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

FIRST SECTION

DECISION

Application no. 58955/13
Diana VUČINA
against Croatia

The European Court of Human Rights (First Section), sitting on 24 September 2019 as a Chamber composed of:

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 September 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Diana Vučina, is a Croatian national who was born in 1966 and lives in Split. She was represented before the Court by Mr S. Štimac, a lawyer practising in Split.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. The circumstances of the case

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

1. Background to the case

4. On 3 September 2009 a lifestyle magazine with nationwide distribution, *Gloria*, published a photograph of the applicant that had been taken during a popular-music concert in Split. The photograph was small in size and depicted the applicant clapping. The caption to the photograph gave the name of A.K. – the wife of Ž.K., the then Mayor of Split.

5. The same page contained several other photographs of various celebrities who had attended the concert, and the captions to those photographs indicated their names. There was also a short text in a separate box explaining that the concert had been held and indicating the titles of the songs performed by the different singers.

6. Following the publication of her photograph and the accompanying erroneous indication of her name, on 10 September 2009 the applicant asked *Gloria* to print a correction. However, she received no reply from the magazine, and nor has the published information been rectified.

2. The applicant's civil proceedings

7. On 10 November 2009 the applicant brought a civil action against the publisher of *Gloria* in the Municipal Court (*Općinski sud u Splitu*; the case was later transferred to Sinj – "the Municipal Court") seeking damages in respect of the erroneous labelling of her photograph. The applicant submitted that she, as a doctor of medicine and a university lecturer, and her real husband, as a university professor, were very active in the social life of Split, and that following the publication of her photograph in *Gloria*, people had started approaching her, addressing her by the name of the Mayor's wife, and taking photographs of her. She argued that it was difficult to express all the unpleasantness that she and her family had suffered as a result of the erroneous labelling of her photograph. She thus argued that personality rights, honour and reputation had been infringed by the publication of the erroneously labelled photograph.

8. In its reply to the civil action, the publisher of the magazine argued that the applicant had not properly sought a correction of the published information as she had not provided any document with a photograph showing that it was her in the published photograph. It also submitted that the photograph had been taken at a public gathering, which was permitted under the law, and that the published information was objectively incapable of causing any prejudice to the applicant.

9. During the proceedings the Municipal Court ordered an expert report on the question of whether the publication of the photograph had caused the applicant emotional distress. It also heard the applicant and a couple who had attended the concert with the applicant and her husband.

10. The latter two witnesses confirmed that they had attended the concert with the applicant and her husband and that the photograph had

been taken at the concert. In her oral evidence, the applicant argued that other media had subsequently used the impugned photograph (presenting it as a photograph depicting the Mayor's, wife) when referring to different scandals in which the Mayor had been involved. She also stated that different persons had contacted her, making fun of the fact that her photograph had been published within the context of the Mayor's marital problems and divorce, and that all of that had caused her and her family great distress.

11. At a hearing on 8 March 2012 a court expert gave evidence indicating that the applicant had indeed suffered stress due to the erroneous labelling of the photograph, in large part on account of the fact that the Mayor was a highly controversial person who was viewed in a negative light by many and that his wife was associated with him in many people's minds.

12. On 22 March 2012 the Municipal Court ruled in the applicant's favour, ordering the magazine to pay her part of the damages claimed. The Municipal Court did not accept the defendant's argument that the applicant had not properly sought a correction of the published information, but it also held that the defendant bore no responsibility for the taking of the photograph, as that had occurred in a public space and at a public gathering. However, the Municipal Court found that, even leaving aside the public perception of the Mayor, the applicant had had every reason to be distressed by the erroneous labelling of the photograph, simply because she was not the Mayor's wife. This was even more the case given that the applicant and her husband were university professors who were active in society and who, moreover, had children of school age. The Municipal Court thus found that there had been a breach of the applicant's personality rights (*prava osobnosti*), namely her honour and reputation.

13. Both the applicant and the defendant appealed against that judgment before the Split County Court (*Županijski sud u Splitu* – "the County Court"). The applicant challenged the amount of the award of compensation for non-pecuniary damage, while the defendant reiterated its previous arguments (see paragraph 8 above). The parties relied on Articles 8 and 10 of the Convention respectively.

14. On 6 December 2012 the County Court upheld the defendant's appeal and reversed the first-instance judgment dismissing the applicant's civil action. It held in particular that irrespective of the controversies surrounding the Mayor, there were no negative connotations in the applicant being identified as his wife in the photograph published in *Gloria*. In the relevant part of its judgment, the County Court reasoned as follows:

> "The first-instance court correctly found that the claimant had properly asked the defendant to publish a correction of the impugned information before she brought the civil action ... The first-instance court also correctly found that, in view of the fact that

the impugned photograph had been taken in a public place, the claimant had no right to compensation simply owing to the fact that her photograph [had been published] ...

However, the central question in these appeal proceedings is whether the first-instance court correctly granted the civil action ...

...

[P]aragraph 3 [of section 21 of the Media Act] provides that the regulations under the Obligations Act shall be applicable to the establishment of liability for damage, unless otherwise provided by that Act. Section 1046 of the Obligations Act ... provides that non-pecuniary damage may result from an infringement of personality rights and, under section 19(2) of the same Act, the personality rights of physical persons are the right to life, to physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, liberty, etc. The latter [provision] does not mean that the court shall award just compensation for every infringement of personality rights. The court shall award [such compensation] only if the gravity of the infringement and the circumstances of the case so warrant, as provided under section 1100(1) of the Obligations Act.

In this case, in the context of the publication of the article and photographs in the magazine *Gloria*, next to the claimant's photograph (and this fact is beyond doubt at this stage of the proceedings) the defendant published erroneous information by indicating instead of the claimant's name the name of another person, namely A.K. [the Mayor's wife]. This court considers that that erroneous information could have breached the claimant's honour and reputation, and thus allowed her to claim damages for the breach of her personality rights, only if the name of the other person was presented in a negative context. A.K. is not a person who is linked to any affairs, crime or unlawful and/or immoral conduct, and is not perceived by the public as a negative person in any way ... These are well-known facts, which are not brought into question by the mere fact that she was the wife of the current Mayor of Split, Ž.K. It is also legally irrelevant that the information in question was published 'at a time when there were rumours in Split about an extra-marital relationship of Ž.K. with a twenty-four-year-old woman, F.H.', as stated in the claimant's appeal, because such 'rumours' do not diminish the moral quality of A.K.

In view of the above, this court finds, contrary to the claimant's arguments, that the published information was incapable of giving rise to the public denigration of the claimant. This is because those who know the claimant, and who recognised her in the photograph, obviously knew that she was not A.K., and the very indication of A.K.'s name next to the claimant's photograph does not give rise to any negative connotations concerning the claimant. Thus, objectively, the erroneously published information was incapable of breaching the claimant's personality rights. As the circumstances of the case do not warrant an award of damages, the civil claim for damages in respect of the breach of [the claimant's] personality rights is unfounded."

15. The applicant then lodged a constitutional complaint against this judgment before the Constitutional Court (*Ustavni sud Republike Hrvatske*), arguing that the County Court had failed, in sanctioning the publication of clearly erroneous information related to her image in *Gloria*, to secure the protection of her personality rights under Article 8 of the Convention.

16. On 6 June 2013 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded, endorsing the reasoning of the Split County Court.

3. Other relevant facts

17. Meanwhile, an Internet portal used the photograph from *Gloria* (again erroneously identifying the applicant as the Mayor's wife) to accompany an article that discussed the details of an extra-marital affair in which the Mayor had allegedly engaged, as well as certain alleged irregularities concerning his business dealings (with which his wife was also associated).

18. In this respect the applicant secured from the Internet portal a correction of that information, and damages under a judgment of the Municipal Court of 12 May 2011, which was upheld on appeal by the County Court on 11 July 2013.

B. Relevant domestic law

19. The relevant provision of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990, with further amendments) reads as follows:

Article 35

"Everyone has the right to respect for and legal protection of his or her private ... life, reputation and honour."

20. The Media Act (*Zakon o medijima*, Official Gazette no. 59/04), in its relevant parts, provides as follows:

Protection of privacy

Section 7

"(1) Everyone has the right to the protection of his or her privacy, dignity, reputation and honour."

Media principles and duties

Section 16

"(1) Media outlets shall respect citizens' right to privacy, dignity, reputation and honour ..."

Liability of [publishers] for damage

Section 21

"(1) A publisher who by publishing information in the media causes damage to another person shall be obliged to pay compensation, except in cases stipulated by this Act.

(2) Damage means the reduction of someone's property or the prevention of an increase thereof (pecuniary damage) and causing physical or mental pain, as well as fear (non-pecuniary damage), to another person.

(3) The regulations under the Obligations Act shall be applicable to the establishment of liability for damage, unless otherwise provided by this Act.

(4) A publisher shall not be liable for damage if the information which caused the damage concerns:

...

- a photograph of the affected party taken in public ...

...

(6) The existence of liability must be proved by the claimant, while the existence of prerequisites for the release from liability for damage referred to in paragraph 4 of this Section must be proved by the defendant."

Section 22

"(1) Non-pecuniary damage shall be compensated for, as a rule, by publishing a correction of the information [in question], together with an apology from the publisher and by the payment of compensation, pursuant to the general regulations of the Obligations Act.

(2) A person who previously requested the publisher that a correction of the disputable information be published (or an apology by the publisher if a correction is not possible) shall have the right to lodge a claim for compensation for non-pecuniary damage, in compliance with the general regulations of the Obligations Act."

Section 23

"A civil action for damages may only be brought within three months of the day on which [the person concerned] learned of the publication of the information that caused the damage."

21. The relevant parts of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005, with further amendments), read as follows:

Rights of personality

Section 19

"(1) All natural persons or legal entities are entitled to the protection of their rights of personality [prava osobnosti] under the conditions provided by law.

(2) Rights of personality within the meaning of this Act are the right to life, to physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, liberty, etc."

Section 1046

"Damage may result from ... an infringement of rights of personality (non-pecuniary damage)."

Section 1100

"(1) Where a court finds it justifiable, on account of the seriousness of an infringement of personality rights and the circumstances of a particular case, it shall

award compensation for non-pecuniary damage, irrespective of compensation for pecuniary damage or where no such damage exists.

(2) When deciding on the amount [to be awarded in] just pecuniary compensation, the court shall take into account the degree and duration of the physical and mental pain and fear caused by the breach, the purpose of the compensation, and the fact that it should not favour aspirations that are incompatible with its nature and social purpose."

Section 1099

"In case of a breach of the personality rights, the injured party may ask that, on the expenses of the respondent, the judgment or the correction [of the published information] ... is published."

COMPLAINT

22. The applicant complained, under Article 8 of the Convention, of a breach of her right to respect for her private life by virtue of the failure of the domestic courts to protect her image form being erroneously attributed to another person in a lifestyle magazine.

THE LAW

23. Complaining of the failure of the domestic courts to protect her image, the applicant relied on Article 8 of the Convention, which reads as follows:

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

A. The parties' arguments

1. The Government

24. The Government submitted that the erroneous labelling of the applicant's photograph in the magazine *Gloria* by which her image was attributed to the Mayor's wife had to be viewed in the right context. In this connection, the Government pointed out that Ž.K. had been a controversial figure in Split but that this had not prevented him from becoming its Mayor. Although the name of his sister had often been associated with his activities, the other members of his family, including his wife, had been unknown to the public. The name of his wife had for the first time entered the public domain when he had announced that they were to divorce; however, this had occurred after the publication of the applicant's photograph in *Gloria*.

In any event, even in the context of the divorce, the name of his wife had been mentioned only in relation to the division of their marital property.

25. The Government furthermore argued that there had been no bad faith in the erroneous placement of Ž.K.'s wife's name next to the applicant's photograph and that this had simply been an error on the part of the magazine. However, in the Government's view, it was important to bear in mind the fact that the photograph had been taken at a public event and that the applicant's approval for its publication had thus not been needed. It was also important to note that the photograph, or the name of Ž.K.'s wife for that matter, had not been used in any derogatory context. It was thus, in the Government's view, unclear how the applicant could have suffered any such distress as a result of the publication of the photograph, as she had argued during the domestic proceedings. In this connection, the Government pointed out that during the domestic proceedings the applicant had failed to adduce any evidence, such as witness statements, to prove that she really had been subjected to mockery or other adverse actions in public in relation to the publication of the impugned photograph.

2. The applicant

26. The applicant argued that the case was not merely about the erroneously published information related to her photograph but about her inability to protect her image and her name and to control its use and thereby to protect her image form being attributed to another person, namely the Mayor's wife. The applicant stressed that the reporters of the magazine Gloria had acted contrary to the relevant professional standards and had not verified the information concerning her identity before the publication of the impugned photograph. Moreover, the magazine had not acted in good faith, as it had failed to correct the erroneous labelling of her photograph and to provide her with an apology. However, the County Court had failed to appreciate this or to protect her right to respect for her private life, including her name, image and reputation.

27. According to the applicant, the publication of the erroneously labelled photograph had disturbed her otherwise harmonious private and family life, and the domestic courts had failed to recognise that and to afford her protection and just satisfaction. In this context, she stressed that she was not a public figure and that the public had no reason to know whether she had been at the concert. The applicant furthermore pointed out that the photograph in question had been published at about the time when the Mayor had been involved in an extra-marital affair and that that photograph had been taken and used by other media. All this had damaged her privacy, as had been found by the expert report in the proceedings before the first-instance court. However, the County Court had failed to take into account all the findings of the expert report – in particular those concerning the fact

that the name of the Mayor's wife had also been mentioned in the context of his general affairs.

B. The Court's assessment

1. General principles

28. The Court refers to the general principles concerning the broad concept of private life (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018), including aspects relating to personal identity, such as a person's name and photograph, under Article 8, and freedom of expression under Article 10 of the Convention, as well as the criteria relevant for the balancing exercise between the two rights set out in *Von Hannover v. Germany (no. 2)* ([GC], nos. 40660/08 and 60641/08, §§ 95-113, ECHR 2012).

29. In further elucidating these principles concerning the effects of the publication of a photograph on an applicant's private life, in *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, ECHR 2015 (extracts)) the Court reasoned as follows:

> "86. In determining whether or not the publication of a photograph interferes with an applicant's right to respect for his or her private life, the Court takes account of the manner in which the information or photograph was obtained. In particular, it stresses the importance of obtaining the consent of the persons concerned, and the more or less strong sense of intrusion caused by a photograph (see *Von Hannover* [*v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 59, ECHR 2012]; *Gurgenidze v. Georgia*, no. 71678/01, §§ 55-60, 17 October 2006; and *Hachette Filipacchi Associés v. France*, no. 71111/01, § 48, 14 June 2007). In this connection, the Court has had occasion to note that photographs appearing in the "sensationalist" press or in "romance" magazines, which generally aim to satisfy the public's curiosity regarding the details of a person's strictly private life (see *Société Prisma Presse v. France* (dec.), nos. 66910/01 and 71612/01, 1 July 2003, and *Hachette Filipacchi Associés v. France* (ICI PARIS), no. 12268/03, § 40, 23 July 2009), are often obtained in a climate of continual harassment which may induce in the person concerned a very strong sense of intrusion into their private life or even of persecution (see *Von Hannover*, cited above, § 59). Another factor in the Court's assessment is the purpose for which a photograph was used and how it could be used subsequently (see *Reklos and Davourlis v. Greece*, no. 1234/05, § 42, 15 January 2009, and *Hachette Filipacchi Associés* (ICI PARIS)*,* cited above, § 52).
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> 87. However, these considerations are not exhaustive. Other criteria may be taken into account depending on the particular circumstances of a given case. Here, the Court emphasises the importance of assessing the seriousness of the intrusion into private life and the consequences of publication of the photograph for the person concerned (see *Gurgenidze,* cited above, § 41)."

30. In addition, in view of the domestic courts' and the applicant's reliance on the concepts of honour and reputation, as aspects of the right to respect for private life (see paragraphs 12, 14 and 26 above), it may be reiterated that in order for Article 8 to come into play in this context an

attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no 17224/11, §§ 76 and 76, 27 June 2017, and *Denisov*, cited above, §§ 97 and 112, with further references).

31. It follows from the Court's case-law that in both contexts – concerning the effects of the publication of a photograph on an applicant's private life (see paragraph 29 above) and in relation to the concepts of honour and reputation (see paragraph 30 above) – in order for an issue to arise under Article 8 of the Convention the impugned situation affecting an applicant's private life must reach a certain threshold of severity or seriousness (see *Couderc and Hachette Filipacchi Associés*, cited above, § 87, and *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 76). Whether or not that level of seriousness was attained will depend on the circumstances of a particular case.

32. Once a measure is found to have seriously affected the applicant's private life, that conclusion means that the complaint is compatible *ratione materiae* with the Convention and that an issue of the "right to respect for private life" arises. Indeed, the question of applicability and the existence of interference with the right to respect for private life are often inextricably linked (see, *mutatis mutandis*, *Denisov*, cited above, § 92). On the other hand, if the requisite level of seriousness is not attained, the complaint is inadmissible as incompatible *ratione materiae* with the Convention (ibid., § 134).

33. Thus, given that the compatibility *ratione materiae* is an issue which the Court must examine on its own motion (see, for instance, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 58, ECHR 2008), the Court must first determine whether the impugned situation affecting the applicant's private life attained the requisite level of seriousness under Article 8 of the Convention.

2. Application of these principles to the present case

34. In view of the above considerations and the Court's case-law, in making its assessment in the present case, the Court finds it relevant to have regard to the following criteria: the manner in which the photograph was obtained; the nature of the publication; the purpose for which the photograph was used and how it could be used subsequently; and the consequences of publication of the photograph for the applicant.

(a) Manner in which the photograph was obtained

35. The applicant's photograph was taken while she attended a popular-music concert held at a public place with a number of other persons, including celebrities, who normally attract the attention of lifestyle

magazines such as *Gloria* (see paragraphs 4-5 above). There can be no doubt that when attending such an event the applicant laid herself open to the possibility of having her photograph taken and published by the media (see, by contrast, *Reklos and Davourlis v. Greece*, no. 1234/05, § 37, 15 January 2009). Moreover, it should be noted that it was not found during the domestic proceedings, and nor did the applicant allege before the Court, that the photograph had been taken covertly or by using some illicit means or subterfuge or taking advantage any form of vulnerable position (see, by contrast, *Egeland and Hanseid v. Norway*, no. 34438/04, § 61, 16 April 2009).

36. In these circumstances, the Court agrees with the domestic courts (see paragraphs 12 and 14 above) that the taking of the applicant's photograph in a public place at a public event and its subsequent publication in itself raises no particular issue under Article 8 of the Convention (compare, for instance, *Couderc and Hachette Filipacchi Associés*, cited above, § 136).

37. However, the key issue in the present case is not the fact that the photograph was taken and published but the fact that the magazine made an error in the designation of the applicant's name by confusing her name with that of the Mayor's wife. This matter will be addressed further below with regard to other criteria relevant for the Court's assessment.

(b) Nature of the publication

38. The publication contained no disparaging statements (or for that matter any other private-life details) concerning any of the persons appearing in the photographs, including the applicant or the Mayor's wife (who the publisher erroneously believed the applicant to be). There was also no distortion or other interference in respect of the applicant's photograph or that of other individuals that were published. It should also be noted that the applicant's photograph was small in size and simply depicted her clapping at the concert (see paragraph 4 above).

(c) Purpose for which the photograph was used and how it could be used subsequently

39. The Court notes that the purpose of the publication and the context in which the impugned photograph was used was to inform the public of the fact that a popular-music concert had been held and that many celebrities had attended it. Thus, the relevant page in the magazine consisted mainly of photographs of celebrities who had attended the concert, together with captions giving their names; these were accompanied by a short text indicating the titles of songs performed by the different singers (see paragraphs 4-5 above). As already indicated above, the purpose of the publication was not to discuss any issue related to any particular person appearing or purportedly appearing on the photographs.

40. In so far as the impugned photograph was later used by an Internet portal in a manner that could have been damaging to the applicant's right to respect for her private life, the Court finds it important that the domestic courts provided effective protection to the applicant by awarding her damages and ordering a correction of the erroneously published information (see paragraphs 17-18 above). The applicant was therefore able to forestall any sufficiently serious adverse consequences for her private life arising in connection with the published information.

41. In this context, although there is no reason to disagree with the Government that there was no bad faith on the part of the publisher of *Gloria* implicit in the erroneous labelling of the photograph and its publication (see paragraph 25 above), which the applicant also does not seem to contest, the Court does not lose sight of the fact that according to the domestic courts the publisher of *Gloria* unjustifiably refused to provide an apology and a correction of the erroneous information (see paragraphs 12 and 14 above). However, the Court notes that under the relevant domestic law (section 22(1) of the Media Act) the applicant had the possibility to ask the domestic courts to issue an order for a correction and apology (see paragraph 20 above), which could have served as an appropriate and justified avenue for the applicant's grievances. The applicant, however, failed to do that and instead only sought an award of damages from the publisher (see paragraph 7 above), which the County Court found to be unjustified (see paragraph 14 above). The Court sees no grounds to call these findings of the County Court into question.

(d) Consequences of the publication of the photograph for the applicant

42. The County Court found that the erroneous published information regarding the applicant's photo in *Gloria*, which had juxtaposed her photograph with the name of the Mayor's wife, had not been capable of causing her any prejudice. The County Court reasoned that it was a well-known fact that the Mayor's wife was not a person linked to any affairs, crime or unlawful and/or immoral conduct, and was not perceived by the public as a negative person in any way (see paragraph 14 above).

43. Although the applicant challenges these findings (referring to the opinion of the expert report obtained by the Municipal Court – see paragraph 27 above), the Court would stress that, having regard to their direct and continuous contact with their societies and their knowledge of local circumstances, it is primarily for the domestic courts to assess how well known a person is, especially where that person is mainly known at a national level (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 98, 7 February 2012, and *Annen v. Germany (no. 4)*, no. 9765/10, § 25, 20 September 2018).

44. Thus, for its part, the Court finds no reason to put those findings of the County Court into doubt. That being so, having regard to the context in

which the publication of the article in question and the applicant's photograph was made (see paragraphs 35-37 above), the Court cannot find that the very fact that the Mayor's wife's name was placed next to the applicant's photograph amounted to a sufficiently serious intrusion into her private life.

45. In this context, the Court also agrees with the County Court's finding that the published information was incapable of giving rise to the applicant's denigration in the eyes of the public since those who recognised her in the photograph obviously knew that she was not the Mayor's wife, and the mere indication of the Mayor's wife's name next to the applicant's photograph does not in itself give rise to any negative connotations concerning the applicant (see paragraph 14 above).

46. Indeed, the Court has already held that the publication of a photograph must in general be considered to constitute a more substantial interference with the right to respect for private life than the mere communication of the person's name (see *Eerikäinen and Others v. Finland*, no. 3514/02, § 70, 10 February 2009). Thus, in so far as the manner in which the photograph was obtained does not raise any issue under Article 8 (see paragraph 36 above), the mere communication of an erroneous name next to the photograph, without any negative connotations associated with that name and/or the distortion of the photograph, cannot be considered a particularly substantial interference with the right to respect for private life.

47. Bearing this in mind and given the particular circumstances of the present case the Court is unable to find that the false impression created by the impugned photograph was objectively capable of creating any negative public perception of the applicant or, for that matter, of the Mayor's wife (see, by contrast, *Bogomolova v. Russia*, no. 13812/09, § 57, 20 June 2017).

48. Although the applicant argued during the domestic proceedings that following the publication of her photograph in *Gloria*, people had started approaching her, addressing her by the name of the Mayor's wife, and taking photographs of her (see paragraph 7 above), the Court notes that the truth of this assertion was not established during the domestic proceedings. The applicant has not adduced any evidence, such as witness statements, showing that such instances of harassment ever occurred.

49. Moreover, as the Government has also pointed out (see paragraph 25 above), it is difficult to accept that a small photograph in a lifestyle magazine next to the photograph of many other celebrities, without any disparagement of the context or the personalities appearing there, would have been capable of leading to such a general recognition or perception of the applicant as the Mayor's wife. There is also nothing in the findings of the domestic courts to suggest that the Mayor's wife enjoyed such popularity and public attention that people on the street would be approaching and taking photographs of her.

(e) Conclusion

50. In conclusion, although the Court accepts that the erroneous placement of the name of the Mayor's wife next to her photograph might have caused some distress to the applicant, the level of seriousness associated with that erroneous labelling of her photograph and the inconvenience that she suffered do not give rise to an issue – neither in the context of the protection of her image nor her honour and reputation (see paragraph 31 above) – under Article 8 of the Convention.

51. The Court therefore finds that the applicant's complaint must be dismissed as incompatible *ratione materiae* with the Convention pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 31 October 2019.

Renata Degener
Deputy Registrar

Krzysztof Wojtyczek
President