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1. In this case, two Convention rights were pitted against each other – the right to freedom of expression of a television company (Article 10) and the right to privacy of a politician (Article 8). The Court stuck to its familiar script: as a matter of principle, both rights deserve equal respect, so a balancing exercise is required. For the outcome of the application, it should not matter, in theory, whether it has been lodged under Article 8 or Article 10. Moreover, the same margin of appreciation should apply in both cases (para. 46, following *Von Hannover* v. *Germany (no. 2)*, ECtHR 7 February 2012 (GC), nos. 40660/08 and 60641/08, ECLI:CE:ECHR:2012:0207JUD004066008, «EHRC» 2012/72 case comment by De Lange & Gerards, para. 106).

2. The Court applied the set of criteria that it had developed in its previous case-law when balancing the two competing rights: "the contribution to a debate of public interest; the degree to which the person affected is well-known; the subject of the news report; the method of obtaining the information and its veracity; the prior conduct of the person concerned; the content, form and consequences of the publication; and the severity of the sanction imposed" (the Court references in this connection: *Couderc and Hachette Filipacchi Associés* v. *France* ECtHR 10 November 2015 (GC), no. 40454/07, ECLI:CE:ECHR:2015:1110JUD004045407, «EHRC» 2016/32 case comment by De Lange, par. 93; *Axel Springer AG* v. *Germany*, ECtHR 7 February 2012 (GC), no. 39954/08, ECLI:CE:ECHR:2012:0207JUD003995408, «EHRC» 2012/71 case comment by De Lange & Gerards, para. 90-95; and *Von Hannover (no. 2)*, para. 109-13).

3. The routine nature of the above approach explains why the Court has classified this judgment as one of 'medium importance' (i.e., it does more than merely apply existing case-law, but it does not make a significant contribution to case-law).

4. What is more interesting about this judgment – and also controversial and problematic – is that the Court continued its recent tendency to decide what 'responsible journalism' entails and where its limits lie. In its judgment in the *Jersild* v. *Denmark* case, the Court found that "[i]t is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists" (*Jersild* v. *Denmark*, ECtHR 23 September 1994 (GC), ECLI:CE:ECHR:1994:0923JUD001589089, para. 31, Series A no. 298). In the present judgment, the Court recalls this principle (para. 38), but it does not fully abide by it.

5. When it articulated this principle in its *Jersild* judgment in 1994, the Court bracketed it and strengthened it with two important remarks. First, it recognized that "the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question" (*Jersild*, para. 31). Secondly, it recalled that Article 10 ECHR "protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed" (*ibid.*).

6. The observation that 'the methods of objective and balanced reporting *may vary considerably*' (emphasis added) takes on increased importance in contemporary times. In the current, so-called 'post-truth' era, information, misinformation and disinformation are widely generated and disseminated by a range of actors (and algorithmic techniques) and they compete fiercely with one another for the public's attention and acceptance.

The prevalence – or even the perceived prevalence – of disinformation is causing certain sections of the public to be more questioning and more sceptical about the accuracy and reliability of information. For those members of the public, transparency about sources used for the production of information, in particular journalism, may be the key to ensuring credibility. Journalists, the media and other contributors to public debate may thus opt to publish or otherwise disseminate some or all of the materials on which their information or reporting is based. Indeed, their readers and audiences may even expect them to do so.

7. The current trend of political figures and leaders dismissing critical reporting as 'fake news' in an attempt to undermine the credibility of the reporting and the credibility of its authors is also relevant in this regard (see further: T. McGonagle, "'Fake news': False fears or real concerns?", 35 *Netherlands Quarterly of Human Rights*(No. 4, December 2017), 203-209, at 209: http://journals.sagepub.com/doi/full/10.1177/0924051917738685). To effectively refute accusations of 'fake news', the publication of source documents and recordings may be required. Seeing is believing, after all.

8. The Court does not appear to have fully countenanced these developments in societal communication in its present judgment, although it did acknowledge that "undoubtedly the broadcasting of the video added credibility to the account of events given in the report" (para. 57). If the Court had engaged more extensively with these developments, clues as to how it would have done so can be found in its case-law on freedom of expression and defamation (see further, T. McGonagle *et al.*, *Freedom of expression and defamation: A study of the case-law of the European Court of Human Rights* (Strasbourg, Council of Europe Publishing, 2016), pp. 29-30). The Court has, for instance, stated that 'in essence', Article 10 "leaves it for journalists to decide whether or not it is necessary to reproduce such documents to ensure credibility. It protects journalists' rights to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide 'reliable and precise' information in accordance with the ethics of journalism" (*Fressoz and Roire* v. *France*, ECtHR 21 January 1999 (GC), no. 29183/95, ECLI:CE:ECHR:1999:0121JUD002918395, para. 54, ECHR 1999-I). In other case-law, the Court has attached 'great importance' to the fact that extracts from documents were published which could help readers to form their own opinion about the underlying facts of particular value judgments (*Lopes Gomes da Silva* v. *Portugal*, ECtHR 28 September 2000, no. 37698/97, ECLI:CE:ECHR:2000:0928JUD003769897, para. 35, ECHR 2000-X).

9. A crucial difference between the above cases and the present case is the clandestine nature of the recordings and their interference with A.C.'s right to privacy. At the operative time, A.C. was a member of the Greek Parliament and chairman of the inter-party committee on electronic gambling, making him in the Court's view, "undeniably a prominent political figure" (para. 55). The first video showed him "entering a gambling arcade and playing on two machines" (para. 6). The second and third videos showed footage from private meetings between A.C. and personnel of the television company; the meetings concerned the first video.

10. The Court accepts the public interest in the focus of the reporting as it concerns "the conduct of an elected representative *vis-à-vis* electronic gambling who, additionally, was chairman of an inter-party committee on electronic gambling" (para. 52). It "notes in particular that the widespread use of gambling constituted a debate of considerable public interest" (*ibid.*). There is also a strong public interest in the second and third

videos insofar as they concern the conduct of an elected representative and 'prominent political figure' towards journalists seeking to exercise their public watchdog function (para. 70). It would appear that A.C. sought to influence how the journalists should present the first video, which could be construed as political interference or pressure (*ibid.*). By broadcasting the video footage, members of the public could decide for themselves whether A.C.'s attempts to 'convince' the journalists about how to present the story amounted to interference or not. Even though the second and third videos were filmed during private meetings, their content relates more to the conduct of A.C. as an elected representative with particular parliamentary responsibilities than to his private life or dignity. Indeed, the extent of the implications for his private life or dignity could be debated.

11. The use of hidden cameras and the subsequent broadcasting of the resultant footage rightly deserve careful ethical consideration by journalists at all times, including in the present case. Opinions about where to draw ethical lines will always differ (as the Court noted in respect of the present case (para. 77)) and they must remain the subject of ongoing discussion and scrutiny. Furthermore, as the Court stressed, the use of a hidden camera in respect of all three videos also gives rise to 'serious issues' under relevant Greek legislation (para. 64). Having said that, and in light of the *Jersild* principle, the Court appears to have offered a weak level of support for journalistic freedom in the present case.

12. It was mentioned above that the Court did not *fully* abide by the *Jersild* principle. It did support the broadcasting of the first video due to its added value for the reporting and its contribution to public debate. In finding a violation of Article 10 in respect of the first video, the Court found that the domestic authorities had failed to take into account the circumstances in which the recording was made. Notwithstanding the use of a hidden camera, the Court attached 'great importance' to the fact that the filming took place in a gambling arcade, which is a public space (para. 78). In line with the Court's previous case-law, public figures' reasonable expectation of privacy is somewhat reduced in public – as opposed to private – spaces (*ibid.*).

13. However, it unanimously declined to provide similar support for the broadcasting of the other two videos. It is understandable that the Court shows due regard for the principle of subsidiarity *vis-à-vis* states and their margin of appreciation, including when, in the present case, "in light of the clear position under Greek criminal law, A.C. was entitled to have an expectation of privacy as he entered private spaces with a view to discussing the recorded incidents and for his conversations not to be recorded without his explicit consent" (para. 65). Nevertheless, it is submitted that in the present case, it showed too much deference to the findings of the domestic courts. By the Court's own admission, the reasons adduced by the national courts for the interference with the applicant's freedom of expression were "the somewhat laconic manner in which some of them were expressed" (para. 76). The Court also concedes that the domestic authorities 'did not explicitly address' the influence of political prominence and public functions on the level of protection for the right to private life (para. 55). Yet this did not prevent the Court from considering that 'it can be derived' from the domestic authorities' seemingly inconclusive findings that A.C.'s public functions had been taken into account (*ibid.*). More rigorous probing by the Court on these points would therefore have been welcome – if only to be more convincing in its conclusion that "there are no strong reasons to substitute its view for that of the domestic authorities" (para. 77).

14. Whereas the *Jersild* judgment was a high-water mark for journalistic freedom, the present judgment is closer to several low-ebb judgments and decisions in which the concept of responsible journalism has been applied to the conduct of journalists in their news-gathering activities, such as *Diamant Salihu and Others* v. *Sweden* ECtHR 10 May 2016 (dec.), no. 33628/15, ECLI:CE:ECHR:2016:0510DEC003362815; *Bédat* v. *Switzerland*, ECtHR 29 March 2016 (GC), no. 56925/08, ECLI:CE:ECHR:2016:0329JUD005692508, «EHRC» 2016/147 case comment by De Lange; *Pentikäinen* v. *Finland*, ECtHR 20 October 2015 (GC), no. 11882/10, ECLI:CE:ECHR:2015:1020JUD001188210, «EHRC» 2016/52 case comment by McGonagle. The Court distinguished its *Haldimann and Others* judgment (para. 68: *Haldimann and Others* v. *Switzerland*, ECtHR 24 February 2015, no. 21830/09, ECLI:CE:ECHR:2015:0224JUD002183009, «EHRC» 2015/115 case comment by Kusari & Jansen), another case involving the use of hidden cameras, but in which the Court had found a violation of Article 10. The main distinguishing factor between both judgments was the ethical/professional conduct of the journalists.

15. There can be no quarrel whatsoever with the Court for recalling that journalists – like everyone else – are bound by certain duties and responsibilities whenever they exercise their right to freedom of expression, and that they do not, in principle, stand above the criminal law when carrying out their professional activities (para. 61). The problem with how the Court has been developing and applying the concept of 'responsible journalism' in some of its case-law is rather that it appears to equate moral or ethical responsibilities with legal obligations. In the present judgment, the Court mentions the "journalistic duties and obligations of the applicant company" (para. 75). It is unclear whether this is a deliberate deviation from the 'duties and responsibilities' countenanced by Article 10, or mere verbal slippage. If the latter, it must be hoped that the slip was not Freudian.

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