Convenzione.



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

FIRST SECTION

CASE OF XXX v. SLOVAKIA

(Application no. 7796/16)

JUDGMENT
STRASBOURG

1 July 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Xxx v. Slovakia,

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

Ksenija Turković, *President,*

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges,*

and Liv Tiggerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 7796/16) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Xxx (“the applicant”), on 4 February 2016;

the decision to give notice of the application to the Slovak Government (“the Government”);

the parties’ observations;

Having deliberated in private on 8 June 2021,

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

INTRODUCTION

1. The case mainly concerns an alleged breach of the applicant's right to private life under Article 8 of the Convention by the publication of, *inter alia*, photographs of him, and the ensuing domestic court decisions dismissing his related claims.

THE FACTS

2. The applicant was born in xxx and lives in xxx. He was represented by Mr M. Kaľavský, a lawyer practising in Bratislava.

3. The Government were represented by their Co-Agent, Ms M. Bálintová, from the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant wished to become a biological father through surrogacy, a practice that was not regulated by Slovak law. In March 2005, he and his alleged partner published a short advertisement in a nationwide daily newspaper seeking a woman who was willing and able to give birth to 'their' child, while offering a financial reward in return. The advertisement did not reveal the applicant's identity and promised to keep any negotiations confidential. An investigative television reporter, pretending to be a potential surrogate mother, used a hidden camera to secretly record her meetings with the applicant in which arrangements for the surrogate pregnancy were discussed. On 27 June 2005, her report about the applicant's intention to 'buy' a child, which included video recordings of the applicant, was broadcast on Slovak television. According to the applicant, the report contained unfounded assumptions which were intended to cause a sensation, and suggested that he was a member of an organised group selling children abroad.

6. On 29 June 2005, a popular daily newspaper with national coverage published an article entitled "Trade in unborn children", describing the applicant's story as depicted by the television report, and displaying, without the applicant's consent, his pictures taken from that report. With regard to details of the applicant's private life, the article stated that the applicant had made his sister impersonate his wife and that, having lived for a long time in the United States, the applicant had only recently acquired Slovak citizenship. The article also mentioned the role of doctors who were allegedly ready to help with the assisted reproduction and the falsification of documents. The article ended by stating that although trafficking of unborn children was illegal in Slovakia, the applicant and his fake partner would probably escape justice and would not be punished because there was no legislation which would enable their actions to be prosecuted.

The article was also published in the online version of the newspaper, where it was still available in June 2020.

7. The applicant subsequently brought two actions for the protection of his personal integrity on the basis of Articles 11-13 of the Civil Code, one against Slovak television and the other against the publisher of the newspaper. In January 2007, he won the case against Slovak television before the first-instance court and was awarded more than 16,500 euros in damages; that decision was upheld by the appellate court's judgment of 26 October 2011 (which became final on 3 February 2012). The courts found that Slovak television had violated the applicant's rights by criminalising him, as well

as by broadcasting, in breach of the law, video and audio recordings of him which had been obtained illegally, without enabling him to express his views on the facts presented in the report.

8. The applicant's action against the newspaper publisher was subsequently dismissed by courts at two levels of jurisdiction, on the grounds that the article aimed to inform readers about questions of public interest, the issue of assisted reproduction being extremely sensitive and somewhat controversial; that the applicant had himself attracted public and media attention by publishing his advertisement, thus excluding the relevant facts from his private sphere; and that the article in question contained only true information which had already been broadcast on public television. The Bratislava Regional Court, acting on appeal, also considered that Article 12 § 3 of the Civil Code allowed the photographs of the applicant to be used for news reporting without his previous consent, and that the applicant's actions were legally unacceptable and morally reprehensible.

9. The applicant lodged a constitutional complaint in which he argued, *inter alia*, that the publication of the pictures of him amounted to an abuse by the defendant of its right to freedom of expression. The Constitutional Court quashed the Regional Court's judgment on 15 January 2014. In the Constitutional Court's view, the Regional Court had not given an appropriate answer to all of the relevant arguments raised by the applicant and had thereby breached his rights under Article 6 § 1 and Article 8 of the Convention. Namely, it had failed to provide sufficient reasons for its conclusion that the article and the applicant's pictures qualified as "news reporting by the press" within the meaning of Article 12 § 3 of the Civil Code; to duly assess the requirement of proportionality when analysing whether the pictures identifying the applicant had contributed to a discussion on matters of public interest; and to explain the factual basis supporting what was considered to be a value judgment on the manner in which the applicant had acted, that is a criticism *ad personam*.

10. The case was thus remitted to the Regional Court and the parties were invited to submit additional comments.

11. By a judgment of 17 July 2014, the Regional Court upheld the dismissal of the applicant's action by the first-instance court. It considered, firstly, that although the applicant was not a publicly known figure, he had decided to enter the public sphere by publishing his advertisement, and should thus have expected a greater amount of attention from the public, all the more so given that his identity had already been revealed by the television report. Consequently, he could not be treated as an "ordinary citizen" and the level of protection for his private sphere was therefore partially reduced.

As to the admissibility of critical value judgments of the applicant's actions, the court pointed out that Slovak law did not allow surrogacy, and that any contract conflicting with the principle that a child's mother is the woman who gave birth to that child, would be invalid as being contrary to good morals. Moreover, the commercial aspect of the surrogacy raised serious ethical questions, which was undoubtedly one of the reasons why the applicant's advertisement had aroused so much interest in the media and among the public; and the issue of surrogacy was a matter of legitimate public interest upon which the press was called to inform the public. In the court's view, the article in question did not contain any harsh or vulgar expressions, and was not only critical about the manner in which the applicant had tried to obtain a child but also about the actions of other people who were to have been involved in the process of assisted reproduction. There was no doubt that the article and the criticisms contained therein had a factual basis and relied on true and uncontested

facts. In view of those considerations, the appellate court concluded that the publication of the article did not amount to an unjustified interference with the applicant's rights, which were in that case overridden by the defendant's right to freedom of expression.

Concerning the publication of the applicant's pictures, to which he had not consented, the appellate court referred to the legal exemption provided by Article 12 § 3 of the Civil Code, enabling pictures to be used, without the consent of the person concerned, for the purposes of news reporting. The term "news reporting" covered not only informing about facts of public interest but also assessing those facts in a critical manner. Although the article containing the applicant's pictures concerned his private life, his private life was touched upon as a secondary issue (to illustrate the applicant's motives), the core theme – and a matter of public interest – being the manner in which the applicant had tried to obtain a child by offering a financial reward, that is through surrogacy, which was not allowed under Slovak law. The publication of the article with the pictures was also considered topical, given that it had occurred two days after the television broadcast and thus covered the subject at a time when the public were hearing information about the applicant's actions. The pictures served the purpose of confirming the trustworthiness of the information published, all the more so because the subject of the article was unusual. The fact that it was published in the so-called tabloid press did not as such exclude it from the news reporting exemption, since the decisive factor was the manner in which the topic had been approached; in the present case, neither the content of the article nor the pictures were intended to create scandal about or ridicule the applicant. Consequently, the publication of the applicant's pictures was covered by Article 12 § 3 of the Civil Code.

Lastly, the appellate court observed that the author of the article had assessed the trafficking of unborn children in Slovakia as being illegal, while quoting the statement of a third party that the trafficking of unborn children could not be prosecuted because of the absence of relevant legislation. This amounted to a contradiction since an action which was not regulated by the criminal law could neither be contrary to that law nor subject to punishment; nevertheless, a surrogacy contract would be invalid from the perspective of family law. According to the court, it was necessary to take into account the fact that the article had been written by a journalist and published in a newspaper designed for a wide public, which required the acceptance of even simplified or distorted allegations; in the present case, the above-mentioned contradiction amounted to a lack of precision which did not have any impact on the applicant's personality rights, given that the substance of the information relied upon in the article was true.

12. The applicant challenged the Regional Court's judgment by a constitutional complaint, arguing that its reasoning was still not compliant with his rights guaranteed under Article 6 § 1 and Article 8 of the Convention. As to the application of Article 12 § 3 of the Civil Code, he argued that the newspaper article had not been topical since the events covered had dated to more than two months back (when the pictures had also been taken), and contained a subjective assessment; thus, it could not be considered as "news reporting" and his consent to the publication of the pictures should have been sought. Moreover, the appellate court had failed to examine the manner and the extent to which the pictures – which formed three quarters of the article – had been used, which suggested that the main aim had not been to report about surrogacy but to reveal his identity; the use of the pictures was contrary to his legitimate interests. In the applicant's view, there was no legitimate interest

requiring the publication of his non-pixelated pictures, which were not capable of contributing to a debate on a matter of public interest. The applicant emphasised in this context that the article had been based on a television report which had used illegally obtained material and which had been broadcast in breach of the law, as had been held in the proceedings against Slovak television, and that the publisher had not acted in good faith but only with the aim of causing a sensation. While the publisher could have had a legitimate interest in covering the public-interest issue of surrogacy, it had had the obligation to do so in an objective and sober manner, without focusing on one particular case and without revealing his identity and criminalising him. Furthermore, the article contained untrue and inadmissible critical value judgments, namely that he was considered to have trafficked unborn children even though no child had ever existed in this case.

13. By decision no. II. ÚS 424/2015 of 1 July 2015 (served on 14 September 2015), the Constitutional Court dismissed the applicant's constitutional complaint as manifestly ill-founded. It considered that the Regional Court, having sufficiently reasoned its judgment and given a clear and comprehensive response to all of the questions raised, had complied with the requirements stemming from the rights to judicial protection and to a fair trial, and from the Constitutional Court's previous judgment. It further observed that the right to respect for private life was not absolute and that the criteria to be taken into account when balancing that right and the journalist's freedom of expression were the status of the person whose personality rights had been interfered with; the content and form of the article; the status of the author of the article; and the article's purpose, aim and motive. In this connection, it was considered essential that the applicant had himself, through his advertisement, drawn attention to his intention to have recourse to surrogacy even though that practice was not in accordance with Slovak law. In so far as the article revealed circumstances of the applicant's private life, even if it had done so in expressive and critical terms, it had not done so without purpose. The article had contributed to the public debate which had followed the television report, and the publication of the applicant's pictures was allowed by the news reporting exemption. The author was a journalist, who was obliged to inform the public about matters of public interest, and it had not been proved that the defendant had acted in bad faith or tried to defame the applicant. Thus, according to the Constitutional Court, the Regional Court's assessment of the proportionality of the interference had not overstepped the constitutionally acceptable limits.

RELEVANT LEGAL FRAMEWORK

14. The right to protection of a person's personal integrity is guaranteed by Articles 11 et seq. of the Civil Code (Law no. 40/1964 Coll., as amended).

15. Pursuant to Article 11, natural persons have the right to protection of their personal integrity, in particular their life and health, civil and human dignity, privacy, name and personal characteristics.

16. Article 12 § 1 provides, *inter alia*, that audio recordings concerning natural persons, or their statements of a personal nature, may only be made or used with the consent of the person concerned. Under paragraph 2 of that Article such consent is not required where the documents or recordings are used for official purposes in accordance with the law. Article 12 § 3 provides that pictures and audio recordings can also be made and used in an appropriate manner, without the consent of the person concerned, for scientific and artistic purposes and also for news reporting by the press, film, radio and television. Such use cannot, however, be contrary to the legitimate interests of the person concerned.

17. Pursuant to Article 13 § 1, all natural persons have the right to apply for an order restraining any unjustified interference with their personal integrity, an order cancelling out the effects of such interference, and an award of appropriate compensation. Article 13 § 2 provides that in cases where the satisfaction afforded under Article 13 § 1 is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party is also entitled to financial compensation for non-pecuniary damage.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The applicant complained that the dismissal of his action against the newspaper publisher amounted to a violation of his right to respect for his private life, as guaranteed by Article 8 of the Convention, the relevant parts of which read as follows:

"1. Everyone has the right to respect for his private ... life ...

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."

A. Admissibility

19. It is clear from the Court's case-law, and the Government accepted, that Article 8 is applicable in the circumstances of the present case. The applicant's allegation that his right to protection of his private life was infringed as a result of the publication of the article in question and the photographs raises serious issues of law and fact which require examination on the merits.

20. The Court accordingly concludes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

21. The applicant was convinced that the domestic courts, by underestimating the importance of his right to respect for his private life and not having it as a central focus, and by considering the case only from the perspective of the publisher's freedom of expression, had failed to reach a fair balance between the competing rights at stake.

22. While the applicant did not contest that the publisher could legitimately publish an article about surrogacy in order to initiate a public debate, he argued that there had been no pressing social need to illustrate that topic using his own story, which disclosed his identity and private aspects of his life. The publication of his pictures had not, in any manner, contributed to a discussion about surrogacy; its only goal had been to create a scandal about him, cause a sensation and increase the number of readers.

23. Referring to the Court's case-law, the applicant contended that the duties and responsibilities stemming from Article 10 § 2 of the Convention require that journalists act in good faith in order to provide accurate and verified information in accordance with the ethics of journalism. However, in the instant case, the courts had stated in rulings on his claim against Slovak television that the recordings which had been broadcast in the television report (and subsequently used in the relevant

newspaper article) had been acquired unlawfully, and that the television report itself (which had provided a basis for the article) had been broadcast in breach of the law (see paragraph 7 above). That unlawful disclosure of his identity in the initial report could not give anyone permission to publish his pictures, all the more so because such use was contrary to his legitimate interests, but the courts had failed to recognise that argument. The applicant further asserted that, although the publisher must have been aware of the unlawful origin of the material it had intended to publish, it had not tried to ascertain his position or to seek his consent to its publication.

24. Lastly, the applicant emphasised that he had not committed any unlawful actions, therefore the journalist's accusatory statements calling for his punishment could not be considered as value judgments based on true facts, as submitted by the Government.

25. The Government referred to the Court's case-law on Article 8 of the Convention but also to the principles established in the field of freedom of expression (citing *Ringier Axel Springer Slovakia, a.s. v. Slovakia*, no. 41262/05, §§ 94-100, 26 July 2011, with further references), from which it followed that expression protected by Article 10 of the Convention did not amount to an unjustified interference under Article 8.

26. As to the question whether the State had met its positive obligation to protect the applicant's privacy from interference by a private publishing company, the existence of which interference was not contested, the Government shared the opinion expressed by the domestic courts after having duly assessed all the relevant circumstances of the case. The courts had correctly held that the applicant had brought himself within the public sphere and had attracted public and media attention by publishing the advertisement in which he had announced his private intentions. It was to be emphasised that the newspaper article in question had been published two days after the television report had been broadcast, which report had already revealed the applicant's identity, and had caused a "public storm". The Government further concurred with the courts' conclusions that surrogacy was an issue of public interest which had a moral and ethical dimension.

27. The Government was convinced that, in exercising its freedom of expression, the publisher had complied with its duties and responsibilities within the meaning of the Court's case-law, since it had acted in good faith and in accordance with the ethics of journalism, with the aim of providing accurate and reliable information. All of the facts mentioned in the article had been based on the applicant's own advertisement, and the terms used could not be considered as defaming or ridiculing him. The applicant's assertion that the value judgments expressed in the article had not been based on the truth (see paragraph 24 above) had been refuted by the domestic courts, which had held that they had had a sufficient factual basis (see paragraph 11 above). Moreover, the applicant's pictures had already been previously revealed in the television report; thus, the publisher had not had any reason to further protect the applicant's identity and could publish the pictures without the applicant's consent, with a view to reporting on questions of public interest.

28. The Government therefore contested the argument that the domestic courts had failed to apply standards stemming from the principles established in the Court's case-law or that they had failed to base their conclusions on an acceptable assessment of the relevant facts. They maintained that the courts had sufficiently reasoned why the protection of the publisher's freedom of expression outweighed the applicant's right to respect for privacy, and that they had reached the necessary fair balance between those competing interests.

2. The Court's assessment

(a) General principles

29. The Court observes that the notion of “private life” within the meaning of Article 8 of the Convention is a broad concept which extends to a number of aspects relating to personal identity, such as a person's name or image, and furthermore includes a person's physical and psychological integrity (see, for instance, *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI, and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 159, ECHR 2017). This concept also includes the right to live privately, away from unwanted attention (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX).

A person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right of each person to the protection of his or her image presupposes the right to control the use of that image. While in most cases it entails the possibility to refuse publication of the image, it also covers the individual's right to object to the recording, conservation and reproduction of the image (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 87 and 89, 17 October 2019).

30. Proceeding from the assumption that the present case requires an examination of the fair balance that has to be struck between the applicant's right to the protection of his private life under Article 8 and the publisher's right to freedom of expression as guaranteed by Article 10, the Court notes that the principles with respect to the State's positive obligations and the criteria for balancing the protection of private life against freedom of expression were set out in the Court's judgment in *Von Hannover* (cited above, §§ 57-60) and have subsequently been elaborated in *Von Hannover v. Germany* (no. 2) ([GC], nos. 40660/08 and 60641/08, §§ 95-113, ECHR 2012); *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 78-95, 7 February 2012); and *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, §§ 83-93, ECHR 2015 (extracts)). As identified in those cases, the main criteria of assessment are contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the report; the prior conduct of the person concerned; the content, form and consequences of the publication; and the circumstances in which photographs were taken.

31. Although freedom of expression includes the publication of photographs, this is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photographs may contain very personal or even intimate information about an individual and his or her family (see *Lillo-Stenberg and Sæther v. Norway*, no. 13258/09, § 30, 16 January 2014, and *Dupate v. Latvia*, no. 18068/11, § 47, 19 November 2020). In the cases in which the Court has had to balance the protection of private life against freedom of expression, it has always stressed the contribution made by photographs or articles in the press to a debate of general interest. In its 2004 judgment in *Von Hannover* (cited above, §§ 60-66) the Court made a distinction between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society, and reporting details of the private life of an individual who does not exercise official functions. While in the former case the press exercises its vital role of a “watchdog” in a democracy by imparting information and ideas on matters of public interest, it does not do so in the latter case. Where the situation does not come within the sphere of any political or public debate and published photographs and accompanying commentaries relate exclusively to details of the person's private life with the sole purpose to satisfy the curiosity of a particular readership, freedom of expression

calls for a narrower interpretation (see *Von Hannover*, cited above, §§ 60-66, and *Couderc and Hachette Filipacchi Associés*, cited above, §§ 100-103).

(b) Application to the present case

32. The issue in the instant case is whether the domestic courts ensured a fair balance between the protection of the applicant's private life and the right of the defendant to freedom of expression. In exercising its supervisory function, the Court's task is to review, in the light of the case as a whole, whether the decisions taken by the domestic courts pursuant to their power of appreciation are in conformity with the criteria laid down in the Court's case-law.

33. In the circumstances of the present case, the Court considers it appropriate to examine the applicable criteria (see paragraph 30 above) in this specific order: how well-known is the person concerned; the prior conduct of the person concerned and the subject matter of the article; the content, form and consequences of the publication; the contribution to a debate of general interest; the method of obtaining the photographs.

(i) *How well-known was the applicant, the applicant's conduct prior to the publication of the article in question and the subject matter*

34. The present case differs from the above-cited ones in that the applicant was not a public or newsworthy figure within the meaning of the Court's case-law (see *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, § 37, 26 February 2002, and *Reklos and Davourlis v. Greece*, no. 1234/05, § 41, 15 January 2009). Nonetheless, the domestic courts pointed in this respect to the applicant's prior conduct, emphasising the fact that he had decided to enter the public arena by publishing an advertisement aimed at finding a surrogate mother. In their view, he should thus have expected a greater amount of attention from the public, all the more so because his identity had already been revealed in the television report (see paragraphs 11 and 13 above).

35. In that connection, the Court observes, however, that the applicant had not himself sought any public exposure beyond placing an anonymous advertisement in a newspaper. He could not have suspected that by talking to the person who had contacted him as a potential surrogate mother, he was running a risk of being recorded and having his intentions and identity revealed in the media (see, *mutatis mutandis*, *Bremner v. Turkey*, no. 37428/06, § 78, 13 October 2015). Thus, the sole fact that the applicant, as an ordinary person, had made use of a newspaper advertisement, which only revealed his readiness to have recourse to commercial surrogacy while promising confidentiality, cannot, in the Court's view, serve as an argument for reducing the level of the protection that should have been afforded to him under Article 8.

36. Concerning the subject matter, the Court admits that the article, entitled "Trade in unborn children" (see paragraph 6 above), which mainly focused on the applicant's plan to find a surrogate mother, his reasons for doing so and his meetings with the pretend candidate, also revealed some details of his private life. However, in so far as the article mentioned the involvement of (unnamed) doctors who were to have helped with the assisted reproduction and the falsification of documents, and the lack of legislation regulating that practice, the Court is ready to accept the domestic courts' conclusion – which was shared by the Government – that the article was aimed at informing people about the controversial public-interest issue of surrogacy.

(ii) *The content, form and consequences of the article*

37. As far as the content and form of the published article are concerned, the Court reiterates that the newspaper published some information about the applicant's background, his intentions and the content about his negotiations with the pretend surrogate mother. It conveyed a message of indignation about the fact that although trafficking of unborn children was illegal in Slovakia, the applicant could not be punished for his action; the applicant considered that to be an unacceptable accusatory statement.

38. The domestic courts were of the view that the article did not contain any harsh or vulgar expressions which were intended to defame or create scandal about the applicant, and that the critical value judgments contained therein relied on the information which, although not sufficiently precise, was true in substance.

39. The Court observes that the article portrayed the applicant rather in a negative light and that its general tone was not favourable to him. In the circumstances of the present case, and viewed in the light of the previous television report, it does not consider however that this in itself gave rise to a breach of the applicant's right to respect for his private life.

(iii) Contribution to a debate of general interest

40. The Court reiterates that the definition of what constitutes a subject of general interest will depend on the circumstances of the case. Articles intended solely to satisfy the curiosity of a particular readership regarding the details of a person's private life, however well known that person might be, cannot be deemed to contribute to any debate of general interest to society (see *Couderc and Hachette Filipacchi Associés*, cited above, §§ 89 and 100, and *Standard Verlags GmbH v. Austria* (no. 2), no. 21277/05, § 52, 4 June 2009.) Furthermore, in the balancing of interests under Articles 8 and 10 of the Convention, the contribution made by photographs or articles in the press is an essential criterion (see *Von Hannover*, cited above, § 109, with further references).

41. In the instant case, while the domestic courts and the Government contended that the publication in question concerned surrogacy as a matter of public interest having a moral and ethical dimension, the applicant argued that there had been no pressing social need to illustrate that topic by his own story, disclosing his identity and private aspects of his life, and that publication of his photographs had made no contribution to a debate about surrogacy.

42. Assessing the publication as a whole, in the actual context and situation, the Court notes that the article was published two days after the broadcast of a television report of similar content which, according to the Government, had caused a "public storm" (see paragraph 26 above). The article was thus closely linked in time to those events. Although the journalist had added little about the phenomenon of surrogacy in general, the Court is of the view that the article can be considered as having been written as part of a debate which was likely to be of significant interest to the general public.

43. As regards, however, the potential contribution of publishing photographs of the applicant to a public-interest debate, the Court sees nothing in the article in question or in the materials in the case file to substantiate any general interest reasons for the journalist's decision to include the pictures of the applicant without taking any particular precautions, such as masking his face (see, in that regard, *Peck v. the United Kingdom*, no. 44647/98, § 80, ECHR 2003-I). Given, in particular, the fact that the applicant was not known to the public (apart from the previous television report), there is nothing to suggest that the publication in question had any inherent informative value or had been

properly and adequately used (see, *mutatis mutandis*, *Gurgenidze v. Georgia*, no. 71678/01, §§ 59 and 60, 17 October 2006, and *Bremner*, cited above, § 80). Nor was the domestic courts' conclusion that the publication of the photographs was necessary for the purposes of news reporting within the meaning of Article 12 § 3 of the Civil Code substantiated by any relevant and convincing arguments.

44. In that connection, the Court observes that in the case of *Haldimann and Others v. Switzerland* (no. 21830/09, § 65, ECHR 2015), which concerned sanctions imposed on journalists for broadcasting a hidden-camera recording of an alleged negotiation between an insurance broker and a journalist, the Court found a violation of the applicants' right to freedom of expression. In order to reach that finding it had considered decisive the fact that the applicants had pixelated the broker's face and distorted his voice.

45. Thus, while the Court accepts in the present case that the article addressed a matter of public interest (see also paragraphs 36 *in fine* and 42 *in fine* above), it considers that the method used for producing the article, notably the publication of large-size photographs of the applicant, can hardly be said to be capable of contributing to any debate on such a matter (see further below).

(iv) Circumstances in which the photographs were taken

46. It is not in dispute between the parties that the applicant did not consent to the publication of the photographs and that they had been obtained covertly by a television reporter using a hidden camera. However, although the applicant argued in the domestic proceedings that the photographs had been obtained illegally, for which Slovak television had been convicted, and that the publisher had not acted in good faith but only with the aim of causing a sensation (see paragraph 12 above), it appears from the materials in the case file that this factor was not duly taken into consideration by the domestic courts.

47. In this context, the Court reiterates that the task of imparting information necessarily includes "duties and responsibilities", as well as limits which the press must impose on itself spontaneously (see *Couderc and Hachette Filipacchi Associés*, cited above, § 89, and *Dupate*, cited above, § 47).

48. In the present case, the courts appear to have attached particular importance to the fact that the applicant's identity had already been revealed in the television report (see paragraph 11 above). The Court admits that the fact that someone's picture has already appeared in an earlier publication might be considered in the balancing process (see *Axel Springer AG*, cited above, § 92) and lead to the conclusion that there was no need to restrict the disclosure of an identity (see *Egeland and Hanseid v. Norway*, no. 34438/04, § 60, 16 April 2009). However, the fact that information is already in the public domain does not necessarily remove the protection of Article 8 of the Convention, especially if the person concerned neither revealed the information nor consented to its disclosure (see, *mutatis mutandis*, *Egeland and Hanseid*, cited above, §§ 62-63, 16 April 2009, and *N.Š. v. Croatia*, no. 36908/13, § 100, 10 September 2020). Indeed, even with respect to a further dissemination of "public information", the Court has found that the interest in publication of that information had to be weighed against privacy considerations (see *Von Hannover*, cited above, §§ 74-75 and 77). This is so because privacy is also about preventing intrusion. Thus, notwithstanding that the information in question was already known to the public, a further dissemination of such "public information" had still to be weighed against the applicant's right to privacy (see, *mutatis mutandis*, *N.Š.*, cited above, §§ 100 and 111).

49. It has to be emphasised in the case at hand that the applicant could not have expected to be recorded or reported on in a public manner (see paragraph 35 above) and did not voluntarily cooperate with the media; thus, his reasonable expectations as to privacy are a significant, although not necessarily conclusive, factor (see *Shabanov and Tren v. Russia*, no. 5433/02, § 46, 14 December 2006, with further references). Furthermore, although it had been established in 2007 by the first-instance court and in 2011 by the appellate court that the material concerning the applicant had been obtained illegally by the television reporter, and broadcast in breach of the law (see paragraph 7), the domestic courts did not take that factor into account. Nor did they assess whether the journalist had acted in good faith and with necessary rigour and taking necessary precautions when disseminating material emanating from another source (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 65-66, ECHR 1999-III; *Mihaiu v. Romania*, no. 42512/02, § 67, 4 November 2008; and *Ringier Axel Springer*, cited above, § 106). In the Court's view, it was indeed clear from the television report that the reporter had contacted the applicant, pretending to be interested in his advertisement, and that she had made the recordings with a hidden camera without the applicant being aware of it or having consented to it. This should have alerted the journalist and the newspaper publisher to the need to use that material with caution and not to disseminate it without masking or blurring the applicant's face (see also paragraph 43 above).

(c) Conclusion

50. Having regard to the foregoing, the Court considers that while the domestic courts did engage in a balancing exercise between the right to private life and freedom of expression, that exercise was not carried out in conformity with the criteria laid down in the Court's case-law. The assessment of the applicant's prior conduct was flawed (see *Dupate*, cited above, § 74) and the manner in which the photographs had been taken was not taken into account (see, conversely, *Bild GmbH & Co. KG and Axel Springer AG* (dec.), nos. 62721/13 and 62741/13, § 35, 4 December 2018). Most importantly, none of the domestic courts would appear to have assessed the contribution to the public-interest debate of broadcasting images of the applicant without blurring them (see *Bremner*, cited above, § 83).

51. In these circumstances, and notwithstanding the margin of appreciation allowed to the domestic courts in this field, the Court concludes that the State has failed to fulfil its positive obligations under Article 8 of the Convention.

52. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

53. Relying on Article 6 § 1 of the Convention, the applicant complained of insufficient reasoning of the domestic courts' decisions.

54. Having regard to the grounds on which it has found a violation of Article 8 of the Convention (see paragraphs 50-51 above), the Court considers that, while this complaint is admissible, no separate issue arises under Article 6 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 16,596.95 euros (EUR) in respect of non-pecuniary damage, which corresponded to the amount awarded to him by the domestic courts in similar proceedings (see paragraph 7 above).

57. The Government contested the claim as being overstated and requested that, should the Court find any violation of the applicant's Convention rights, any just satisfaction be awarded in an adequate amount.

58. The Court considers that, in the particular circumstances of the present case, the finding of a violation of Article 8 of the Convention constitutes sufficient just satisfaction for the applicant.

B. Costs and expenses

59. The applicant also claimed EUR 10,572 for the costs and expenses incurred before the domestic courts, including the costs which he had to reimburse to the defendant, and EUR 419 for those incurred before the Court.

60. The Government objected that the applicant had only proved the payment of the court fees amounting to EUR 1,559 and had not substantiated the rest of his claim with any relevant documents.

61. 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 were 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 the applicant the sum claimed for the fees incurred before the domestic courts, and for the costs paid to the defendant, that is to say EUR 6,030. It also considers it reasonable to award the sum claimed for the representation of the applicant before the Court, namely EUR 419.

C. Default interest

62. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that no separate issue arises under Article 6 § 1 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, EUR 6,449 (six thousand four hundred and forty-nine 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 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar
Ksenija Turković President