



Company's right to freedom of expression not breached by order to pay compensation to individuals whose exchange with a comedian was broadcast without their consent

In today's **Chamber judgment¹** in the case of [SIC - Sociedade Independente de Comunicação, S.A v. Portugal \(no. 2\)](#) (application no. 2746/21) the European Court of Human Rights held, unanimously, that there had been no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a judgment against the applicant company, *SIC - Sociedade Independente de Comunicação, S.A*, in proceedings brought against it by two individuals, M.G. and M.C. Those individuals had claimed that a recording of them involved in a heated exchange with a comedian during a stand-up comedy show, which had been broadcast on television and made available on the internet without their express consent, had caused them damage. The domestic courts had found in favour of M.G. and M.C. and had awarded them compensation.

The Court concluded that the Portuguese authorities had not overstepped their wide discretion under the European Convention in achieving a balance between SIC's right to freedom of expression and the right of M.G. and M.C. to respect for their private life. In particular, there had been no public interest in exposing two private individuals to the public eye in a potentially embarrassing video broadcast which could have had an adverse impact on their professional and personal lives. Moreover, it was doubtful that they had given their tacit consent, and the sanctions imposed on SIC by the Supreme Court had been appropriate.

Principal facts

The applicant, *SIC - Sociedade Independente de Comunicação, S.A* ("SIC"), is a company based in Oeiras (Portugal). SIC owns several Portuguese television channels, including *SIC Radical*, which is known for broadcasting programmes targeted at a younger audience, often featuring content with an irreverent tone such as comedy shows, talk shows or music.

On 18 January 2012 M.G. and M.C. attended a stand-up comedy show in a theatre in Lisbon. At the entrance to the auditorium, a notice said that video recording would take place during the show. At the start of the performance, the comedian began by informing the audience that the show was being recorded. Throughout the performance, three video cameras could be seen filming both the comedian and the audience. During the performance, the comedian made comments to which M.G. and M.C. took exception. They stood up, and, as they were leaving the auditorium, became engaged in a heated exchange with the comedian.

The comedy show was then included as part of a six-episode documentary series about the career of the comedian, which was broadcast on *SIC Radical*. On 29 January 2013 a promotional video advertising the documentary series began airing, in which an extract of the exchange involving M.G. and M.C., appeared briefly. One of the episodes, aired on 26 February 2013, featured an exchange

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.

which was almost three minutes long and in which both the images and the voices of M.G. and M.C. were reproduced.

In June 2013, M.G. and M.C. contacted SIC, requesting that their images be removed from the broadcast. SIC rejected any responsibility. On 25 April 2014 M.G. and M.C. instituted proceedings against SIC, arguing that their images and voices had been broadcast by *SIC Radical* without their consent. On 9 July 2018 the Cascais Civil Court dismissed the case, finding that the applicant company had not acted unlawfully. The Lisbon Court of Appeal upheld that decision.

On 16 June 2020 the Supreme Court overturned the judgment of the Lisbon Court of Appeal and ordered the applicant company to pay M.G. and M.C. 40,000 euros in damages for broadcasting their images and voices unlawfully. The Supreme Court further instructed the applicant company to delete any video-recordings containing their image, including those on its website and to take steps to ensure the removal of any video-recordings available on YouTube. The Supreme Court stated that the comedian's right to freedom of expression was not at issue, but rather the question was whether valid consent had been given by the claimants. It went on to explain that any tacit consent to being filmed only extended to the normal course of the show. It found that consent could not therefore reasonably be construed as permission for the claimants' images and voices to be edited and used out of context, especially in a promotional video which portrayed them negatively by highlighting a heated exchange between them and the comedian.

On 15 September 2020 the Supreme Court refused SIC leave to appeal.

Complaints, procedure and composition of the Court

Relying on Article 10, SIC complained that the Supreme Court's judgment against it amounted to a breach of its right of freedom of expression.

The application was lodged with the European Court of Human Rights on 16 December 2020.

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

Lado Chanturia (Georgia), *President*,
Jolien Schukking (the Netherlands),
Faris Vehabović (Bosnia and Herzegovina),
Anja Seibert-Fohr (Germany),
Ana Maria Guerra Martins (Portugal),
Sebastian Rădulețu (Romania),
András Jakab (Austria),

and also Simeon Petrovski, *Deputy Section Registrar*.

Decision of the Court

From the outset the Court pointed out that it was not the comedian's right to freedom of artistic or satirical expression that was at issue but rather SIC's right to both advertise and broadcast one of its shows in order to increase its audience figures, using recordings of the voices and images of two private individuals attending a live stand-up comedy show.

The Court found it undisputed that M.G. and M.C. were both private individuals, not known to the public. Furthermore, it could not be assumed, that by merely attending a stand-up comedy show, they had sought exposure, courted publicity to further their own interests or to enter the public domain. Notwithstanding the written and verbal notices and the presence of cameras during the show, the behaviour of M.G. and M.C. had not clearly or unequivocally demonstrated their tacit consent to the recording and prominent use of their images and voices. Even accepting that it may

be normal, or even expected, that stand-up comedy shows would be recorded, M.G. and M.C. could not have reasonably expected that their images and voices would be extracted from a heated exchange, edited and used in a misleading way for commercial purposes.

The Court accepted that the broadcasting of the videos had been embarrassing and capable of tarnishing or causing prejudice to the reputation of M.G. and M.C. with possible personal adverse effects on both their professional and personal lives. SIC had failed to take steps to minimise any adverse effects by not seeking the explicit consent of M.G. or M.C. and by not blurring their faces or distorting their voices, thus creating a feeling of being ridiculed and increased public exposure.

Having regard to those considerations and in particular, the absence of any matter of public interest in broadcasting the exchange, the fact that M.G. and M.C. were private individuals whose private life had been affected by the broadcasting of their images, the doubtful nature of their tacit consent, and the appropriate sanction and restrictions imposed on SIC by the Supreme Court, the Court concluded that the domestic authorities had not overstepped the discretion (margin of appreciation) allowed to them in achieving a balance between SIC's right to freedom of expression on the one hand and the right of M.G. and M.C. to respect for their private life on the other.

There had therefore been no violation of Article 10.

The judgment is available only in English.

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