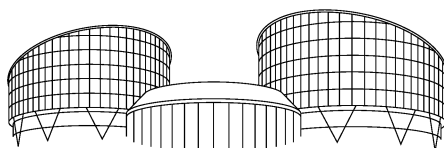


**La CEDU su intervista a minore senza consenso dei genitori, né misure di tutela dell'identità
(CEDU, sez. IV, sent. 1° marzo 2022, ric. n. 35582/15)**

La Corte Edu si pronuncia sul caso di un minore intervistato (in ordine alla morte di un compagno di scuola durante una gita scolastica) senza il consenso dei genitori e senza la predisposizione, da parte dell'emittente televisiva, di misure adeguate a proteggerne l'identità.

Dopo la trasmissione dell'intervista, il ricorrente (che, pur non essendo stato presente al momento dell'incidente, aveva ipotizzato delle responsabilità) era divenuto vittima di bullismo in ambito scolastico con conseguente enorme stress emotivo.

I Giudici di Strasburgo hanno colto l'occasione per ricordare che il previo consenso dei genitori non è un mero requisito formale, ma una tutela fondamentale per il minore e che i fornitori di servizi di media audiovisivi devono adempiere al dovere di informare il pubblico tutelando l'identità dei minori coinvolti, i quali a causa della maggiore vulnerabilità rispetto agli adulti, possono ricevere gravi pregiudizi per la propria dignità ed il proprio benessere dalla divulgazione di informazioni sulla propria identità. Ecco, dunque, la necessità di particolari tutele legali, non assicurate nel caso di specie, in cui i giudici nazionali hanno bilanciato il diritto del ricorrente alla vita privata con il diritto dell'emittente televisiva alla libertà di espressione in maniera non conforme ai criteri stabiliti dalla giurisprudenza della Corte Edu stessa.



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

FOURTH SECTION

CASE OF I.V.Ț. v. ROMANIA

(Application no. 35582/15)

JUDGMENT
STRASBOURG
1 March 2022

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 I.V.Ț. v. Romania,

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

Yonko Grozev, *President*,

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Armen Harutyunyan,

Pere Pastor Vilanova,

Jolien Schukking, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 35582/15) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms I.V.Ț. (“the applicant”), on 9 July 2015;

the decision to give notice to the Romanian Government (“the Government”) of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible; the Government’s observations;

Having deliberated in private on 8 February 2022,

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

INTRODUCTION

1. The applicant, aged eleven at the material time, was interviewed without prior parental consent about the accidental death of a schoolmate during a school trip, and the interview was broadcast on television. The higher domestic courts dismissed the civil proceedings that she brought against the private broadcasting company, finding that the journalists had not acted wrongly in so far as they had been covering a subject of public interest, and that the adverse attitude of the school teachers and schoolmates towards the applicant following the broadcast of her interview was not imputable to the journalists. The applicant considers that the authorities have failed to protect her right to respect for her private life, guaranteed by Article 8 of the Convention.

THE FACTS

2. The applicant was born in 2001 and lives in Bucharest. She was represented by Ms V. Țucureanu, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms O.-F. Ezer, of the Ministry of Foreign Affairs.

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

I. THE TELEVISION REPORT

5. On 22 October 2012, a private Romanian television channel with national coverage sent its reporters to the public school in Bucharest where the applicant was enrolled to cover a recent tragic

event, namely the death of a pupil during a school trip on which the school pupils were accompanied by school staff.

6. The applicant was not among the pupils who attended the above-mentioned school trip.

7. A reporter interviewed the applicant, aged eleven at the time, in front of her school, in the absence of her parents, close relatives or teachers, and without obtaining prior consent from any of them. The reporter questioned the applicant, among other pupils, in relation to the tragic event, asking her:

- if she had spoken to her schoolmates who had attended the school trip (Ai vorbit cu colegii tăi care au fost în excursie?) during which the tragic event had occurred;

- if she had any knowledge from her schoolmates about whether a schoolteacher had been in proximity to the victim (Știi cumva, era vreun profesor în jurul ei, ți-au zis colegii?) when the tragic event had occurred;

- how she would describe the schoolteachers who had accompanied the pupils on the school trip (Cum sunt profesorii cu care ați fost în excursie?);

- if any similar events had taken place at the school before.

8. The applicant told the reporter that she had heard from her schoolmates who had been present during the school trip that the victim had felt ill. The applicant also said that she could not remember anything more, but she believed that the girl had either felt ill and leaned on the train door, or she had been pushed. She also said that she believed that no schoolteacher had been near to the victim when the tragic event had occurred because if one had been present, the tragedy would not have happened. The applicant further said that "it would be better to care more for pupils and to make them secure" (Mai bine ar fi trebuit să fie mai multă grijă sau pază pentru elevi). When asked particularly about the schoolteachers, the applicant said that they "should have taken better care". Lastly, concerning the question of whether other incidents of this kind had occurred in her school, the applicant told the reporter that no such incidents had occurred there, but they had done so in another school during a school trip with an accompanying schoolteacher, who she named.

9. On the same day (22 October 2012), the television channel aired a report in which extracts from the interview recorded with the applicant were broadcast. The news, including the video and a transcript, was also posted on the television channel website under the title "Schoolmates of the girl who fell out of the train are shocked. The pupil was going to the toilet when the tragedy occurred".

10. The applicant alleges that, following that television report, she was recognised by her schoolmates and teachers and subsequently suffered from their showing a hostile attitude towards her. Her mother was summoned to the school to give a written declaration that she would prevent the applicant from making any other statements in front of journalists. The applicant's mother also made apologies and gave explanations to all of the schoolteachers.

II. THE LAWSUIT INTRODUCED BY THE APPLICANT

11. On 14 February 2013, the applicant, represented by her mother, brought civil proceedings for compensation in respect of non-pecuniary damage against the private company X, which held the licence for the television channel that had broadcast the interview conducted with her on 22 October 2012 without prior parental consent. She relied on the provisions of the Civil Code concerning the

right to one's own image, that included the right to oppose the reproduction or use of one's own image (see paragraph 25 below), and the provisions of Decision no. 220/2011 of the National Audiovisual Council (Consiliul Național al Audiovizualului, hereafter the "NAC") relating to the requirement of prior written parental consent for the participation of minor children, aged under fourteen, in television programmes (see paragraphs 28-31 below).

A. First-instance judgment

12. By a decision of 10 December 2013, the Ploiești District Court allowed the applicant's civil action and ordered the private company X to pay the applicant 200,000 Romanian lei in respect of non-pecuniary damage. The District Court found that the defendant had acted in breach of the relevant provisions issued by the NAC in the field of audiovisual broadcasting because the applicant, a minor child, had been interviewed without parental consent. The District Court also concluded that, whether or not the applicant's face had been blurred out when her interview had been broadcast on television, which was an issue that was in dispute between the parties, the applicant was easily recognisable on the video recording made available to the court by company X, and she had been recognised by her schoolmates and teachers, if only by her voice, which had not been distorted in any way in order to protect her image or her privacy. The District Court found that by breaching the relevant legal provisions on the protection of children's privacy, the defendant had caused non-pecuniary damage to the applicant in so far as she had suffered severe emotional distress and anguish, having been, *inter alia*, summoned with her mother by the director of the school and asked not to give any further statements to the media on the subject of the above-mentioned tragic event (see paragraph 10 above).

B. Appeal proceedings

13. Company X appealed against that judgment on the grounds of its journalistic freedom to report on subjects of public interest, such as the tragic event that had happened at the school attended by the applicant.

14. By a judgment of 23 September 2014, the Prahova County Court upheld the defendant's appeal and dismissed the civil action brought by the applicant. While acknowledging that there had been no parental consent, the County Court found that having regard to the public interest in the subject of the report that had included the interview with the applicant, and to the journalistic freedom of the defendant, the latter was not liable for the non-pecuniary damage caused to the applicant by the unlawful conduct of the schoolteachers, and in particular of the director of the school who had summoned the applicant and her mother to make a written statement that she would not give any further interviews to the media.

C. The applicant's appeal on points of law

15. The applicant lodged an appeal on points of law against the judgment of the Prahova County Court, arguing that her right to respect for her dignity and her right to protect her image as a child had not been secured, despite Article 10 of the Convention allowing for limitations on freedom of

expression for the protection of the rights of others, and in particular of minor children. The applicant relied on constitutional provisions on the protection of private life, including the right to her own image, and in particular the provisions of the Constitution stating that the right to information should be without prejudice to measures to protect young people and children, who should enjoy special legal protection (see paragraphs 22-24 below).

D. The final judgment

16. By a final judgment of 29 January 2015, the Ploiești Court of Appeal dismissed the applicant's appeal on points of law.

17. The Court of Appeal examined whether company X was liable for the non-pecuniary damage suffered by the applicant, because of the hostile attitude of her schoolmates and teachers, after interviewing her without her parents' consent. The Court of Appeal reiterated the provisions of NAC Decision no. 220/2011 regarding the Code on the Regulation of Audiovisual Content (see paragraphs 28-31 below). As had been argued by the applicant, Article 7 of that Decision required the consent of parents or legal representatives to involve a minor child in audiovisual programmes, other than cultural and sporting events (see paragraph 30 below).

18. However, the Court of Appeal decided that the County Court had correctly found that the interview concerned an issue of justified public concern, its scope being to show the deficiencies in the organisation of a school trip. The Court of Appeal emphasised that the imperatives of respecting the principle of the superior interest of the child and the right to protect his or her image and his or her family and private life, had to be interpreted and applied in direct correlation with the principle of freedom of expression. The Court of Appeal therefore declared that the decision of the County Court was correct and company X had not committed an unlawful act.

19. The final judgment of the Court of Appeal reads as follows in its relevant parts:

“The Court will not reiterate the theory of civil responsibility for tort, largely explained in the lower courts' decisions, and also by the appellant in her reasons for the appeal on points of law. It will analyse the present case in the light of the applicable legal provisions to examine whether the conditions are met for the obligation to make good the tort.

In this context, the Court reiterates the importance for the present case of the provisions of Decision no. 220/2011 regarding the Code on the Regulation of Audiovisual Content.

It is true that, in accordance with Article 7 § 2 of that Decision, which was also relied on by the applicant as the legal basis for her action, the participation of a minor aged under 14 in audiovisual programmes other than cultural events and sports competitions is possible only with the consent of the latter, or with the parents' consent or the consent of another legal representative, if applicable.

Nevertheless, regardless of the fact that the interview – in which the applicant's face was blurred out, an issue which was contested by the applicant, including in her reasons for the appeal on points of law, but which argument was never proved during any of the procedural phases – can be considered to be an “audiovisual programme” as defined by the Audiovisual Act (Law no. 504/2002), in order to attract the applicability of Article 7 § 2, this provision has to be interpreted in conjunction with the other provisions of the above-mentioned Decision.

Having regard to this, the court considers that the County Court has lawfully taken into account the provisions of Article 31, and Article 32 §§ 2 and 3, of Decision no. 220/2011, which in essence strike a fair balance between the rights and interests of the persons [in question] and the finding of the truth regarding issues of justified public concern.

Therefore, the County Court correctly considered that the interview in question revealed a problem of justified public concern, its purpose being to expose deficiencies in the organisation of a school trip.

The appellant's arguments based on Article 2, and Article 3 § 1, of the above-mentioned Decision do not allow for this appeal on points of law to be allowed either.

As indicated above, the principle of the superior interest of the child and his [or her] right to the protection of his [or her] image and private life have to be interpreted in the light of the [principle of] freedom of expression enshrined in the Constitution and in conformity with the case-law of the European Court of Human Rights regarding the role of the media in a democratic society.

For these reasons, the court cannot accept the appellant's arguments based on Article 72, Article 73 and Article 74 of the Civil Code.

Having regard to the above, the Court considers that the County Court correctly found that the conditions for the existence of an unlawful act have not been met in the present case."

20. As regards the tort alleged by the applicant, on the basis of the hostile attitude of the teachers, said to be a negative consequence of the interview, the Court of Appeal considered that this kind of behaviour by a professional body was not in accordance with their professional standards, and was without justification. The Court of Appeal also considered that it was hard to believe that, even if the parents had given their consent, the behaviour of the teachers would have been different, "their aim being to suppress the facts".

21. On the basis of the above-mentioned arguments, the Court of Appeal stated that the negative effects suffered by the applicant after the interview were not direct consequences of it, but were a consequence of the non-professionalism of the teachers "who tried in fact to cover the facts".

RELEVANT LEGAL FRAMEWORK

22. The relevant provisions of Article 30 of the Constitution on freedom of expression, and in particular paragraphs 6 and 8, are described in *Marina v. Romania* (no. 50469/14, § 27, 26 May 2020).

23. The relevant provisions of Article 31 of the Constitution on the right to information, and in particular paragraph 3, are described in *Roşianu v. Romania* (no. 27329/06, § 24, 24 June 2014).

24. Article 49 § 1 of the Constitution (Protection of children and young people) reads as follows:

"(1) Children and young people shall enjoy special protection and assistance in the pursuit of their rights."

25. Articles 72 and 73 of the Civil Code in force since 1 October 2011 regulate the right to dignity and the right to one's own image. Article 74 of the Civil Code sets out a list of acts that may be considered as damaging to one's private life (*pot fi considerate ca atingeri aduse vieţii private*),

including broadcasting news or reports in the press or audiovisual media without the agreement of the person concerned.

26. Article 1349 of the Civil Code, on liability in tort, is quoted in *Association ACCEPT and Others v. Romania* (no. 19237/16, § 40, 1 June 2021).

27. The relevant provisions of the Audiovisual Act (Law no. 504/2002), which were enacted on 11 July 2002 and entered into force on 22 July 2002 upon publication in the Official Journal, Part I no. 534 of 22 July 2002, are partially described in *Frăsilă and Ciocîrlan v. Romania* (no. 25329/03, § 35, 10 May 2012).

28. The relevant provisions of NAC Decision no. 220/2011 of 24 February 2011 on the Code on the Regulation of Audiovisual Content, published in the Official Journal no. 174 of 11 March 2011, are partially described in *Marina* (cited above, § 30).

29. In addition, the relevant provisions of Title II “Protection of minors” of NAC Decision no. 220/2011 on the protection of minor children, as in force at the relevant time, read as follows:

Chapter 1 - Compliance with minors’ rights in respect of audiovisual programmes

Article 2

“Audiovisual media service providers shall respect the principle of the superior interest of the minor.”

Article 3

“(1) The minor has the right to the protection of his or her public image, [and] his or her intimate, private and family life.

(2) The terms under which the minor can participate in an audiovisual programme shall take into account the age-specific sensibility, vulnerability in general and the minor’s personality, in particular.

(3) The right of the minor to his or her private life and private image prevails over the need for information, especially in the case of a minor in a difficult position.

...”

Article 5

“(1) Broadcasts of programmes featuring minors aged under 14 which re-enact offences, abuses or dramatic events, shall be prohibited.

(2) Audiovisual media service providers shall not broadcast interviews, [or] statements given by a minor under 14 in connection with dramatic events in the community or family that he or she has witnessed.”

Article 7

“(1) The minor, the parents or the legal representative shall be informed about the rights of the minor before he or she is filmed or recorded.

(2) Participation of a minor under 14 old in audiovisual programmes, other than cultural events and sports competitions, is possible only with the consent of the latter, or with the parents’ consent or the consent of another legal representative, if applicable.”

30. NAC Decision no. 220/2011 was subsequently amended by NAC Decision no. 141/2013, which introduced the following new provisions:

Article 71

“(1) News and other information regarding violence in educational institutions shall be broadcast only where accompanied by the school management’s point of view and with the approval of the minor’s parents, or the minor’s legal representative; situations in which the broadcaster acts in the superior interest of the minor, without affecting the minor’s public image or the minor’s right to intimate, private and family life shall be exempted.

(2) Images in which minors are involved in scenes of violence or in implicit or explicit sexual scenes of any kind, shall be broadcast only on condition that:

- a) they serve a justified public interest;
- b) the broadcaster acts in the superior interest of the minor, with the consent of the parents or the legal representatives;
- c) the broadcaster shall not broadcast any indication that might lead to the identification of the minors involved.

(3) The Internet page where such images are available, or websites that refer to such an Internet page, shall not be referred to.”

31. The relevant provisions of Title III “Protection of human dignity and of the right to one’s own image” of NAC Decision no. 220/2011 read as follows:

Article 30

“Audiovisual media service providers are required to respect fundamental human rights and freedoms, [namely] private life, the right to honour and reputation, and a person’s right to their own image.”

Article 31

“For the purpose of the present Code, any problems, facts or events which influence a community or society, are considered of justified public interest, in particular if they concern:

- a) the prevention of or the proof for committing a criminal offence;
- b) the protection of health or public safety;
- c) reports of false allegations or cases of incompetence that may be relevant to the public.”

Article 32

“(1) No right conferred by law may be exercised in an excessive and unreasonable manner, contrary to good faith in order to harm or defraud another person, or to take advantage of people’s ignorance or good faith.

(2) The interest of the public should not be satisfied at any cost; the mere reference to the right to information cannot justify the violation of private life.

(3) The right to one’s own image should not hinder finding the truth in issues of justified public concern.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained that the national authorities had failed to protect her right to respect for her private life and in particular the right to respect for her image as provided in Article 8 of the Convention, which, in so far as relevant, reads 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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

33. The Government argued that the application was inadmissible for failure to exhaust domestic remedies because the applicant should have instituted civil proceedings to seek to establish the liability of the schoolteachers who had shown hostility towards her following the broadcast by the private television channel of her interview.

34. The applicant’s representative submitted observations outside the relevant time-limit, which were consequently not included in the case file for the consideration of the Court.

35. The Court notes that the applicant instituted civil proceedings for compensation in respect of non-pecuniary damage against the private company X, which held the licence for the television channel that had broadcast the interview conducted with her on 22 October 2012 without prior parental consent (see paragraphs 11-21 above). The Court therefore considers that the applicant has exhausted the available domestic remedies which were apt to offer her redress in relation to her complaint of the violation of her right to privacy by the media exposure (see, *mutatis mutandis*, *Kahn v. Germany*, no. 16313/10, § 51, 17 March 2016).

36. In the circumstances of the present case there was, therefore, no reason for the applicant to institute further sets of proceedings in addition to the civil proceedings for compensation in respect of non-pecuniary damage against the private company which held the licence for the television channel.

37. Accordingly, the applicant has exhausted domestic remedies and the Government's objection must be dismissed.

38. The Court further reiterates that the concept of "private life" extends to aspects relating to personal identity, such as a person's image. 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. Whilst in most cases it involves the possibility for an individual 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 and, for a case which also concerns the photograph of a child taken without parental consent, see *Dupate v. Latvia*, no. 18068/11, § 40, 19 November 2020).

39. Accordingly, the Court considers that the broadcast of the interview in the absence of any parental consent encroached on the applicant's private life, and Article 8 is therefore applicable in the present case.

40. The Court notes 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. Arguments by the parties

(a) The applicant

41. The applicant argued that the domestic courts had failed to protect her private life and her right to her image following her exposure on a private television channel, and she provided the Court with a colour printed version of the television channel website showing her face, not covered and not blurred out.

(b) The Government

42. The Government points to the fact that the applicant, then a minor, had answered questions asked by a journalist concerning the death of a schoolmate during a school trip. In the present case, therefore, the right to respect for private life had to be seen in the larger context of the freedom of public expression regarding facts of public interest. The domestic court had stated in the final judgment in the case that the applicant's face had been blurred out by the television channel. It did not therefore appear from the facts of the case that data of a personal character had been exposed. Moreover, the questions that the reporter had asked the applicant concerned the cause of her schoolmate's death and the guilt of the teachers, and were not related to her private life. Furthermore, the domestic court had emphasised that the subject of the news report, namely the death of a minor during a school trip, was an issue of public interest, so finding out the truth in this respect was justified.

43. Referring to *Putistin v. Ukraine* (no. 16882/03, 21 November 2013), the Government contended, as regards the protection of an individual's reputation, that there must also be a sufficient link

between the applicant and the alleged attack on reputation. The repercussions on private life should be directly and causally linked to the interview with the applicant. However, the domestic courts had indicated that the negative consequences for the applicant had not been a direct result of the interview, but had been caused by the behaviour of the teachers, who had acted unlawfully and not in accordance with professional standards. For the domestic courts, it was plausible that the consequences would have been similar even if the parents' consent for the interview had been given.

44. The Government further argued that the final decision of the domestic court not to find against company X fulfilled the conditions of necessity in a democratic society and proportionality in relation to the legitimate aim. Consequently, that decision had not breached the applicant's rights under Article 8.

2. The Court's assessment

(a) General principles

45. The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves (see, recently, *Marina v. Romania*, no. 50469/14, § 61, 26 May 2020, and the case-law cited therein).

46. Moreover, individuals who lack legal capacity, such as minor children, are particularly vulnerable; therefore Article 8, as well as other provisions of the Convention, impose on the State the positive obligation to take into account the particular vulnerability of young persons (see, *mutatis mutandis*, *M.G.C. v. Romania*, no. 61495/11, § 73, 15 March 2016).

47. The Court starts from the premise 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 her private life under Article 8 of the Convention and the private broadcasting company and journalists' right to impart information as guaranteed by Article 10 according to the principles set out in its case-law. In *Dupate* (cited above, § 46), the Court referred to its case-law in which the criteria for balancing the protection of private life against freedom of expression were set out. These criteria include: 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 images were taken. Where the balancing exercise between the rights protected by Articles 8 and 10 of the Convention has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Axel Springer AG v. Germany [GC]*, no. 39954/08, §§ 87-88, 7 February 2012, with further references).

48. The task of audiovisual media service providers of imparting information necessarily includes "duties and responsibilities", as well as limits which the media must impose on itself spontaneously. Wherever information bringing into play the image of a person is at stake, journalists are required

to take into account, in so far as possible, the impact of the information, pictures or video recordings to be published prior to their dissemination (see, *mutatis mutandis*, Dupate, cited above, § 47).

(b) Application of those principles to the present case

49. The issue in the present case is whether the domestic courts ensured a fair balance between the protection of the applicant's private life and the right of the opposing party to freedom of expression (see paragraph 47 above). In exercising its supervisory function, the Court's task is to review, in the light of the case as a whole, whether the decisions that the domestic courts have taken pursuant to their power of appreciation are in conformity with the criteria laid down in the Court's case-law (see, *mutatis mutandis*, Dupate, cited above, § 49). Accordingly, the Court will analyse in turn the elements identified as relevant in this regard in its case-law and the domestic courts' assessment thereof.

(i) Subject of the news report and its contribution to a debate of public interest

50. The Court reiterates that in the balancing of interests under Articles 8 and 10 of the Convention, the contribution to a debate of public interest made by the broadcasted news report is an essential criterion (see *mutatis mutandis* Axell Springer AG, cited above, § 90, with further references).

51. The Court observes that in taking the decision to dismiss the applicant's claims, the Ploiești Court of Appeal, unlike the District Court, held that company X had not committed an unlawful act when broadcasting the interview with the applicant without parental consent, because the news report that included the interview concerned a subject of public concern, namely deficiencies by the school attended by the applicant in organising a school trip (see paragraphs 18 and 19 above).

(ii) The notoriety of the applicant and her prior conduct

52. The Court notes that the applicant, an eleven-year-old pupil at the time of the interview, was not a public or newsworthy figure. On the contrary, she was a minor, and the exercise of the right to the protection of her image was overseen by her parents. Accordingly, the prior consent of the applicant's parents to the broadcast of the interview was an important element in the assessment of the case (see *Reklos and Davourlis v. Greece*, no. 1234/05, §§ 41-43, 15 January 2009).

(iii) The circumstances in which the images were taken and the content, form and consequences of broadcasting the news report including the interview

53. As regards the conditions under which the interview in question was conducted, the Court observes that the applicant's parents or legal representative did not at any time give their consent to the broadcast of the interview. A reporter interviewed the applicant, aged eleven at the time, in front of her school, in the absence of her parents, close relatives or teachers, and without obtaining any prior consent from any of them to conduct that interview (see paragraph 7 above).

54. Regarding the lack of prior parental consent to the interview, the Court of Appeal considered that it was hard to believe that even if the parents had given their consent, the adverse behaviour of

the teachers towards the applicant would have been different (see paragraph 20 above). However, having regard to the content of the news report on a tragic event involving a child, the Court of Appeal failed to give due consideration to the obligations imposed by Article 8 to protect the applicant's private life, given also her vulnerability as a child. In particular, the Court of Appeal failed to assess whether the applicant's image had been effectively protected. In this respect, the prior parental consent had to be considered as a safeguard for the protection of the applicant's image, rather than as a mere formal requirement. Had the applicant's mother been made aware of the interview she would have had the possibility to oppose it.

55. Moreover, the Court notes that the Ploiești District Court concluded in its judgment of 10 December 2013 that, regardless of whether the applicant's face had been blurred out or not when the interview with her was broadcast on television, an issue that was in dispute between the parties, the applicant was easily recognisable on the video recording made available to the court by the defendant private broadcasting company, and she was effectively recognised by her schoolmates and teachers, if only by her voice, which had not been distorted in any way in order to protect her image and privacy (see paragraph 12 above). None of the superior courts that subsequently dealt with the case following the appeal brought by company X against the judgment of 10 December 2013 thoroughly examined the steps that the defendant undertook to protect the identity of the applicant.

56. The Court emphasises that even where a news report makes a contribution to the public debate, the disclosure of private information, such as the identity of a minor who witnessed a dramatic event, must not exceed the latitude accorded to editorial assessment, and has to be justified (see, *mutatis mutandis*, *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 147-51, 18 January 2011, and *Alkaya v. Turkey*, no. 42811/06, §§ 32-36, 9 October 2012). Particular regard has to be had to situations of vulnerability (see *Dupate*, cited above, § 61). These considerations are all the more compelling in the present case, where the Court expressed doubts as to the contribution to a debate of public interest of the exposure of the opinions of the applicant, a child who did not witness the event in question (see paragraph 6 above).

57. The Court also notes that although the domestic regulatory framework in respect of audiovisual media service providers, and in particular Article 3 § 3 of NAC Decision no. 220/2011, provides that "the right of the minor to his or her private life and private image prevails over the need for information, especially in the case of a minor in a difficult position" (see paragraph 29 above), the higher domestic courts failed to duly examine whether that legal requirement had been complied with in the case at hand.

58. Moreover, the Court notes that after the date of the facts in the present case, the domestic regulatory framework evolved to provide for new special requirements for reporting on "violence in educational institutions", in particular the requirement to avoid disclosure of any indication that might lead to the identification of a minor, provided for in Article 71 of NAC Decision no. 220/2011, amending NAC Decision no. 141/2013 (see paragraph 30 above). It follows that reporting on dramatic events surrounding or involving minors requires audiovisual media service providers to perform their duty of informing the public while protecting the identity of minors involved.

59. The Court considers that the above-mentioned requirements are of the utmost importance in cases of media reporting concerning minor children. The disclosure of information concerning their

identity could jeopardise the child's dignity and well-being even more severely than in the case of adult persons, given their greater vulnerability, which attracts special legal safeguards.

60. Finally, regarding the consequences of broadcasting the news report including the interview with the applicant without the appropriate safeguards to protect her identity, the Court observes that the higher domestic courts did not depart from the findings of the Ploiești District Court, which noted that the applicant suffered from severe distress and anguish following the broadcast of her interview (see in paragraphs 12 and 20 above). It appears, thus, that the broadcast had serious repercussions on the applicant's well-being and private life and that her allegations on this point do not appear ill-founded or frivolous to the Court (compare *Aleksey Ovchinnikov v. Russia*, no. 24061/04, § 51 in fine, 16 December 2010).

(iv) Conclusion

61. The Court considers that the higher domestic courts only superficially engaged in the balancing exercise between the applicant's right to private life and company X's freedom of expression, and this exercise was not carried out in conformity with the criteria laid down in the Court's case-law and mentioned in paragraph 47 above.

62. In the Court's view, the above considerations – especially on the young age and the lack of notoriety of the applicant; on the little contribution that the broadcast of her interview was likely to bring to a debate of public interest and on the particular interest of a minor in the effective protection of her private life – are sufficiently strong reasons to substitute its view for that of the domestic courts (see the case-law quoted in paragraph 47 in fine above). The Court finds that, given their duty to duly take into account the rights of minor children (see paragraph 47 above), the latter failed to strike a fair balance between the relevant interests, thus failing to comply with their positive obligations to protect the applicant's right to respect for her private life.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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.”

65. The applicant did not submit a claim for just satisfaction within the time-limit set by the Court. As the present case does not disclose exceptional circumstances which call for a just-satisfaction award in respect of non-pecuniary damage (see, a contrario, *Nagmetov v. Russia [GC]*, no. 35589/08, §§ 57-92, 30 March 2017), the Court considers that there is no call to award the applicant any sum on that account.

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.

Done in English, and notified in writing on 1 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Yonko Grozev
President