



## Domestic courts failed to protect the right to privacy of a new mother

In today's **Chamber judgment**<sup>1</sup> in the case of [Dupate v. Latvia](#) (application no. 18068/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned surreptitiously taken photos of the applicant leaving a maternity ward and their subsequent publication with an accompanying article.

The Court found in particular that although the domestic courts had balanced the right to privacy of the applicant with the right to freedom of expression of the publishing magazine, they had failed to do so sufficiently or in line with the Court's case-law.

### Principal facts

The applicant, Kristīne Dupate, is a Latvian national who was born in 1973 and lives in Riga.

At the time of the events in question, the applicant was a lawyer and her partner was the chairperson of a political party and the face of an advertising campaign for *Privātā Dzīve*, a nationally available celebrity-focused magazine. Previously, he had headed a State-owned company.

In 2003, *Privātā Dzīve* published an article about the break-up of the applicant's partner's previous marriage, including pictures of the applicant and information about her pregnancy with their first child. In 2004 the magazine published an article about the birth of the applicant's second child, including covertly taken photos – one of which was the cover photo – of her leaving hospital with her child carrying baby paraphernalia and going to her car.

In 2006 she brought a case before the courts, claiming infringement of her right to respect for her private life. The Riga City Central District Court found for her. Nevertheless, the magazine republished the article and photos, alongside a statement that they disagreed with the judgment.

In subsequent appellate proceedings, the Riga Regional Court found against the applicant, noting in particular the applicant's status as the partner of a public figure, the applicant's and her partner's attitude to publicity, that the photos had been taken in a public place, that they had not been humiliating, and that the journalists involved had not tracked her daily life, rather they had focused on one event.

A subsequent appeal on points of law was dismissed by the Latvian Supreme Court.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant alleged that the dismissal of her complaints regarding the publication of covertly taken photos of her and her newborn baby had violated her rights.

The application was lodged with the European Court of Human Rights on 17 March 2011.

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

Síofra O’Leary (Ireland), *President*,  
Mārtiņš Mits (Latvia),  
Latif Hüseyinov (Azerbaijan),  
Lado Chanturia (Georgia),  
Ivana Jelić (Montenegro),  
Arnfinn Bårdsen (Norway),  
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 8 (right to respect for private and family life)

The Court reiterated the importance of freedom of expression for democracies, but emphasised the need to correctly balance that freedom with the protection of private life. It noted that news about the private life of public figures generally benefitted from the protection of the Convention, excepting where such news was private or intimate and where there was no public interest in its publication. The Court considered that it had not been substantiated that the applicant’s partner’s private life as such had affected the public at that time. Nonetheless, the information about the birth of the child came within the public sphere and therefore was of some public importance – albeit less than a political matter might be.

The Court agreed with the domestic courts that the applicant, as the partner of a public figure, should have expected to be mentioned in the media as the child’s mother. However, it asserted that the article in question went well beyond what could reasonably have been expected. The Court stressed that a degree of caution was required where a partner of a public person attracted media attention merely on account of his or her private or family life. In the present case, the domestic courts had failed to make a distinction between relaying the information about the birth of the child and the publication of the covertly taken photographs depicting the applicant in a private moment – leaving hospital after giving birth. The Court also found that the applicant’s and her partner’s prior and subsequent appearances in the media, which may have involved lesser interferences with their privacy, had not turned the birth into a public event. Nor, indeed, did they excuse the particular encroachment on the applicant’s privacy.

The Court emphasised that although the applicant had not been depicted in a humiliating manner, the article had been a “photo story”, with the text of secondary importance. The shots had been taken covertly, in a situation the applicant could not practicably have avoided – traversing the hospital car park – and she had been followed to her home. The domestic courts had failed to analyse these factors. As such the Court found that although the domestic courts had engaged in a balancing exercise, they had failed to do so sufficiently or in line with the Court’s case-law.

There had therefore been a violation of Article 8 of the Convention.

### Just satisfaction (Article 41)

The Court held that Latvia was to pay the applicant 7,000 euros (EUR) in respect of non-pecuniary damage and EUR 532 in respect of costs and expenses.

*The judgment is available only in English.*

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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.