

# HUMAN RIGHTS

## Photographs and privacy protection and the European Court of Human Rights

*Tuzunatac v Turkey*, Application No 14852/18, decision of the European Court of Human Rights March 7, 2023.

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### Introduction

Taking and publishing photographs of individuals without their consent raises issues of private and life and individual privacy, protected under Article 8 of the European Convention. However, not every unauthorised photograph will constitute a breach of Article 8. First, the claimant will need to show that they had an actionable and reasonable expectation of privacy in that image; and the press will be allowed to claim that there was a public interest in taking and publishing the photograph (and any accompanying story), which then overrode that privacy right. The balance has to be consistent with both Articles 8 (private life) and 10 (freedom of expression) of the ECHR, and the jurisprudence of the European Court of Human Rights in this area,<sup>1</sup>

All cases are fact-sensitive, but a recent decision of the European Court provides some insight into the factors that must be taken into account. In this case,<sup>2</sup> the Strasbourg Court had to decide whether the taking and publishing of a photograph showing two high profile actors in an intimate embrace was in breach of Article 8; the applicants having failed to get a remedy before the national courts. The case illustrates the principles that the Strasbourg Court applies in such cases, as well as the consequences of national law not following the Court's jurisprudence.

### The facts and decision in *Tüzünataç v Turkey*

The case concerned an application by a famous Turkish actor with respect to the broadcasting by a television channel of a video recording where she appeared to be kissing another famous actor on a terrace. She claimed that the dissemination of this recording constituted an infringement of her right to respect for private life under Article 8 ECHR.

The applicant is a famous Turkish actor who has appeared in several films and television series. The television show broadcast a video recording showing the applicant in the company of ŞG, an actor and humourist also known to the public, on the terrace of the applicant's apartment, located on the sixth and last floor of a building. In the film, the audience saw both actors getting closer to each other before kissing several times. The show's presenter called the video "the love bomb of the year" and "the revelation of Berrak Tüzünataç's very secret relationship with Ş.G." adding

You will be amazed when you see the [joy] (*sefa*) strange of the couple. At the first light of the morning, when the watches indicated 5 o'clock and the sun was rising, they kissed each other several times on the terrace overlooking the sea. They had amazing gestures.

The video was accompanied by background commentary and a number of captions, including:

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<sup>1</sup> Most notably, *Van Hannover v Germany (No. 1)*, Application Nos. 40660/08 and 60641/08, decision of the Grand Chamber 7 February 2012

<sup>2</sup> *Tuzunatac v Turkey*, Application No 14852/18, decision of the European Court of Human Rights March 7, 2023.

This lady sitting on the balustrade of her terrace is the famous actress Berrak Tüzünataç. Besides, she has a glass of wine in her hand. She's probably drunk, she could fall over. As she takes a sip of wine, a large man appears behind her. [That] person hugging Berrak Tüzünataç [while standing behind her] and bringing her down [from the railing] is none other than Ş.G.

Then the kisses go to the cheeks. Another [kiss on the] cheek. Now Ş.G. draws Berrak Tüzünataç to him with a [sudden] gesture.

The attempt of Ş.G. to [the] kiss succeeds. Again she leans back [on the balustrade]. She looks at the sea panorama upside down. She straightens up again. S.G. whispers something in her ear and then they go back into the apartment.

A district judge accepted the applicant's request for an order pending trial, prohibiting the publication by the press of the images as well as of any article on the subject, as in his opinion both were likely to injure their personality rights. The applicant then brought a civil action against the parent company of the television channel and the person responsible for the programme arguing that the dissemination of these images, filmed without her knowledge and without her consent in close-up using a telephoto lens, had infringed the confidentiality of her private life and her personality rights. She requested damages and a ban on the rebroadcasting of the images together with their destruction. However, although the court extended the interim measure until the end of the civil proceedings, the Istanbul High Court dismissed the applicant's claims, noting that the journalists had filmed the images from a public thoroughfare and not by secretly entering the applicant's home. Further, they had come by the scene by chance, in the context of a pursuit of ŞG, and had only continued to film her when they realised that the individuals on the terrace were the applicant and SG. It concluded, therefore, that the broadcast was not unlawful, since the applicant was a public figure whose lifestyle and celebrity attracted the attention of the "people" and press, and that the publication had presented a logical link between the style of expression and the subject of the programme. Further, the programme was of a critical nature, reflecting reality and did not contain any expression likely to infringe the rights of personality, honour and reputation of the claimant.

Subsequently the Court of Cassation dismissed the appeal, finding that the decision was in accordance with procedure and law. The applicant then lodged an individual complaint with the Constitutional Court complaining of a violation of her right to the protection of her reputation and the length of the proceedings before the civil courts. The Constitutional Court held that there had been no violation of the applicant's right to respect for her private life, and that the complaint relating to the length of the proceedings was inadmissible for manifest lack of foundation. It considered that the images of the applicant should be examined in the context of freedom of the press given the status of the applicant, an artist with a public of admirers, and where they had been filmed not from inside her apartment but from a public road while she herself was in a place exposed to everyone's view. Further, the images where the applicant and ŞG approach each other did not contain any elements likely to cause unacceptable discomfort to those concerned, noting that she had chosen to approach her companion of her own free will.<sup>3</sup>

Before the European Court, the applicant relied on, firstly, Article 8 of the Convention, arguing that the video showed intimate moments shared with her companion, filmed while they were on the terrace of her apartment, and thus constituted an interference with her right to respect for her private life. She also complained of the absence of an adequate judicial response to this interference. The Court declared the application admissible and then ruled on its merits.

The European Court first confirmed that the concept of private life covered elements relating to the identity of a person, such as his name, his photograph and his physical and moral integrity, and also

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<sup>3</sup> With respect to the complaint relating to the length of the proceedings, it found that the period of four years over which they had taken place was reasonable.

implies the right to live in private, away from unwanted attention.<sup>4</sup> That guarantee is primarily intended to ensure the development, without external interference, of the personality of each individual in his relations with his fellow human beings; consequently, there is an area of interaction between the individual and third parties which, even in a public context, may fall within the realm of private life.<sup>5</sup> Further, while a private person unknown to the public may claim special protection of his right to private life, the same does not apply to public persons,<sup>6</sup> although in certain circumstances a person, even known to the public, can rely on a “legitimate expectation” of protection and respect for his private life. Accordingly, the publication of a photograph interferes with the private life of an individual even if it is a public person; a photograph containing very personal, even intimate, “information” about an individual or his family.<sup>7</sup>

The Court also recognised the right of every person to their image, emphasising that this is one of the main attributes of his personality, expressing his originality and allowing him to differentiate themselves from their peers. That right presupposes the control by the individual of his image, which notably includes the possibility of refusing its dissemination, and the right for him to oppose the capture, conservation and reproduction of it by another.<sup>8</sup> In determining whether a publication violates the individual's right to privacy, the Court must take into account how the information or photograph was obtained and must consider the fact that the consent of the persons concerned has been obtained or that a photograph arouses a more or less strong feeling of intrusion.<sup>9</sup> In cases such as this, the photographs appearing in the so-called “sensational” press, or “press of the heart”, which usually aims to satisfy the curiosity of the public for the details of the strictly private life of others, are often carried out in a climate of continuous harassment, which may cause the person concerned to have a very strong feeling of intrusion into his or her private life, or even of persecution. Also relevant in the Court's assessment is the purpose for which a photograph was used and may be used in the future.<sup>10</sup> The Court also noted that other criteria may be taken into account depending on the particular circumstances, such as the seriousness of the intrusion into private life and the repercussions of the publication for the affected person, as well as the fact that the audio visual media often have a much more immediate and powerful effect than the written press.<sup>11</sup>

On the other hand, in the Court's view, although the disclosure of information about the private lives of public figures generally pursues a goal of entertainment and not of education, it can contribute to the variety of information made available to the public and undoubtedly benefits from the protection of the Article 10 of the Convention. Nonetheless, this protection may give way to the requirements of Article 8 where the information in question is of a private and intimate nature and there is no public interest in its dissemination.<sup>12</sup> Thus, when the situation is not subject to any political or public debate and the photographs and the comments relate exclusively to details of the person's private life with the sole aim of satisfying the curiosity of a certain public, freedom of expression calls for a more restrictive interpretation.<sup>13</sup>

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<sup>4</sup> *Tüzünataç v Turkey*, at [28], citing *Smirnova v. Russia*, Application Nos 46133/99 and 48183/99, at [95].

<sup>5</sup> *Tüzünataç v Turkey*, at [30], citing *Couderc and Hachette Filipacchi Partners c. France* [GC], Application No. 40454/07, at [83].

<sup>6</sup> Citing *Minelli v. Switzerland*, Application no. 14991/02, decision of the European Court June 14, 2005.

<sup>7</sup> *Tüzünataç v Turkey*, at [31], citing *Von Hannover v. Germany (No 2)* [GC], Application Nos. 40660/08 and 60641/08, decision of the Grand Chamber 7 February 2012, at [97].

<sup>8</sup> *Tüzünataç v Turkey*, at [32], citing *López Ribalda and others v. Spain* [GC], Application Nos. 1874/13 and 8567/13, decision of the Grand Chamber, October 17, 2019), at [89].

<sup>9</sup> Citing *Von Hannover v. Germany*, note 28, and *Hachette Filipacchi Associés v France*, Application No. 71111/01, decision of the European Court, June 14, 200, at [48].

<sup>10</sup> *Tüzünataç v Turkey*, at [33], citing *Reklos and Davourlis v Greece*, Application No. 1234/05, decision of the European Court, 15 January 2009, at [42], and *Hachette Filipacchi Associés v France*, Application No 12268/03, decision of the European Court of Human Rights 23 July 2009, at [52].

<sup>11</sup> *Tüzünataç v Turkey* at [34], citing *Pedersen and Baadsgaard v. Denmark* [GC], Application No. 49017/99, at [79].

<sup>12</sup> *Tüzünataç v Turkey*, at [36], citing *Mosley v. United Kingdom*, Application No. 48009/08, decision of the European Court of Human Rights May 10, 2011, at [131].

<sup>13</sup> *Ibid*, citing *Hájovský v. Slovakia*, Application No 7796/16, decision of the European Court 1 July 2021, at [31].

Applying the above principles to the present application, the question was whether the national courts failed to protect the applicant against the claimed interference, and whether in the circumstances a fair balance was struck between the individual's right to respect for private life, on the one hand, and freedom of the press on the other.<sup>14</sup> It then observed that the video recording related exclusively to the applicant's strictly private life in the context of a relationship which she allegedly had at the material time with an actor known to the public, containing images of her spending time with her partner on the terrace of her home. The audience saw the couple chatting, getting closer to each other and kissing and the broadcast was announced by the presenter of the programme with expressions likely to arouse the interest and attention of the public: such as "the love bomb of the year", "the revelation of the very secret relationship "of the interested party and" the abnormal joy of the couple."<sup>15</sup> In that context, even if it is accepted that elements of the private life could be revealed because of the interest which the public could have in knowing certain traits of the personality of a public person, a person's love and sentimental life is in principle of a strictly private nature, and details relating to a couple's sex life or intimate moments should only be made known to the public without prior consent to do so in exceptional circumstances.<sup>16</sup> The Court also noted that the dissemination of those details seems to have had the sole purpose of satisfying the curiosity of a certain audience for the details of the applicant's private life and cannot as such, whatever the notoriety of the person concerned, be taken to contribute to any debate of general interest for society.<sup>17</sup> The general interest cannot be reduced to the expectations of a public fond of details about the private life of others, nor to the taste of readers for the sensational or even, sometimes, for voyeurism.<sup>18</sup>

With respect to the circumstances in which the images were obtained by the journalists, the Court reiterated that the fairness of the means used to obtain information and return it to the public, as well as respect for the person, are essential criteria to be taken into account by the Court.<sup>19</sup> Thus, when information involving the privacy of others is in question, it is up to journalists to take into account, as far as possible, the impact of this information and the images concerned before their dissemination. In particular, certain events in private and family life are the subject of reinforced protection under Article 8 of the Convention and must therefore lead journalists to exercise prudence and precaution when covering them.<sup>20</sup> In the particular circumstances of this case, in judging her reasonable expectation of privacy, the applicant could not have expected to be filmed or to be the subject of a public report, and did not co-operate with the media. Even if the terrace of the applicant's apartment was visible from the public thoroughfare where the journalists were, the comments that they exchanged in the video suggest that they had made the recording secretly and sought to hide so as not to be seen by the applicant and her partner when they were filming. Further, the video was made at 5 a.m., and not at a time of day when the public flocks to the streets and when the applicant could have anticipated the presence of journalists outside. In any event, it is indisputable that the images were taken without the applicant's knowledge and that they were disseminated without her consent.<sup>21</sup> The Court thus reaffirmed that the notoriety or the functions of a person cannot in any case justify media harassment or the publication of photographs obtained by fraudulent or clandestine manoeuvres, or revealing details of the private life of persons and constituting an intrusion in their privacy.<sup>22</sup>

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<sup>14</sup> *Tüzünataç v Turkey*, at [39-40].

<sup>15</sup> *Tüzünataç v Turkey* at [42].

<sup>16</sup> *Tüzünataç v Turkey*, at [43], citing *Ojala and Etukeno Oy v. Finland*, Application No. 69939/10, decision of the European Court, 14 January 2014, at [54-55], *Ruusunen v. Finland*, Application No. 73579/10, decision of the European Court of Human Rights, 14 January 2014, at [49-50], and *Couderc and Hachette Filipacchi v France*, Application No. 40454/07, decision of the European Court of Human Rights 10 November 2015.

<sup>17</sup> Citing *Von Hannover*, note 28 above, at [65], and *MGN Limited v. United Kingdom*, Application No. 39401/04, decision of the European Court, 18 January 2011, at [143].

<sup>18</sup> *Tüzünataç v Turkey*, at [44].

<sup>19</sup> Citing *Egeland and Hanseid v. Application No. 34438/04*, decision of the European Court 16 April 2009, at [61].

<sup>20</sup> *Tüzünataç v Turkey*, at [45], citing *Éditions Plon v. France*, Application No. 58148/00, §§ 47 and 53, and *Hachette Filipacchi Associés*, note 37, at [46-49].

<sup>21</sup> *Tüzünataç v Turkey* at [46].

<sup>22</sup> *Tüzünataç v Turkey*, at [47].

In addition, the Court found that by relying on the applicant's public profile and that the filming took place in a public place, the national courts could not be said to have properly balanced the applicant's right to respect for her private life and freedom of the press. The domestic courts should have shown greater rigor when weighing the various interests involved, in particular to the content of the broadcast video, which related to details of the applicant's love and intimate life (which in no way related to a subject of general interest) and to the circumstances (not in accordance with the standards of responsible journalism), in which these images were obtained and disseminated by the journalists, without the consent of the person concerned. In particular, the argument that the applicant had not been sufficiently attentive to the protection of her privacy by approaching her companion at a point on the terrace of her apartment visible from the outside was rejected. Acceptance of this criterion of a "spatial isolation" defence would be tantamount to saying that, unless she is in an isolated place sheltered from the public, the applicant must agree to be filmed almost at all times, and that these images are then to be very widely disseminated, even if such images relate exclusively to details of a person's private life.<sup>23</sup>

Accordingly, the Court concluded that the national courts failed in their obligation to protect the applicant's right to respect for her private life against the infringement which had been caused by the dissemination of those images, and there had been a violation of Article 8.<sup>24</sup> With respect to the claim under Article 6, the Court considered that the length of the proceedings before the civil courts, namely approximately four years and three months, could not be considered as disregarding the principle of a 'reasonable time', taking into account the nature of the case - which required careful balancing of the different interests at stake - the examination of the case at two levels of jurisdiction, and the introduction of two appeals before the Court of Cassation. Thus, on the facts there was no breach of Article 6.<sup>25</sup>

### **Photographs, privacy and the European Court of Human Rights**

The decision in *Tüzünataç v Turkey* excites little debate, unless one believes that well-known public celebrities enjoy little or no privacy and thus have sold any expectation of privacy by the fact of them being famous and being the subject of interest from the public.<sup>26</sup> Thus, the decision of the domestic courts in this case, having failed to grasp the essential jurisprudence of the European Court in this area, was ripe for challenge by the European Court for failing to consider and apply the Court's fundamental principles in the necessary balancing act between privacy and freedom of expression.

To succeed in a case under Article 8, the applicant must first show that they have a reasonable expectation of privacy, and as there is no absolute right not to have one's photograph taken without one's consent, all the circumstances of the case must be considered in determining whether there is a violation of Article 8. Nonetheless, despite the fact that there is no absolute right not to have one's image photographed and published, the European Court has accepted the potential for greater intrusion into privacy caused by photographs. Thus, in *Reklos v Greece*,<sup>27</sup> it was noted that a person's image constitutes one of the chief images of a person's personality, as it reveals the person's unique characteristics and distinguishes the person from his or her own peers.<sup>28</sup> In these cases, therefore, photographing and distributing photographic images will strengthen the privacy claim.

The application of the principles becomes more complicated when the claimant is a celebrity. In *Von Hannover v Germany*,<sup>29</sup> the European Court held that the publication of photographs taken of the former Princess Caroline of Monaco and her family in her daily life clearly fell within Article 8. In stressing

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<sup>23</sup> *Tüzünataç v Turkey* at [48-49]. The Court also noted that the national authorities had failed to take sufficient account of the emotional distress and the consequences for the applicant's private and professional life which the dissemination of the images may have caused her.

<sup>24</sup> *Tüzünataç v Turkey*, at [50-51].

<sup>25</sup> *Tüzünataç v Turkey*, at [52-54]. As the applicant did not submit a claim for just satisfaction within the time allowed to her in accordance with the Court's procedure, the Court considered that there was no reason to award him any sum under this head (at [56]).

<sup>26</sup> See Lord Woolf in *A v B plc* [2002] 3 WLR 542, at [43], a view now discredited after *Von Hannover*.

<sup>27</sup> [2009] EMLR 16

<sup>28</sup> *Reklos v Greece*, at para [40].

<sup>29</sup> *Von Hannover v Germany* (2004) EMLR 2

the significance of photographs as means of invading privacy, the Court held that the photographs in question – of her shopping and relating with close friends and her children in a public place - contained *very personal or very intimate ‘information’* about an individual. Thus, although freedom of expression extended to the publication of photographs, this was an area in which the protection of the rights and reputation of others took on particular importance.<sup>30</sup> Further, photographs appearing in the tabloid press were often taken in a climate of continual harassment, inducing in the person concerned a very strong sense of intrusion into their private life or even of persecution.<sup>31</sup>

Significantly, the Court noted that *everyone, including people known to the public*, had a legitimate expectation that his or her private life would be protected,<sup>32</sup> and this will impact on whether the publication can be justified by the public interest in freedom of expression. In the case the Court noted that the photographs showed the applicant in scenes from her daily life, and thus engaged in activities of a purely private nature, taken secretly and without her consent and making no contribution to a debate of public interest. Relevant to the instant case, it also noted that the general public did not have a legitimate interest in knowing the applicant’s whereabouts or how she behaved generally in her private life, even if she appeared in places that could not always be described as secluded and was well known to the public.<sup>33</sup> These rules applied to the instant case, as the apartment and the applicant could, with some effort, be viewed by the public from a public location.

With respect to the public profile of the applicant, some case law suggests that the Court will take into account the status of that individual in determining whether there has been a violation of Article 8. Thus, in *Van Hannover v Germany (No 2)*,<sup>34</sup> it was held by the Grand Chamber that there had been no violation when photographs had been taken of Princess Caroline of Monaco and her husband on a skiing holiday. Because the photographs accompanied a story which questioned whether the couple should have been holidaying at a time when her father – Prince Rainier - was critically ill, they related to a matter of genuine public interest and were thus justified on grounds of freedom of expression.<sup>35</sup> The Court also stated that irrespective of the question to what extent she assumed public functions on behalf of the Principality of Monaco, it could not be claimed that the applicants, whom were undeniably well known, were ordinary private individuals; they had to be regarded as public figures.<sup>36</sup> Similarly, in *Von Hannover v Germany (No 3)*,<sup>37</sup> there was no breach when the domestic courts refused to grant an injunction prohibiting the further publication of a photograph of the applicant and her husband taken while they were on holiday; the photograph being accompanied by an article about the trend among the very wealthy towards letting out holiday homes and including information about the home. Although the photograph of the couple did not concern a matter of public interest, the article did, and the article did not provide private information relating to the couple and was not simply a pretext for taking a photograph.<sup>38</sup>

Similarly, in *Springer v Germany*,<sup>39</sup> it was held that there had been a violation of Article 10 when an injunction had been granted to a well-known television actor prohibiting the applicants from publishing photographs of him being arrested for cocaine possession, together with articles about his previous drug use and convictions. In this case, of course, the facts as disclosed were not intimate private details but concerned public judicial facts, but the Court noted that the actor was sufficiently well known to qualify as a public figure, thus reinforcing the public’s interest in being informed of his arrest and the proceedings against him.<sup>40</sup> Whether the taking and publication of photographs constitutes a breach of article 8 depends, therefore, on a number of factors relating both to the expectation of the individual’s

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<sup>30</sup> *Von Hannover v Germany*, at [59].

<sup>31</sup> *Ibid*

<sup>32</sup> *Von Hannover v Germany*, at [69], italics added.

<sup>33</sup> *Von Hannover v Germany*, at [74].

<sup>34</sup> (2012) 55 EHRR 15

<sup>35</sup> *Von Hannover v Germany (No 2)*, at [118].

<sup>36</sup> (2012) 55 EHRR 15, at [120]

<sup>37</sup> Decision of the European Court of Human Rights, 19 September 2013

<sup>38</sup> *Von Hannover v Germany (No. 3)*, at [76].

<sup>39</sup> (2012) 55 EHRR 6

<sup>40</sup> *Springer v Germany*, at [99].

privacy and the public interest in publication; and the public status of the individual is apparently vitally important in respect of both questions.<sup>41</sup>

In the present case, however, there was no public interest or contextual debate about celebrity life, beyond the capture and revelation of the applicant's private life and image, thus the applicant's status was irrelevant. This is the case even though the Court, in cases such as *Springer*, has drawn a distinction between wholly private individuals and persons well-known to the public, giving added protection to the former. For example, in *Egeland and Hanseid v Norway*,<sup>42</sup> it was held that there had been no violation of Article 10 when two journalists had been prosecuted and fined for taking photographs of accused persons outside a court hearing without their consent, contrary to national law. The Court noted that the photographs had been taken without her consent and directly after she had been informed of her conviction for a triple murder; she was in tears and in great distress and thus at her most vulnerable psychologically. The public interest in the photographs and the trial did not outweigh the woman's right to privacy and the interest in the fair administration of justice. Similarly, in *Recklos v Greece*,<sup>43</sup> it was held that the taking of a baby's photograph in a hospital without the parent's consent constituted a clear violation of Article 8. In the Court's view there was no public interest in taking the photograph and the retention of the photographs contrary to the parents' wishes was an aggravating factor contributing to the finding of a breach.

## Conclusions

Despite some flexibility in public celebrity cases, the outcome in *Tüzünataç* was very predictable. Irrespective of natural public curiosity in two very well-known celebrity figures, the video and its public broadcasting clearly caught the applicant and her partner in a private, intimate moment that gave rise to a clear and legitimate expectation of privacy. Claims that the images were not captured in the apartment itself, and that the scene was visible from a public place, is both disingenuous and ignores the reality of reality of long lens photo-journalism, which allows events taking place on private premises to be captured from public highways or other buildings that the public have access to. It is surprising, therefore, that the Turkish domestic courts, being bound to follow at least the basic tenets of privacy law and the jurisprudence of the Strasbourg Court, should accept such a claim.

Equally baffling is the domestic courts' ruling that the broadcast was not unlawful because the applicant was a public figure whose lifestyle and celebrity attracted the attention of the "people" and press, and that the publication had presented a logical link between the style of expression and the subject of the programme. This ruling flies in the face of the seminal ruling in *Von Hannover* that celebrities should not be treated as public figures *par excellence*, thus further reducing their expectation of privacy, and that unless justified by the public interest intrusions into their private lives are in violation of Article 8. Further, the ruling that the programme was of a critical nature, reflecting reality and did not contain any expression likely to infringe the claimant's rights of personality, honour and reputation as public figures who would or should expect such intrusions, is wholly inconsistent with the jurisprudence in this area, which draws a clear distinction between the public interest and public curiosity.

The decision in the recent case sends a clear warning to the press and the domestic authorities concerning the necessary balance between celebrity privacy and press freedom. The well-known status of the individual is, in most cases, the driving force in capturing and disseminating photographic images, and other details. This will serve the public's curiosity and sell newspapers, but when this impinges on sufficiently intimate and serious aspects of that person's private life (such as the details of an intimate relationship), then privacy rights come into play in disturbing that public curiosity and the commercial gain of publishers. The European Court has accepted that this natural curiosity can reduce the

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<sup>41</sup> See also *Hachette Filipacchi Associés v France*, Application No 12268/03, decision of the European Court of Human Rights 23 July 2009, where the Court attached particular importance to the public notoriety of the applicant and the fact that the published photographs had been derived from advertising material as opposed to being obtained through contentious or undercover methods.

<sup>42</sup> (2010) 50 EHRR 2.

<sup>43</sup> [2009] EMLR 16.

expectation of privacy of such individuals, but the guidance provided in *Von Hannover* is sufficiently clear to have allowed the Turkish courts to provide the actor with a suitable remedy, and to have avoided the Strasbourg application altogether.