



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

FIRST SECTION

**CASE OF ALPHA DORYFORIKI TILEORASI ANONYMI ETAIRIA
v. GREECE**

(Application no. 72562/10)

JUDGMENT

STRASBOURG

22 February 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece,
The European Court of Human Rights (First Section), sitting as a Chamber
composed of:

Kristina Pardalos, *President*,

Linos-Alexandre Sicilianos,

Aleš Pejchal,

Krzysztof Wojtyczek,

Armen Harutyunyan,

Tim Eicke,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 30 January 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 72562/10) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Alpha Doryforiki Tileorasi Anonymi Etairia, a limited liability company registered in Greece (“the applicant company”), on 19 November 2010.

2. The applicant company was represented by Mr P. Tantaroudas, a lawyer practicing in Athens. The Greek Government (“the Government”) were represented by their Agent’s delegates, Mrs S. Charitaki and Ms S. Papaioannou, legal counsellor and legal representative respectively at the State Legal Council.

3. The applicant company alleged, in particular, that the sanctions imposed on them for the dissemination of images taken by a hidden camera had violated their right to freedom of expression under Article 10.

4. On 16 March 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a limited liability company and is the owner of the Greek television channel ALPHA.

6. On 24 January 2002, ALPHA broadcast a television show named “Jungle” (*Ζούγκλα*) in which three videos that had been filmed with a hidden camera were broadcast. In the first video, A.C., then a member of the Hellenic Parliament and chairman of the inter-party committee on electronic gambling, was shown entering a gambling arcade and playing on two machines. The second video showed a meeting between A.C. and associates of the television host of “Jungle”, M.T., during which the first video was shown to A.C. The third video showed a meeting between A.C. and M.T. in the latter’s office. On 27 January 2002 the videos were shown again during a television show named “Yellow Press” (*Κίτρινος Τύπος*) presented by the same television host.

7. On 23 May 2002 the National Radio and Television Council (*Εθνικό Συμβούλιο Ραδιοτηλεόρασης*), following an invitation to the applicant company, held a hearing in which the applicant company was represented by its attorneys. As can be seen from the minutes of the meeting, the applicant company’s attorneys acknowledged the use of hidden camera in the above-mentioned incidents. They argued that such use had been justified owing to A.C. being a public figure and that it had served the public interest, as proven by the fact that the report had resulted in A.C.’s being dismissed from the parliamentary group of the political party for which he had been elected as parliamentary deputy. In their view, that had been the result not only of A.C.’s gambling activities, but also of the fact that he had tried to negotiate with the applicant company’s reporters to present the incident differently. The applicant company’s attorneys further argued that the use of a hidden camera had been exceptional and had been resorted to following the receipt of information that could not have been verified otherwise, as nobody would have believed the journalists’ allegations if they had reported on the issue without broadcasting the images. It can also be seen from the minutes that the members of the National Radio and Television Council expressed their disagreement regarding the use of a hidden camera, arguing that if anyone were able to use a hidden camera by claiming that there was an overriding public interest in doing so, then all citizens – especially if they were public figures – would be exposed to the possibility of being subject to pressure and extortion. They furthermore stressed that nobody would ever forbid journalists to report on a certain issue; however the means used raised an issue, as the use of hidden camera could be accepted only in respect of a national security issue or for the prevention of a serious crime or other similar situations. They also noted that there were two separate issues in the instant case; on the one hand the use of a hidden camera and on the other hand the entrapment of A.C.

8. By its decision 214/162/23.05.2002, the National Radio and Television Council ordered the applicant company to pay one hundred thousand (100,000) euros (EUR) for each of the two television shows during which the above-mentioned videos were shown, as well as to broadcast on three days in

a row on its main news show the content of that decision. The decision included a short description of the three videos, a citation of the relevant legislation, and the conclusion that the use of hidden camera in that case had not been in accordance with the relevant law. It further stated that the sanctions had been imposed following an assessment of the gravity of the offence, of the number of viewers of the two television shows, of the size of the investment that had been made by the applicant company and the fact that the television channel had been repeatedly fined in the past for the same offence.

9. On 10 June 2002 the decision of the National Radio and Television Council was communicated to the Minister of Press and Media, who, after examining its legality, issued decision no 3156/E/11.02.2003 confirming its content.

10. On 4 April 2003 the applicant company lodged an application for annulment (*αίτηση ακύρωσης*) against the decisions of the National Radio and Television Council and the Minister of Press and Media with the Supreme Administrative Court (*Συμβούλιο της Επικρατείας*) on the grounds that the above-mentioned decision had violated Articles 9, 15 § 1 and 25 of the Greek Constitution, as well as Article 10 of the Convention. A.C. lodged a third-party intervention requesting from the Supreme Administrative Court to dismiss the application for annulment. On 23 January 2006 the President of the Supreme Administrative Court referred the case to the Plenary Supreme Administrative Court owing to its high importance.

11. The hearing before the Plenary Supreme Administrative Court took place on 2 June 2006. By its judgment no. 1213/2010, published on 16 April 2010 and finalised on 21 May 2010 (*δημοσίευση και καθαρογραφή*), the Supreme Administrative Court dismissed the application for annulment.

12. In its legal assessment, the majority of the Supreme Administrative Court firstly referred to the constitutional provisions providing the right to impart and receive information, and then emphasised that this right is subject to limitations whose legitimate aim is the protection of the rights of others and the observance of the rule of law on condition that those limitations are proportionate. It additionally referred to the Court's case-law in respect of Article 10 and on Article 8, with specific reference to case-law concerning the protection of a person's image (see *Von Hannover v. Germany*, no. 59320/00, ECHR 2004-VI; *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002; and *Sciacca v. Italy*, no. 50774/99, ECHR 2005-I). It continued by noting that under Article 15 of the Constitution the State has the legal duty to exercise control over the radio and television in order to ensure respect for human values and that sanctions imposed by the National Radio and Television Council served that purpose.

13. The Supreme Administrative Court laid down the conditions under which it is legitimate to broadcast an image that has been filmed with the method of hidden camera, by making a distinction between reporting on

specific news, whose exclusive or main source is an image of a specific person recorded by secret means, and the broadcasting of the relevant, secretly recorded image. According to that reasoning, recording by secret means an image which has as its main or only subject a specific person constitutes in principle a violation of that person's right to his own image, which is protected by Articles 9 § 1 of the Constitution and 8 § 1 of the Convention, as a specific aspect of the right to respect for one's private life. Consequently, the broadcasting on television of news whose exclusive or main source is an image of a specific person recorded by secret means cannot, in principle, be considered as constituting the legitimate exercise of the right to impart information, given that the disseminated news has been received under circumstances which constitute a violation of an individual's right to his own image. Nevertheless, in certain cases it may be considered justified to broadcast such news, on account of its contribution to a debate of general interest and taking into account the secretly recorded person's position or standing. However, even when broadcasting of the news is considered a legitimate exercise of the right to impart information, this does not automatically render legitimate the broadcasting of the relevant, secretly recorded images, as that constitutes a much more intense [έντονος] limitation of the constitutionally protected right of that person to his own image than the simple transmission of news. In the domestic court's view, broadcasting of a secretly recorded image can only be justified if the legitimate (for the reasons mentioned above) broadcasting of such news is completely impossible or particularly difficult without broadcasting the image that was recorded by hidden means and which constitutes the source of the news.

14. By applying the above-mentioned principles to the circumstances of the case, the Supreme Administrative Court dismissed the applicant company's argument that it had legitimately transmitted the news concerning A.C. in view of A.C.'s capacity as a public figure. The domestic court stressed that from the text of the decision and from the minutes of the meeting of the National Radio and Television Council it derived that the sanction was imposed to the applicant company solely and exclusively on account of the broadcast of the images that had been recorded by hidden means and not on account of the transmission of the news, whose source had been the secretly recorded images. As far as the broadcasting of the images was concerned, the applicant company had not disputed that the images had been recorded by secret means and had not claimed that broadcasting of the news was absolutely impossible or extremely difficult without broadcasting the relevant images. Therefore, the applicant company's allegation that it had broadcast the impugned images for reasons of journalistic interest and of public interest was dismissed.

15. On the basis of the above-mentioned reasoning, the Supreme Administrative Court ruled that the decision of the National Radio and

Television Council had been fully reasoned and dismissed the applicant company's application for annulment.

16. A concurring, more specific (*ειδικότερη*) opinion was joined to the majority opinion; the seven judges considered that the recording of a person without his knowledge and the use of it for the broadcasting of news constituted a direct violation of that person's right to dignity as it reduces him to an instrument for others to achieving goals that are irrelevant to him. Given that, pursuant to Articles 2 § 1, 15 § 2 and 25 § 1 of the Constitution, the protection of human dignity is absolute, the broadcasting of such news is always forbidden, irrespective of whether such a broadcast includes the image in question. For those reasons, the judges who supported this opinion considered that the application for annulment should be dismissed.

17. In addition, there were two dissenting opinions. According to the first one, in view of the fact that the National Radio and Television Council had considered that the broadcasting of news that had been recorded by secret means had constituted a legitimate exercise of the right to impart information, the same considerations should be extended to the broadcasting of the relevant image. The reason for this was the special nature of television, in comparison with the other media, owing to which the broadcasting of the image went hand-in-hand with broadcasting the news itself. Therefore, the application for annulment should have been allowed, given that the National Radio and Television Council's decision had been based solely on the fact that the image of A.C. had been recorded by hidden means, without considering whether broadcasting news whose source was the above images constituted a legitimate exercise of the right to impart information.

18. Lastly, according to the other dissenting opinion, no constitutional provision justified the absolute protection of an image (as was held by the majority). A person's right to his own image was susceptible to limitations that varied according to that person's position and the space in which the recording in question had taken place. For individuals, protection against the recording of their image without their consent was absolute, irrespective of whether it took place in a public or private space, unless the recording was not directed to them or the recording of the image took place with a view to the prevention of crimes in public space. For public figures, however, protection was less absolute. In particular, public figures, such as politicians, were exposed to publicity and sometimes they even pursued it. As a result, there was a legitimate expectation on the part of the media and of the public to impart and receive information regarding their public activities. For these persons, there was an absolute protection of their image in their private space and in public spaces in which they shared private or family moments. When, however, public figures were in public spaces but not under the conditions described above, or acted in a way that was of interest to the public (such as in cases in which they engaged in behaviour contrary to what their public role entailed or contrary to the image they projected towards the public), then the

right to receive and impart information could justify the recording of that person without his consent and the broadcasting of the relevant images by the media. In this regard, the dissenting judges argued that it would be inconceivable to equate radio with television, as they did not operate on the same way; therefore, it would not be possible for a television show to simply announce the news without broadcasting the relevant images, as would be the case on the radio. In respect of legitimately recorded images, when there is a balance between transparency and the right to receive information on the one hand and the protection of a person's image on the other hand, the presumption should be that the recorded image could be broadcast without consent. In view of the above, the four judges considered that the application for annulment should be allowed, taking into account especially the fact that A.C. was a public figure, that the recording of his image had taken place in a public space (that is to say in a gambling arcade), and that the broadcasting of the relevant images had served the purpose of informing the public of behaviour on the part of a member of Parliament that did not meet the requirements of his position. Therefore, the television channel's decision to broadcast the image as a part of the television shows, which otherwise could be considered unfounded or even defamatory, had not breached the proportionality principle.

II. RELEVANT DOMESTIC LAW

A. The Constitution

19. The relevant Articles of the Greek Constitution provide as follows:

Article 5A

"1. All persons have the right to information, as specified by law. Restrictions on this right may be imposed by law only in so far as they are absolutely necessary and justified for reasons of national security, combating crime or protecting the rights and interests of third parties."

Article 9

"1. ... An individual's private and family life is inviolable ..."

Article 14

"1. Every person may express and propagate his thoughts orally, in writing and through the press, in compliance with the laws of the State.

2. The press is free. Censorship and all other preventive measures are prohibited. ..."

Article 15

“1. The protective provisions in respect of the press in the preceding Article shall not be applicable to films, sound recordings, radio, television or any other similar medium for the transmission of speech or images.

2. Radio and television shall be subject to direct State control. The control and imposition of administrative sanctions belong to the exclusive competence of the National Radio and Television Council, which is an independent authority, as specified by law. The direct control of the State, which may also assume the form of a “prior permission” status, shall aim at the transmission on objective and equal terms of information and news reports, as well as of works of literature and art; at ensuring the quality level of programmes mandated by the social mission of radio and television and by the cultural development of the country, and at the respect for the value of human beings and the protection of childhood and youth.”

Article 25

“1. The rights of human beings as individuals and members of society and the principles of the welfare state and the rule of law are guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These rights also apply to the relations between individuals Restrictions of any kind which, under the Constitution, may be imposed upon these rights should be stipulated either directly by the Constitution or by law ... and should respect the principle of proportionality.”

B. Law No 2863/2000

20. The relevant Articles of Law No. 2863/2000 provide as follows:

Article 1

“The National Radio and Television Council is an independent authority which has its seat in Athens. Its members enjoy personal and functional independence and they are not subject to administrative control when they exercise their duties.”

Article 4

“1. The National Radio and Television Council exercises direct State control, as provided by the Constitution, over the provision of radio and television services by issuing enforceable individual administrative acts. In particular: a) ..., b) ..., c) ..., d) ..., e) imposes the administrative sanctions and measures that are provided under Articles 4 § 1 of Law No. 2328/1995 ...”

Article 5

“...

7. The decisions of the National Radio and Television Council shall be fully and specifically reasoned and shall fully correspond to the minutes of the relevant meeting.

8 ... The National Radio and Television Council communicates its decisions to the Minister for Media. An application for annulment in respect of any of its decisions may be lodged with the Supreme Administrative Court ...”

C. Law No. 2328/1995

21. The relevant Articles of Law No. 2328/1995, as in force at the material time, provided as follows:

Article 3

“1. ...

b) broadcasts of any type (including advertisements) that are transmitted by radio and television stations shall respect the personality, honour, reputation, private and family life, and professional, social, scientific, artistic, political or any other relevant activity, of anyone whose image is broadcast on the screen or in respect of whom a name or data sufficient to identify him/her are transmitted ...”

Article 4

“1. In the event of the violation of a) provisions of national legislation, or of legislation of the European Union or of international law that concern directly or indirectly private television channels and in general, the functioning of private television; ... c) code of ethics, as they are defined in Article 3 of the present law, the National Radio and Television Council imposes of its own motion or following a question by the Minister for Media or a complaint lodged by anyone who has a legal interest, one or more of the following sanctions: aa) a recommendation to comply with a specific provision of law, issuing at the same time a warning that further sanctions may be imposed; bb) a fine between five million and five hundred million (5,000,000 to 500,000,000) drachmas [between EUR 14,673.51 and EUR 1,467,351.43 euros] ...; cc) a temporary suspension of up to three (3) months or indefinite interruption in respect of the broadcasting of a certain television show of the channel in question; dd) a temporary suspension of up to three (3) months in respect of the broadcasting of any television show; ee) the revocation of the channel’s permission to broadcast, and ff) sanctions of a “moral” character (such as the obligatory transmission of a statement concerning the rest of the imposed sanctions). The decision is communicated without delay to the Minister for Media, who reviews its legality and issues the order for the sanction to be imposed. The choice of the type and calculation of the administrative sanctions under the present Article shall depend on the gravity of the offence, the ratings of the show on which the offence took place, the share of the radio and television show market held by the person who owns the licence to broadcast, the size of the investment that has been made or planned, and whether the offender has committed the same offence again ... Any decision on the part of the National Radio and Television Council to impose the above-mentioned sanctions shall contain complete and specific reasoning and shall be taken in any event only after hearing the interested parties during at least one plenary meeting of the council ...”

D. Criminal Code

22. The relevant Article of the Criminal Code reads as follows:

370A

Violation of the confidentially governing telephone communication and oral conversations

“ ...

2. Whoever illegitimately monitors by special technical means or records onto a material media an oral conversation between third persons or records onto a material media a non-public action undertaken by another person shall be punished by imprisonment of up to ten years. Such an action shall be punished by the same sentence when the perpetrator records onto a material media the content of his conversation with another person without the latter person's explicit consent.

..."

E. Code of Journalistic Ethics in Radio and Television Services (Code of Journalistic Ethics) (Regulation 1/1991 of the National Radio and Television Council)

23. The relevant Articles of the Code of Journalistic Ethics, as in force at the time in question, provided as follows:

Article 7

"Private life shall be respected. Oversight of [a person's] private life, as well as the broadcasting of information or images concerning it, shall be permitted only if there are reasons concerning the public interest that in the circumstances of the case outweigh the right to respect for private life."

Article 9

"1. Direct measures are being used for the collection of information, data or images. Exceptions are allowed only if and in so far as [such information, data or images] are the only ones available and the information or images must be made known to the public for reasons ... in the public interest. Under no circumstances, however, may the method of collecting information prejudice human dignity."

F. Code of Radio and Television Services (Regulation 2/1991 of the National Radio and Television Council)

24. The relevant Article of the Code of Radio and Television Services, as in force at the time in question, provided as follows:

Article 2

"....

3. The Constitution and the legal order in general shall be respected, even when specific laws or institutions are being criticised."

G. Code on Journalistic Ethics (issued by the journalists' union on 20 May 1998)

25. The relevant Articles of the Code of Journalistic Ethics, as in force at the time in question, provided as follows:

Article 2

“... A journalist has the right to, and should:

...

b) respect the personality, dignity and inviolability of a person’s and citizen’s private life. Only if the right to impart information so entails – and even then only in a responsible manner – can he use data relating to the private life of people who exercise a public function or have a special role and power in society and are subject to social oversight;

...

f) collect and verify his information and secure its documentation (documents, photographs, tapes, television images) using legitimate journalistic methods, [and] always making his capacity as a journalist known;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicant company complained that the sanctions imposed on it by the National Radio and Television Council had violated its right to freedom of expression, as provided in Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant company's arguments

28. The applicant company maintained that the decision of the National Radio and Television Council to impose administrative sanctions on it on account of the three videos that had been filmed with a hidden camera and broadcast in two of its television shows had violated its right to freedom of expression. In particular, the applicant company argued that the fines imposed on it, specifically EUR 100,000 in respect of each of the two television shows during which the videos had been broadcast – as well as the obligation to broadcast the content of the above-mentioned decision – had interfered with its right to freedom of expression and in particular with its right to impart information.

29. The applicant company argued that the images recorded by the use of a hidden camera concerned the behaviour of a public figure who had been at the time a member of the Hellenic Parliament and chairman of the inter-party committee on the widespread use of electronic gambling. Therefore his participation in gambling games had been a matter of public interest in the light of A.C.'s public role and could have affected his duties as a member of parliament and as chairman of the parliamentary committee on electronic gambling. Viewers had had the right to learn the truth about an elected deputy. In any event, electronic gambling had been a matter of general interest in Greece at the time as many citizens had been financially destroyed owing to their participation in similar games. That had been the reason why the two television shows had prepared the broadcasts in question. In view of the above, the broadcasting of videos that had been filmed by the use of a hidden camera had been necessary, and A.C.'s right to private life had been outweighed by the applicant company's right to impart information concerning a matter of public interest. Both the National Radio and Television Council (which had imposed the administrative sanctions) and the Supreme Administrative Court (which had dismissed the application for annulment) had failed in the present case to strike a fair balance between the applicant company's right under Article 10 and A.C.'s right under Article 8 of the Convention.

30. In addition, the broadcasting of the second video had been necessary as it had showed that A.C. had tried to negotiate with the journalists who had filmed the first incident. In particular, A.C. had appeared to request that the journalists present the incident as if he had been gambling in order to experiment within the context of his parliamentary duties; in exchange he offered to appear live on the television shows. In the applicant company's view, such behaviour on the part of a public figure had had to be exposed; therefore, the broadcasting of that video had been necessary and had fulfilled

part of the applicant company's duty to inform the public, pursuant to Article 10 of the Convention.

31. The applicant company maintained that, as far as the first video was concerned, A.C. had been filmed in a public space – namely in a gambling arcade. In addition, the use of hidden camera had been necessary in order to document and prove his behaviour, as he would never have given his consent to being filmed playing on gambling machines – as proven by the fact that he had tried to negotiate with the journalists in order that the filmed incidents might be presented differently.

32. Lastly, the applicant company argued that in any event, the fine that had been imposed on it by the National Radio and Television Council had not been proportionate to the offence in question and stressed that the imposition of similar sanctions were jeopardising television's role in disseminating news, as protected by Article 10 of the Convention.

(b) The Government's arguments

33. The Government contested the argument that there had been any interference with the applicant company's right to impart information or with the public's right to receive information. In particular, the Government argued that the decision of the National Radio and Television Council had made it clear that the sanctions were being imposed because of the broadcasting of images that had been captured using a hidden camera and not because of the broadcasting of the legitimately transmitted news that A.C. had been spotted entering a gambling arcade and playing on gambling machines. The same considerations applied to the second video; the sanctions had been imposed because of the broadcasting of the images and not because of the transmission of the news of the meeting that had taken place between A.C. and the television station's reporters.

34. The Government further maintained that even if it were to be accepted that there had been interference with the applicant company's rights under Article 10 of the Convention, such interference had been prescribed by the domestic legislation, namely Article 15 § 2 of the Constitution, Article 3 § 1 (c) of Law No. 2328/1995, Articles 7 and 9 of Regulation 1/1991 and Article 2 § 3 of Regulation 2/1991 of the National Radio and Television Council, and Article 2 (b) and (f) of the Code on Journalistic Ethics (issued by the journalists' union). Additionally, the Government asserted that any interference with the applicant company's right to impart information had pursued the legitimate aim of protecting the rights and reputation of others – specifically A.C.'s right to private life, as protected under Article 8 of the Convention.

35. In respect of the necessity of the alleged interference, the Government stressed that all three videos had been filmed by illegitimate means, namely a hidden camera, without the consent and knowledge of A.C. and in violation of the relevant legislation. In addition, the images on all three videos, as well

as the filmed conversations of A.C. with journalists on the second and third videos, had breached criminal law and in particular Article 370A § 2 of the Criminal Code. Therefore, the applicant company had been aware that it had breached all the above-mentioned provisions of domestic legislation by filming and broadcasting the impugned videos. In the Government's view, the applicant company had not advanced any argument as to why the broadcasting of the videos had been necessary and why it had not been sufficient to merely broadcast the news without showing the videos that had been recorded in violation of A.C.'s right to his own image. The videos had not contributed to a public debate but had merely satisfied the public's curiosity and had been used as a means of securing higher ratings for the programmes; this could not have been considered a legitimate reason for violating A.C.'s right to his own image. In view of the above, the National Radio and Television Council – which considered that the applicant company could have broadcast the news but not the videos that had been the source of the news and had consequently imposed sanctions on the applicant company – had not erred but had struck a fair balance between the rights protected under Articles 8 and 10 of the Convention. Referring to the Court's case-law (*Bédat v. Switzerland* [GC], no. 56925/08, §§ 72-73, ECHR 2016), the Government argued that the sanction imposed had constituted an exercise of the positive obligation arising from Article 8 in order to effectively protect A.C.'s right to his own image. In addition, it had been in accordance with the Court's case-law, which made clear that the wide protection afforded to the press did not mean that journalists were not obliged to respect national legislation and the Code on Journalistic Ethics. The alleged interference had addressed a pressing social need – namely that in a democratic society dialogue should be conducted without the use of means which harmed the reputation and image of individuals unless such means contributing to a public debate.

36. Lastly, as regards the proportionality of the interference, the Government stressed that the Plenary Supreme Administrative Court had found the sanctions proportionate, as it had been clear that the National Radio and Television Council had taken into account the gravity of the offence, as well as the applicant company's previously-incurred sanctions for similar offences in the past. In addition, national legislation provided for far more severe sanctions than the ones imposed on the applicant company.

2. The Court's assessment

(a) The existence of interference

37. The Court notes that it is in dispute between the parties whether the imposition on the applicant company of the fine and the obligation to broadcast the content of the relevant decision imposed constituted interference with its freedom of expression. In particular, the Government

maintained that the sanctions imposed on the applicant company had not interfered with its freedom of expression, as they had not concerned the broadcasting of the news – the source of which was the videos that had been filmed with a hidden camera – but the projection of the videos themselves, which had been filmed by illicit means.

38. The Court notes that it has consistently held that freedom of expression includes the publication of photographs (*Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 103, ECHR 2012). Similarly, freedom of expression has been considered to include the broadcasting of videos (see *Haldimann and Others v. Switzerland*, no. 21830/09, ECHR 2015). It additionally notes that it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Stoll v. Switzerland* [GC], no. 69698/01, § 146, ECHR 2007–V). Consequently, the Court considers that the sanctions imposed on the applicant company on account of its broadcasting the impugned videos constituted interference with its freedom of expression.

39. Such interference will infringe the Convention unless it satisfies the requirements of paragraph 2 of Article 10. The Court must therefore determine whether it was “prescribed by law”, pursued one or more of the legitimate aims set out in that paragraph, and was “necessary in a democratic society” to achieve those aims.

(b) Prescribed by law

40. It has not been disputed that the legal basis for the imposition of the sanctions on the applicant company was Article 15 § 2 of the Constitution, Article 3 § 1 (c) of Law No. 2328/1995, Articles 7 and 9 of Regulation 1/1991 and Article 2 § 3 of Regulation 2/1991 of the National Radio and Television Council, and Article 2 (b) and (f) of the Code on Journalistic Ethics.

41. The Court thus concludes that the impugned interference was “prescribed by law” within the meaning of the second paragraph of Article 10 of the Convention.

(c) Legitimate aim

42. The Government submitted that the imposition of sanctions on the applicant company had pursued the legitimate aim of protecting the reputation and rights of others, specifically of A.C. The applicant company did not contest that argument.

43. The Court observes that A.C.’s image and voice were recorded without his knowledge and then broadcast against his will in a television programme with high viewing figures. It therefore considers that the measure in issue pursued the aim of protecting the rights and reputation of others, specifically A.C.’s right to respect for his image, words and reputation.

(d) Necessary in a democratic society*(i) General principles*

44. The general principles governing an assessment of whether an interference with the exercise of the right to freedom of expression is “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention are well-settled in the Court’s case-law. They were recently restated in *Pentikäinen v. Finland* ([GC], no. 11882/10, §§ 87-91, ECHR 2015); *Bédat*, cited above, §§ 48-54; and *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, §§ 82-93, ECHR 2015 (extracts)).

45. The Court notes that account must be taken of the need to strike the right balance between the various interests involved. Because of their direct, continuous contact with the realities of the country, a State’s courts are in a better position than an international court to determine how, at a given time, the right balance can be struck. For this reason, in matters under Article 10 of the Convention, the Contracting States have a certain margin of appreciation in assessing the necessity and scope of any interference in the freedom of expression protected by that Article in particular when a balance has to be struck between conflicting private interests (see, among other authorities, *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 54, ECHR 2011). However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it – even those delivered by an independent court. In exercising its supervisory function, the Court’s task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on. If the balance struck by the national judicial authorities is unsatisfactory, in particular because the importance or the scope of one of the fundamental rights at stake was not duly considered, the margin of appreciation accorded to the decisions of the national courts will be a narrow one (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 67, ECHR 2012). Where, however, the exercise of striking a balance between two conflicting rights was undertaken by the national authorities in conformity with the criteria laid down in the Court’s case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Von Hannover (no. 2)*, cited above, §§ 104-107, and *Couderc and Hachette Filipacchi Associés*, cited above, §§ 90-92).

46. The Court reiterates that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect (see *Von Hannover (no. 2)*, cited above,

§ 106). Accordingly, the margin of appreciation should in theory be the same in both cases.

47. The Court has identified, in so far as relevant to the present case, the following criteria within the context of balancing competing rights: the contribution to a debate of public interest; the degree to which the person affected is well-known; the subject of the news report; the method of obtaining the information and its veracity; the prior conduct of the person concerned; the content, form and consequences of the publication; and the severity of the sanction imposed (see *Couderc and Hachette Filipacchi Associés*, cited above, § 93; *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 90-95, 7 February 2012; and *Von Hannover (no. 2)*, cited above, §§ 109-13).

48. In addition, the Court reiterates that it is commonly acknowledged that the audiovisual media often have a much more immediate and powerful effect than the print media (see *Jersild*, cited above, § 31, and *Peck v. the United Kingdom*, no. 44647/98, § 62, ECHR 2003-I). Accordingly, although freedom of expression also extends to the publication of photographs, the Court recalls that this is an area in which the protection of the rights of others takes on particular importance, especially where the images contain very personal and intimate “information” about an individual or where they are taken on private premises and clandestinely through the use of secret recording devices (see *Von Hannover*, cited above, § 59; *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 47, 23 July 2009; and *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 143, 18 January 2011). Factors relevant to an assessment of where the balance between competing interests lies include the additional contribution made by the publication of the photographs to a debate of general interest, as well as the content of the photographs (see *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, § 37, 26 February 2002).

(ii) *Application of the above principles in the present case*

α) Contribution of the report to a debate of public interest

49. An initial essential criterion is the contribution made by articles in the press to a debate of public interest. The Court has previously recognised the existence of such an interest where the publication concerned political issues or crimes (see *Axel Springer AG*, cited above, § 90, with further references).

50. The applicant company maintained that the videos had been disseminated within the context of two television broadcasts devoted to the social issue of gambling and had contributed to the public debate concerning that issue, which had been a widespread problem in Greece at the time. It additionally claimed that the videos had included information concerning the conduct of A.C., a member of the Greek Parliament at the time who had also been chairman of the inter-party committee on electronic gambling and that

they therefore concerned in general a matter of public interest – that is to say the conduct of an elected representative. The Government contested the argument that the videos might have made an additional contribution to the debate of public interest, arguing that they had merely served the purpose of securing higher programme ratings.

51. The Court notes that both the National Radio and Television Council and the Supreme Administrative Court – by applying the relevant legislation and principles and acknowledging that the news had been lawfully broadcast – implicitly acknowledged that the subject of the report concerned a matter of public interest. In addition, they had considered that the applicant company had been entitled to report on the issue; they had only contested the applicant company’s entitlement to broadcast the impugned videos, in addition to the news itself (see paragraph 14 above).

52. The Court, assessing the report as a whole, as well as the substance of the information that is disclosed in it, and having regard to the observations of the domestic authorities (see *Couderc and Hachette Filipacchi Associés*, cited above, § 105), agrees with the domestic authorities’ assessment of whether the report was in the public interest. It notes in particular that the widespread use of gambling constituted a debate of considerable public interest. Turning to whether the report in question was capable of contributing to the public debate at issue (see *Stoll*, cited above, § 121, ECHR 2007-V), the Court observes that the report in question was not without political import. In particular, it could arouse the interest of the public with regard to the conduct of an elected representative *vis-à-vis* electronic gambling who, additionally, was chairman of an inter-party committee on electronic gambling.

β) Degree of notoriety of the person affected and the subject of the report

53. The Court reiterates that the role or function of the person concerned and the nature of the activities that are the subject of the news report and/or photograph constitute another important criterion to be taken into consideration (see *Von Hannover* (no. 2), cited above, § 110, and *Axel Springer*, cited above, § 91). The extent to which an individual has a public profile or is well-known influences the protection that may be afforded to his or her private life. Thus, the Court has acknowledged on numerous occasions that the public was entitled to be informed about certain aspects of the private life of public figures (see, *inter alia*, *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 45, ECHR 2004-X).

54. Nevertheless, in certain circumstances, even where a person is known to the general public, he or she may rely on a “legitimate expectation” of protection of and respect for his or her private life (see, *inter alia*, *Von Hannover* (no. 2), cited above, § 97). Thus, the fact that an individual belongs to the category of public figures cannot in any way, even in the case of persons exercising official functions, authorise the media to violate the

professional and ethical principles which must govern their actions, or legitimise intrusions into private life (see *Couderc and Hachette Filipacchi Associés*, cited above, § 122).

55. In the present case, the Court notes that A.C., as a member of Parliament and the chairman of the inter-party committee on electronic gambling, was undeniably a prominent political figure. The domestic authorities ought therefore to have considered the extent to which this prominence and those public functions were capable of influencing the protection which could be afforded to his private life (*ibid.*, § 124). The Court notes that the domestic authorities did not explicitly address this point. In fact, the National Radio and Television Council in its decision made no reference to A.C.'s public functions but merely referred to the relevant legislative provisions which provide the general protection of the right to private life and one's right to one's own image. The Supreme Administrative Court, however, stated that an exception could be made to the principle of the protection of private life whenever the facts disclosed could give rise to a debate on account of their impact, in the light of the status or position of the person concerned (see paragraph 14 above), although it drew no conclusion from that consideration in so far as broadcasting the impugned videos was concerned. Nevertheless, the Court considers that it can be derived from the domestic authorities' conclusions, notably that the news whose source was the videos that had been recorded with a hidden camera could legitimately be broadcast, those authorities took into account A.C.'s public functions (see *Von Hannover v. Germany (no. 3)*, no. 8772/10, § 55, 19 September 2013). The Court therefore concludes that this element was sufficiently taken into account by the domestic authorities when striking a balance between the competing interests.

56. As regards the subject of the report, the Court notes that from the parties' arguments, as well as from the minutes of the hearing that took place before the National Radio and Television Council, where the applicant company's attorneys admitted that the reporters had made use of a hidden camera following their receipt of specific information, it follows that the report focused on the behaviour of A.C. and not on a general discussion of electronic gambling (contrast *Haldimann and Others*, cited above, § 60). This is corroborated by the fact that all three videos were focused on A.C. and his reaction to the first video, which showed him entering a gambling arcade and gambling on electronic machines. Both the National Radio and Television Council and the Supreme Administrative Court accepted that the report concerning A.C.'s behaviour could be legitimately broadcast; nevertheless, they made a distinction between the news, whose source had been the videos recorded by hidden camera, and the broadcasting of the videos themselves.

57. The Court shares the domestic authorities' position. As regards the distinction made between the report on the one hand and the broadcasting of the videos on the other hand, the Court notes that its own case-law

acknowledges that the protection of the rights and reputation of others takes on particular importance in the context of the publication of photographs which may contain very personal or even intimate information (see *Von Hannover* (no. 2), cited above, § 103, and *Eerikäinen and Others*, cited above, § 70). The same considerations apply – even more so – to the broadcasting of videos, since the audiovisual media have often a much more immediate and powerful effect than the print media (see *Jersild*, cited above, § 31). Therefore, even taking into account the special features of television, there can be no objection to distinguishing between reporting on specific news and the broadcasting of a video (see, *mutatis mutandis*, *MGN Limited v. the United Kingdom*, cited above, §§ 148-156; *Verlagsgruppe News GmbH and Bobi v. Austria*, no. 59631/09, § 82, 4 December 2012; and *Société de conception de presse et d'édition v. France*, no. 4683/11, § 41, 25 February 2016), even though undoubtedly the broadcasting of the video added credibility to the account of events given in the report (see *Couderc and Hachette Filipacchi Associés*, cited above, § 148).

γ) Prior conduct of the person concerned

58. The Court notes that neither the domestic courts nor the parties commented on A.C.'s prior conduct. In the circumstances of the case, the Court considers that the material in the case file is not in itself sufficient to enable it to take cognisance of or examine A.C.'s previous conduct with regard to the media. Moreover, the mere fact that a person has cooperated with the press on previous occasions cannot serve as an argument for depriving that person discussed in an article of all protection (see *Egeland and Hanseid v. Norway*, no. 34438/04, § 62, 16 April 2009). An individual's alleged or real previous tolerance or accommodation with regard to publications touching on his or her private life does not necessarily deprive that individual of the right to privacy (see *Couderc and Hachette Filipacchi Associés*, cited above, § 130).

δ) Circumstances under which the video was taken – Method of obtaining the information and its veracity

59. The manner in which the information was obtained and its veracity are also important factors. In this connection, the Court reiterates that the protection afforded by Article 10 of the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information, in accordance with the tenets of responsible journalism (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], cited above, § 65; *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; *Kasabova v. Bulgaria*, no. 22385/03, §§ 61 and 63-68, 19 April 2011; and *Times Newspapers Ltd v. the United Kingdom* (nos. 1 and 2), nos. 3002/03 and 23676/03, § 42, ECHR 2009).

60. However, the concept of responsible journalism, as a professional activity which enjoys the protection of Article 10 of the Convention, is not confined to the contents of information which is collected and/or disseminated by journalistic means. That concept also embraces, *inter alia*, the lawfulness of the conduct of a journalist, including his or her public interaction with the authorities when exercising journalistic functions. The fact that a journalist has breached the law in that connection is a most relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly (see *Pentikäinen*, cited above, § 90).

61. The Court reiterates in this context that journalists who exercise their freedom of expression undertake “duties and responsibilities” (see *Stoll*, cited above, § 102, and *Handyside v. the United Kingdom*, 7 December 1976, § 49 *in fine*, Series A no. 24). It will be recalled in this connection that paragraph 2 of Article 10 does not guarantee a wholly unrestricted freedom of expression, even with respect to media coverage of matters of serious public concern. In particular, and notwithstanding the vital role played by the media in a democratic society, journalists cannot, in principle, be released from their duty to obey the ordinary criminal law on the basis that, as journalists, Article 10 affords them a cast-iron defence (see, among other authorities, *mutatis mutandis*, *Stoll*, cited above, § 102; *Bladet Tromsø and Stensaas*, cited above, § 65; and *Monnat v. Switzerland*, no. 73604/01, § 66, ECHR 2006-X). In other words, a journalist cannot claim exclusive immunity from criminal liability for the sole reason that, unlike other individuals exercising the right to freedom of expression, the offence in question was committed during the performance of his or her journalistic functions (see *Pentikäinen*, cited above, § 91).

62. Turning to the circumstances of the present case, the Court observes that both parties agreed in substance that the use of a hidden camera was not absolutely prohibited in domestic law, but that it could be accepted, subject to strict conditions. It was not disputed among the parties that pursuant to Article 9 § 1 of the Code on Journalistic Ethics, the use of this technique was permitted only where there was an overriding public interest in the dissemination of the relevant information, provided that the collection of the information did not violate a person’s dignity. The Court has already established that the report concerned a matter of public interest. It considers that what is important at this stage is an assessment of the conduct of the applicant company’s employees.

63. In this connection, the Court notes that in the first video A.C. was filmed entering a gambling arcade and playing on electronic gambling machines. Therefore, the applicant company’s employees recorded the first video in a public space – that is to say a place accessible to anyone. By contrast, the second video was recorded in unknown premises and showed journalists of the television show projecting the first video to A.C. As regards

the third video, the Court does not have in its possession sufficiently detailed knowledge, other than that it was filmed in the host's office.

64. The Court notes that the domestic authorities assessed the journalists' conduct as a whole, imposing one sanction on the applicant company for all three videos. In the Court's view, however, there are significant differences between the circumstances under which the first video was filmed on the one hand and those under which the second and third videos were filmed on the other hand. Without a doubt, the use of a hidden camera in this case raises serious issues under the relevant Greek legislation in respect of all three videos. Nevertheless, the fact that the first video was filmed in a public space in which anyone could have taken a photograph or – as in the instant case – filmed a video of the member of the Parliament is a factor that should have been taken into consideration by the domestic authorities when assessing the journalists' conduct. The Court has previously considered in cases falling under the scope of Article 8, albeit in a different context, that on occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 57, ECHR 2001-IX).

65. On the contrary, as regards the second and third videos, the Court considers that, in light of the clear position under Greek criminal law, A.C. was entitled to have an expectation of privacy as he entered private spaces with a view to discussing the recorded incidents and for his conversations not to be recorded without his explicit consent. In this connection, the Court considers that the journalists of the applicant company did not act in good faith in their meetings with A.C., who would have been entitled to feel deceived. The Court also notes that the National Radio and Television Council emphasised that the second and third videos were recorded by the journalists with a view to exercising pressure on A.C. and the applicant company did not adduce any argument to rebut this, other than claiming that recording A.C. with a hidden camera had been necessary, as he would never have consented to being filmed.

66. In addition, as the Government pointed out, the journalists working in the applicant company breached criminal law and in particular Article 370A § 2 of the Criminal Code, which protects the confidentiality of conversations. In the Court's view, the journalists of the television show, as professionals, must have been aware of the relevant legislative provisions and should have been aware that at that time they were in breach not only of professional ethics but also of criminal law. Therefore, such a breach can only be regarded as deliberate, irrespective of the veracity of the relevant information (which was not disputed).

67. The Court also notes that the National Radio and Television Council based its decision on the above-mentioned considerations and accordingly

sanctioned the applicant company for its use of a hidden camera which resulted in an interference with A.C.'s right to his own image. From the minutes of the meeting it can also be seen that the Council attached significant weight to the "entrapment" of A.C. (see § 7 above). The same considerations apply to the Supreme Administrative Court which, without questioning the legitimacy of broadcasting news whose source had consisted of the impugned videos, ruled that the applicant company had acted in breach of the Code on Journalistic Ethics, which provided for the use of direct and legitimate means when one exercised the right to impart information (compare *Tierbefreier e.V. v. Germany*, no. 45192/09, §§ 52–56, 16 January 2014). The Supreme Administrative Court emphasised the fact that the applicant company had not put forward any argument as to why it had been necessary to broadcast the videos that had been filmed without the knowledge and consent of A.C. In the Court's view, the domestic authorities' conclusion that the applicant company overstepped the limits of responsible journalism is not unreasonable, at least in so far as the second and third videos are concerned. In this connection, the Court attaches some weight to the fact that the applicant company had already been sanctioned for the same offence in the past. However, as regards the first video, the Court considers that the domestic authorities failed to take into consideration in their assessment the fact that it was filmed in a public place, an element which, in the Court's view, weakens the legitimacy of any expectation of privacy A.C. might have had when he entered the gambling arcade.

68. Therefore, the present case is distinguishable from *Haldimann and Others v. Switzerland* (no. 21830/09, ECHR 2015), in which the Court ruled that the applicants should have been given the benefit of the doubt as to whether they had intended to act in breach of the ethical rules governing their profession. In that case, the Court took into account the fact that the applicants had taken every measure to protect the broker's image by pixellating his image and altering his voice. In the present case, however, it is clear that the applicant company made no effort to compensate for the intrusion into A.C.'s private life; on the contrary, his conduct had been the central subject matter of the videos, while the conduct of the journalists in the present case suggests that the breach of the Code on Journalistic Ethics and of the Criminal Code was deliberate.

69. The case is further distinguishable from the case of *Radio Twist a.s. v. Slovakia* (no. 62202/00, ECHR 2006-XV), in which the Court ruled that there had been a violation of Article 10 after taking into account the fact that it had not been the applicant company or its employees that had been responsible for the recording in question, which had been undertaken by illegal means (*ibid.*, §§ 60, 62). In the present case, however, it has not been disputed by the parties that the applicant company's employees deployed illegal means with a view to capturing A.C. gambling and his reaction to the contents of the first video.

ε) Content, form and consequences of the broadcast

70. As regards the content and form of the broadcast, the Court notes that the first video showed A.C. entering a gambling arcade and gambling on two machines. The second video showed a meeting between A.C. and associates of the television host of “Jungle”, M.T., during which the first video was shown to A.C. The third video concerned a meeting between A.C. and M.T. in the latter’s office. The content of the second and third videos has not been described in detail to the Court by the parties; however, from the applicant company’s submissions (which have not been refuted by the Government), it appears that in the meetings recorded on those videos, A.C. was shown trying to convince the journalists to present the first video as an experiment connected with his parliamentary duties; in exchange he offered to appear live on television.

71. In respect of the consequences of the broadcast, the Court cannot help but notice that according to the applicant company the impugned videos resulted in A.C.’s removal from the parliamentary group of the political party for which he had been elected as deputy. In the Court’s view, such a consequence can only be regarded as serious and as having directly affected A.C.

στ) The severity of the sanction

72. Lastly, the Court recalls that the nature and severity of any sanction imposed are also factors to be taken into account when assessing the proportionality of the interference (see, among other authorities, *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV, and *Annen II v. Germany* (dec.), nos. 2373/07 and 2396/07, 30 March 2010).

73. In this regard, the Court observes that the National Radio and Television Council took into account the gravity of the offence, the number of viewers that had watched the two television shows, the size of the investment that the applicant company had made and the fact that the applicant company had been repeatedly sanctioned for committing the same offence in the past. On the basis of the above-mentioned considerations, it imposed on the applicant company the relevant sanctions, namely EUR 100,000 euros in respect of each of the two television shows during which the impugned videos were broadcast and the obligation to disseminate the content of the decision. The Supreme Administrative Court upheld the relevant sanctions, considering that they were proportionate and that the lack of specific details regarding the number of viewers or the size of the investment the applicant company had made did not have any impact on the proportionality of the sanctions. It further took into account the fact that Article 4 § 1 of Law no. 2328/1995 provided for far stricter penalties (including fines as high as EUR 1,467,351.43 and the temporary suspension or even the indefinite interruption of the broadcasting of a television show) than those imposed on the applicant company. The Court moreover notes that

the sanctions were imposed on the applicant company and not on the journalists who had made use of the hidden camera or who hosted the television shows.

74. In view of the above, the Court accepts that the sanctions imposed on the applicant company were relatively lenient, though not insignificant, and that a number of factors were taken into account when imposing them, such as the applicant company's past behaviour in relation to similar incidents. The Court also considers that the sanctions imposed cannot be said to have had a deterrent effect on the press reporting on matters of public interest.

ζ) Conclusion

75. The Court observes that the domestic authorities fully recognised that the present case involved a conflict between the right to impart ideas and the right of others to protection of their private life and tried to carefully balance the competing rights. In that respect, they attached fundamental importance to the way the information was obtained and to the journalistic duties and obligations of the applicant company. On the basis of the above, they imposed the relevant sanctions on the applicant company.

76. In the Court's opinion, these conclusions cannot be considered to be unreasonable or based on a misrepresentation of the relevant facts in so far as the second and third videos were concerned. Despite the somewhat laconic manner in which some of them were expressed, the reasons put forward by the domestic courts in support of their conclusions were in keeping with the principles set forth in the Court's case-law. In particular, the domestic authorities acknowledged that the news whose source was the impugned videos had been legitimately disseminated but considered that the videos had constituted a substantially more far-reaching interference with A.C.'s right to his image. This conclusion was in line with the Court's case-law, according to which, even though freedom of expression extends to the publication of photographs, this is an area in which the protection of the rights of others takes on particular importance, especially where the images contain very personal and intimate "information" about an individual or where they are taken on private premises and clandestinely through the use of secret recording devices (see *Von Hannover*, cited above, § 59; *Hachette Filipacchi Associés (ICI PARIS)*, cited above, § 47; and *MGN Limited*, cited above, § 143).

77. In view of the above, the Court concludes that in the circumstances of the present case, the reasons given by the Greek authorities were "relevant" and "sufficient" to justify the interference in respect of the second and third videos. The Court reiterates that, although opinions may differ on the outcome of the judgment, where a balancing exercise was undertaken by the national authorities, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Lillo-Stenberg and Sæther v. Norway*, no. 13258/09, § 44, 16 January 2014, with references to *Axel*

Springer AG, § 88, and *Von Hannover (no. 2)*, § 107, both cited above). In these circumstances and having regard to the margin of appreciation enjoyed by the domestic courts when balancing competing interests, the Court concludes that there are no strong reasons to substitute its view for that of the domestic authorities, and that there has accordingly been no violation of Article 10 of the Convention in respect of the second and third videos.

78. On the contrary, in so far as the first video is concerned, the Court considers that the domestic authorities failed to take into account the circumstances under which it was obtained. Despite the fact that it, too, was filmed by a hidden camera, the Court attaches great importance to the fact that it was not recorded in private premises and that the interference with A.C.'s rights under Article 8 was therefore significantly less serious. **The Court is thus of the opinion that the domestic authorities should have included in their assessment the fact that A.C., by entering a gambling arcade, could legitimately have expected his conduct to have been closely monitored and even recorded on camera, especially in view of the fact that he was a public figure.**

79. Having regard to these considerations and despite the margin of appreciation afforded to the domestic authorities, the Court finds that, in assessing the circumstances submitted for their appreciation, they did not strike a reasonable balance of proportionality between the measures restricting the applicant company's right to freedom of expression, imposed by them, and the legitimate aim pursued.

80. The Court therefore concludes that there has been a violation of Article 10 of the Convention in respect of the first video.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

81. The applicant company complained that the length of the proceedings before the Supreme Administrative Court had been excessive. It relied on Article 6, which in its relevant parts reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

82. The Court notes at the outset that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

83. The applicant company maintained that the length of the proceedings before the Supreme Administrative Court had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. In particular, it claimed that the procedure had lasted seven years from the date on which it had lodged the application for annulment and that the fault for the delay had lain with the authorities.

84. The Government contended that the length of the proceedings could not be considered unreasonable in view of the complexity of the case, the seriousness of the matters examined and the number of third-party interveners. It additionally stressed that the case had initially been scheduled to be examined by the Fourth Section of the Supreme Administrative Court, but that owing to its importance and complexity it had been referred to the Plenary Supreme Administrative Court.

2. The Court's assessment

(a) Period to take into consideration

85. The period to take into consideration began on 4 April 2003 (the date on which the applicant company lodged the application for annulment before the Supreme Administrative Court) and ended on 21 May 2010 (when judgment no. 1213/2010 was finalised). Therefore, the impugned proceedings have lasted seven years and two months.

(b) Reasonableness of the length of proceedings

86. The Court reiterates that the reasonableness of the length of proceedings must be assessed, in accordance with well-established case-law, in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 143, ECHR 2016 (extracts); and *Vassilios Athanasiou and Others v. Greece*, no. 50973/08, 21 December 2010).

87. The Court has examined on many occasions cases raising questions akin to the one in issue here — namely the duration of administrative proceedings — and concluded that there had been a breach of Article 6 § 1 (*Vassilios Athanasiou and Others*, cited above, § 48, and the cases cited therein).

88. Even accepting the Government's argument that the case presented a certain complexity and that its importance led to the Fourth Section of the

Supreme Administrative Court relinquishing the case to the Plenary Supreme Administrative Court, the Court notes that the proceedings lasted more than seven years for one instance. Having regard to its case-law on the subject, the Court considers that the Government have advanced no fact or argument justifying a different conclusion in the present case. Therefore, in the instant case the length of the proceedings was excessive.

89. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

91. The applicant company claimed 200,000 euros (EUR) in respect of pecuniary damage, which was the level of the fine imposed on it by the National Radio and Television Council. In this regard it submitted a certificate drafted by its managing director, according to which on 13 March 2003 the applicant company paid to the domestic authorities the sum of EUR 200,000; however the relevant proof of payment had been destroyed at some point during the years that had elapsed in the meantime. It additionally claimed EUR 50,000 in respect of non-pecuniary damage, arguing that the excessive length of the domestic proceedings in addition to the sanctions imposed on it had been made publicly known and had been covered widely in the press, thus damaging its reputation.

92. The Government considered that in the event that a violation was found, such a finding should constitute sufficient compensation for the applicant company. In addition, the Government contested the causal link between the fine imposed on the applicant company pursuant to the domestic legislation and the alleged violation of Article 10 of the Convention. They further argued that the applicant company could have lodged an application with the domestic courts for the reimbursement of the amount they had paid as a fine under Article 105 of the Introductory Law to the Civil Code governing compensation in cases of an illegal act or an omission on the part of the State. In any event, the Government submitted certificates from the relevant fiscal authorities attesting to the fact that the applicant company had paid EUR 100,000 and not EUR 200,000 as they had erroneously maintained.

93. On the basis of the documents in its possession, the Court accepts that the applicant company paid only EUR 100,000 of the fine imposed in relation

to all three videos. The Court further observes that, in the present case, it has found a violation of the applicant's rights guaranteed by Article 10 of the Convention only in respect of the first video. In view of the above, the Court finds that there is a causal link between the violation found and part of the pecuniary damage incurred. Taking into account the documents before it, the Court finds it reasonable to award EUR 33,000 to the applicant company in respect of pecuniary damage.

94. In addition, it considers that the violation of Articles 10 and 6 must have caused damage to the applicant company's reputation and prolonged uncertainty. In this regard, the Court reiterates that it may award just satisfaction for non-pecuniary damage to a commercial company. Non-pecuniary damage suffered by such companies may include aspects that are to a greater or lesser extent "objective" or "subjective". Aspects that may be taken into account include the company's reputation, uncertainty in decision-making, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV).

95. Having regard to all the evidence in its possession and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant company EUR 7,000, plus any tax that may be chargeable, in respect of non-pecuniary damage and dismisses the remainder of the applicant company's claim under this head.

B. Costs and expenses

96. The applicant company did not submit a claim for costs and expenses. Accordingly, the Court does not make any award under this head.

C. Default interest

97. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention in respect of the first video;

3. *Holds* that there has been no violation of Article 10 of the Convention in respect of the second and third videos;
4. *Holds* that there has been a violation of Article 6 of the Convention;
5. *Holds* unanimously,
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 33,000 (thirty-three thousand euros), in respect of pecuniary damage;
 - (ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
6. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 22 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Kristina Pardalos
President