



An RTBF programme on possible sexual abuse of children concerned matters of public interest and was protected by freedom of expression

In today's Chamber judgment¹ in the case of [RTBF v. Belgium \(no. 2\)](#) (application no. 417/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a civil judgment against *Radio-télévision belge de la communauté française* (RTBF) by the Belgian courts for having breached the right to respect for private life and the right to the presumption of innocence, following a report – broadcast during the “Questions à la Une” programme in January 2006 – about allegedly suspicious acts by a couple, involving possible sexual abuse of children. RTBF was ordered to pay each spouse one euro in respect of non-pecuniary damage.

The Court considered that the programme in question undoubtedly concerned matters of public interest and that its purpose had been to inform the public about the suspicious conduct of the couple in question and about the investigation carried out by the judicial authorities in that respect. It had concerned not only “child protection” in the general sense, but had also addressed a particularly serious form of violence against children, namely sexual exploitation and abuse.

Thus, the Court found that the reasons put forward by the domestic courts had not been sufficient to establish that the interference complained of had been “necessary in a democratic society”. In view of the importance of the media in a democratic society and of the domestic authorities’ limited margin of appreciation in respect of a television programme about a subject of considerable public interest, the Court considered that the need for restrictions on freedom of expression had to be convincingly established. Despite the minor nature of the penalty imposed on RTBF, the Court considered that there was no reasonable relationship of proportionality between, on the one hand, the restrictions on the applicant company’s right to freedom of expression entailed by the measures ordered by the domestic courts and, on the other, the legitimate aim pursued, namely the protection of the reputation of others.

Principal facts

The applicant company, *Radio-télévision belge de la communauté française* (RTBF, the applicant company), is a Belgian public-service corporation which has its headquarters in Brussels.

On 24 January 2006, in the context of a programme “Questions à la Une”, RTBF broadcast a 52-minute report on the role of a couple (Mr and Ms V.) in organising private wrestling matches - with the participation of girls who were partially undressed - which had occurred in February 2005 in the sports hall of a school in Rochefort. The RTBF television news on 19, 20, 21 and 24 January 2006 included previews of the report, including some footage, and it was also broadcast on TV5 and RTBF Sat. When the programme was broadcast a judicial investigation into the events in question was pending, although no charges had yet been brought.

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

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

The report had been prepared by a journalist, D. In September 2005 he had learnt about a complaint by a girl (V.B.), who was a pupil in the school in question. She had gone to a family planning centre to complain about the actions of Mr and Ms V. and was received by the centre's doctor, who happened to be the partner of the journalist D. According to RTBF, the girl, on the doctor's advice, contacted D., who decided to carry out a journalistic investigation. He interviewed the applicant and three other girls who wished to remain anonymous. In the course of his investigation, he discovered the existence of the female wrestling matches, including, among other aspects, the recording of sex videotapes and their commercialisation, and the suspected involvement of Mr and Ms V. in this activity.

After the girl (V.B.) had lodged a formal complaint with the police, the journalist D. was informed by a judicial source about a search that was due to be carried out at the home of Mr and Ms. V. On 20 October 2005 the journalist and his team were waiting for the police officers as they arrived to conduct the search and filmed Mr V. at the door of his home as the police officers entered. The journalist asked the neighbours what they knew about the couple and the alleged female wrestling matches in which they were involved.

Some time after the search, in possession of the information given by the girls, the journalist D. asked Mr and Ms V. for an interview, which they accepted. The interview revealed that the couple arranged gatherings which they described as "female wrestling matches" in their home; these involved young women who were often naked, and some young women agreed to participate, for remuneration, in "mixed matches" with men known as "sponsors", and to be filmed during those matches. In the interview Mr V. acknowledged a certain form of libertine conduct between consenting adults. He denied that he had forced the girls to participate in the matches or to be filmed.

Mr and Ms V. considered that they had been insulted by the filmed sequences and the report, and applied to the Belgian courts seeking compensation for the damage they had allegedly sustained as a result of what they described as "a trial by media".

In 2008 the Namur Court of First Instance granted their claim in part and ordered RTBF to pay them compensation of 2,500 euros (EUR) each and EUR 1,000 in court fees. RTBF appealed against that decision.

In 2010 the Liège Court of Appeal upheld the judgment against RTBF and ordered it to pay each of the spouses one euro in respect of non-pecuniary damage.

In 2014 the Court of Cassation dismissed an appeal on points of law by RTBF. Subsequently, in the same year, Mr V. was sentenced by the Dinant Court of First Instance to 18 months' imprisonment, suspended, for several offences, including some related to the activities denounced by the journalist D. A mere finding of guilt was pronounced against Ms V. in respect of some of the alleged offences.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), RTBF considered that the civil judgment against it had represented an unjustified interference with its right to freedom of expression.

The application was lodged with the European Court of Human Rights on 22 December 2014.

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

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Georges Ravarani (Luxembourg),
Egidijus Kūris (Lithuania),
Diana Sârcu (the Republic of Moldova),

Davor **Derenčinović** (Croatia) and,
Stefaan **Smis** (Belgium), *ad hoc Judge*,

and also Dorothee **von Arnim**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court considered that the civil judgment against RTBF had constituted an interference with its right to freedom of expression within the meaning of Article 10 of the Convention. That interference had a legal basis, namely Article 1382 of the Civil Code, and had pursued the aim of “protection of reputation”.

With regard to the necessity of the interference in a democratic society, the Court noted that the television programme undoubtedly concerned matters of public interest. Its purpose had been to inform the public about the suspicious conduct of Mr and Ms V. and about the investigation carried out by the judicial authorities in that respect. It had concerned not only “child protection” in the general sense but had also addressed a particularly serious form of violence against children, namely sexual exploitation and abuse. The programme referred to the existence of a particular aspect of the sex industry, specifically so-called “female wrestling” shows with a sexual connotation, and the involvement in that activity of several young girls, at least one of whom had been a minor at the relevant time, at the behest of a person belonging to their social environment. The programme also reported on the authorities’ lack of trust in the girls’ statements and the difficulties encountered by these girls in seeking protection and asserting their rights, as shown by the footage in the report concerning the police’s reluctance to act on the first complaint lodged by one of the girls testifying anonymously, and by the school headteacher’s refusal to believe V.B.’s account.

The Court also noted that the report had been broadcast three months after the investigation had begun. By the date of the broadcast, the judicial authorities had made no statement about the conduct of the investigation, as was pointed out by a journalist in the television news of 20 January 2006. Given the importance of the issues raised in the report and the lack of an official statement by the investigating authorities, the public had an interest in being informed of the pending proceedings, including in order to be able to exercise its right of scrutiny over the functioning of the criminal justice system and, where necessary, to be alerted to the potential danger for girls who were likely to associate with Mr and Ms V. Lastly, in the television news of 19 January 2006 and at the end of the report broadcast on 24 January 2006, the journalist D. had stated that “very many young girls from Rochefort [wrestled] at [Mr and Ms V.’s] home when they were minors”, that since the start of the investigation six young girls had testified against Mr V. and that “the Dinant judicial authorities” were expecting further witnesses to come forward. There was therefore all the most interest in the public being informed about a case whose scope was yet to be ascertained.

In consequence, given that the exercise of freedom of expression in the context of a television programme on a subject of major public interest was at stake, the Belgian authorities had had only a limited margin of appreciation in determining whether there was a “pressing social need” to take the measure complained of.

As regards the extent to which the individuals concerned were well-known, the Court considered that Mr V.’s status as a former headteacher did not confer on him the status of a public figure. However, Mr and Ms V. had agreed to be interviewed by the journalist – for RTBF, a national and international television company – thus agreeing to be placed in the spotlight, so that their “legitimate expectation” that their private life would be effectively protected had been limited.

As to the way in which the information was obtained and its veracity, the Court considered that the manner in which the journalist D. had obtained the information could not be regarded as unfair. Moreover, the veracity of the events described in the report had not been disputed by the parties to the domestic proceedings, nor by the parties to the proceedings before the Court. The journalist's good faith had also not been in issue, and he had a sufficient "factual basis" for his value judgment. Furthermore, the style and means of expression used by the journalist corresponded to the nature of the issues raised in the report, and the court of appeal had not established that it had had "an impact on the direction of the investigation or the decisions taken by the investigating courts".

Moreover, at no point had the journalist asserted that the charges on which the search of Mr and Ms V.'s home was based had been proven or that the couple had committed the offences under investigation. In addition, both during the television news of 21 January 2006 and at the end of the report broadcast on 24 January 2006, viewers had been reminded that the investigation was ongoing and that the couple were presumed innocent. In those circumstances, contrary to the court of appeal, the Court did not consider that the reminder of the presumption of innocence with regard to Mr and Ms V. at the close of the broadcast on 24 January 2006 had been insufficient. With regard to the non-verbal means used by the journalist and highlighted by the court of appeal, the Court considered that, in the circumstances of the case, they had not amounted to a "finding of guilt" within the meaning of its case-law. Viewers had been put in a position to understand that the case had not yet come to trial. The Court was of the opinion that, taken as a whole, the report in question had merely described a state of suspicion against Mr and Ms V. without, however, exceeding the threshold of that suspicion.

Lastly, the Court considered that, although the penalty imposed on RTBF had been lenient, it could have had a chilling effect and that in any event it had been unjustified.

The Court concluded that the reasons put forward by the domestic courts had not been sufficient to establish that the interference complained of had been "necessary in a democratic society". In view of the importance of the media in a democratic society and of the reduced margin of appreciation enjoyed by the domestic authorities in respect of a television programme on a subject of considerable public interest, the Court considered that the need for restrictions on freedom of expression had to be convincingly established. Despite the minor nature of the penalty imposed on RTBF, the Court considered that there was no reasonable relationship of proportionality between, on the one hand, the restrictions on the applicant company's right to freedom of expression entailed by the measures imposed by the domestic courts and, on the other, the legitimate aim pursued, namely the protection of the reputation of others. It followed that there had been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by RTBF and that Belgium was to pay the applicant company 54,601.69 euros (EUR) in respect of costs and expenses.

The judgment is available only in French.

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