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TITLE

CONFLICT OF HUMAN RIGHTS: RESPECT FOR PRIVATE LIFE AND FREEDOM OF EXPRESSION

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Your freedom of expression ends
where my private life begins.

INTRODUCTION

As a fundamental aggregate of the basic principles for the state governed by the rule of law the amended text of the Constitution of the Republic of Armenia (the ***"Constitution"***) declares inviolability of private and family life, honour and good reputation, and home as a right for everyone[1]. Such rights are granted under many international documents as well, including ***the European Convention on Human Rights, the Universal Declaration of Human Rights*** (the ***"Convention"***), ***the International Covenant on Civil and Political Rights, the Charter of Fundamental Rights of the European Union***.

These all fall under the notion of privacy which covers the physical, moral and psychological integrity[2] and mental stability[3] of a person and is a broad term with no strict, clear and widely accepted definition. However, it is universally accepted[4] that the right to privacy is one of the grounds for the fulfillment of a human being in society[5], when private and public figures have the right to live privately away from unwanted attention. This right oftentimes means the privilege to personal autonomy.

The other part of the right to privacy are basic principles including some limitations while processing personal data. As a general rule, personal information should not be made public or be processed without the consent of the concerned person. Furthermore, it is prohibited to disseminate information obtained by video and audio recording conducted without notifying the person of the fact or recording, when the person expected to be out of sight or earshot of the implementer of video and audio recording and has taken sufficient measures to ensure it, with the exception of situations when such measures were obviously not sufficient[6].

[1] See Articles 31 and 32 of the RA Constitution (2015).
[2] X and Y v. the Netherlands, Series A, App. No: 91 (1985).
[3] Bensaid v. the United Kingdom, App. No: 44599/98 (2001).
[4] See Article 3 of the Universal Declaration of Human Rights which provides obligations directly for member stats.
[5] Article 8(1) of the Convention, "Everyone has the right to respect for his private and family life, his home and correspondence".
[6] See Article 7(1) of the RA Law "On Mass Media".

Simultaneously the above-mentioned local and international documents guarantee everyone's rights to freedom of expression, which allows the owners of this right to hold opinions and seek, receive and disseminate information and ideas through any media without interference by public authority and regardless of frontiers[7].

It is more than obvious that people want to be kept informed of ongoing events, including details of the life of the people who are in the center of interest. These are persons acting in a public context, as political figures or public figures[8] and have a position in society[9] or have entered the public scene[10] including heads of state, politicians and high-ranking local civil servants[11]. Thus, mass media, as one of the means to exercise this right, pries into every corner of social lives thereof[12].

Media makes us aware of various social, political and economical activities happening around the world. It is like a mirror, which shows us or strives to show us the bare truth and harsh realities of life[13]. Media also exposes loopholes in the democratic system, which ultimately helps the government in filling the vacuums of loopholes and making a system more accountable, responsive and citizen friendly.

However, there were times when freedom of expression wasn't the status quo. In Europe, only in 1950 did, the newly founded Council of Europe drafted the European Convention on Human Rights with the atrocities of World War II in mind, intending to protect human rights in the world.

As the European Court of Human Rights (in this paper hereinafter referred to as the ***"Court"***) puts it, "the public has a right to receive information of general interest[14]". The Court also notes that "Article 10[15] applies not only to the content of information but also to the means

[7] See e.g. Articles 42 and 51 of the RA Constitution (2015).

[8] According to Article 7 of the Declaration on the Mass Media and Human Rights adopted by the Parliamentary Assembly, "Public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain".

[9] Verlagsgruppe News GmbH v. Austria (2), App. No: 59631/09 (2013).

[10] Standard Verlags GmbH v. Austria (3), App. No: 34702/07 (2001).

[11] See e.g. Timciuc v Romania, App. No: 28999/03 (2010).

[12] It should be noted that certain individuals will always be public figures (even following death). See e.g. Dzhugashvili v. Russia, App. No: 41123/10 (2015).

[13] Past Years Questions Social Science/Studies & EVC 2019-2011, page 112 (2019).

[14] Társaság a Szabadságjogokért v. Hungary, App No: 37374/05 (2009).

[15] Article 10(1) of the Convention, "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".

of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information[16]". Moreover, "the [I]nternet plays an important role in enhancing the public's access to news and facilitating the sharing and dissemination of information generally (...)[17]".

Hence, the right to freedom of expression like the right to privacy isn't absolute and has some limitations. This right can be subject to some restrictions, which should be prescribed by law and are necessary for a democratic society for the protection of the reputation or rights of others as well.

As competing rights, privacy and freedom of expression have equal weight in the case law of the Court, "as a matter of principle these rights deserve equal respect. It depends on the circumstances in a particular case which right should prevail. The [C]ourt has developed a large body of case law on balancing privacy and freedom of expression. The [C]ourt takes a nuanced approach, taking all circumstances of a case[18][19]".

In order to find a balance between these conflicting rights of the freedom of expression and an individual's right to privacy, laws in different countries try to offer a set of rules.

While technology advances at an unprecedented pace, legislators are finding it progressively difficult to keep up and suggest a satisfactory resolution for these contrasting values.

Consequently, it becomes more and more difficult to maintain balance when today's world is increasingly being driven by an intermixture of information and entertainment values in the form of both traditional media and the Internet.

With bearing these foregoing in mind, this thesis paper will underscore the main aspects of the right of freedom of expression and the respect for private life to reveal and understand their roles, the "job" of the media and the notion of responsible journalism in modern society by discussing litigations, domestic and international practices, and the scientific approaches that shaped those ideas. As an outcome of such research we will try to provide guidance on how to strike the golden mean between these rights by amending national applicable legislation

[16] Autronic v. Switzerland, App. No: 12726/87 (1990).

[17] Fredrik Neij and Peter Sunde Kolmisoppi v. Sweden, App No: 40397/12 (2013).

[18] M. Oetheimer, "Freedom of Expression in Europe: Case-law Concerning Article 10 of the European Convention of Human Rights", Council of Europe publishing (2007).

[19] Today's judicial practice has slowly tripped the balance ever more in favor of a person's right to privacy against the competing right of freedom of expression, which will be shown in this thesis paper in more details.

based on the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia[20].

[20] See Article 81(1) of the RA Constitution. Such approach has been established by the RA Constitutional Court in decision ՍԴՈ-997 dated on November 15, 2011.

CHAPTER 1: THE RIGHT OF FREEDOM OF EXPRESSION, RESPONSIBLE JOURNALISM

The right to the freedom of expression is a right granted to everyone. It includes the right to hold opinions and receive and disseminate information and ideas without interference by public authorities[21].

Access to public information is one of the essential preconditions for the transparency of a responsible state governance for democracy and the public. Democratic oversight of public opinion promotes transparency in the functioning of state power and promotes the accountability of government agencies and officials[22].

This right is an essential element of today's democratic society and a basic condition for its progress[23]. Going beyond information and ideas that are favorably received or regarded as inoffensive or with indifference, the right to freedom of expression extends to information that could offend, shock or even disturb[24].

The pluralism of the media is an important aspect of the right to the freedom of expression. In a democratic society, pluralism of opinions in the media must not only be tolerated but actively promoted and facilitated. Different voices and opinions present in a society must be included and reflected in the media[25]. In this way, tolerance and broadmindedness are built.

It is said that the media constitute the fourth pillar of democracy. They also serve as watchdogs that we rely on for uncovering errors and wrongdoings by those who have power. If there is no freedom of expression – if people aren't free to share information and express a range of ideas, opinions and political views; and, the corollary to that, if people aren't free to receive information in the form of a range of ideas, opinions and political views – they will not be sufficiently informed to make appropriate and meaningful political choices, whether at the ballot box or in their interactions with government more generally[26].

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[21] See Article 10 of the European Convention on Human Rights.

[22] See the decision of the RA Constitutional Court, App. No: ՍԴՈ-1010 (2012).

[23] That is why the right to receive information is granted under the RA Constitution (Article 51).

[24] See, e. g., Lingens v. Austria, App. No: 103 (1986); Nilsen and Johnsen v. Norway, App No: 23118/93 (1999)

[25] Article 4(1) of the RA Law "On Mass Media" declares: "Media practitioners and journalists operate freely based on the principles of equality, legality, freedom of expression and pluralism."

[26] Article "Role of media in democracy", available at https://legaldesire.com/role-of-media-in-democracy/ (last visited on May 11, 2020).

The right to freedom of expression and information is intrinsically linked to the citizens' right to know, which is a prerequisite for making well-informed decisions. The possibility to express freely ideas and opinions enhances public dialogue and therefore stimulates the development of the democratic process in society[27].

The media plays an important role in the dissemination and discussion of ideas and information[28]. As a judge of the English Court of Appeal said, "The media, to use a term which comprises not only the newspapers but also television and radio, are an essential foundation of any democracy. In exposing crime, anti-social behavior and hypocrisy and in campaigning for reform and propagating the views of minorities, they perform an invaluable function[29]".

Nonetheless, a journalist's right to the freedom of expression isn't absolute, as any right also implies an obligation and responsibility. From this perspective, the term "rights" includes a journalist's prerogative to exercise her/his professional activity and protects not only the substance of the ideas and information expressed but also the form in which they are conveyed[30]. For this purpose, laws provide guarantees of the freedom of speech in the sphere of the media. Implementers of media activity and journalists shall operate freely in compliance with the principles of equality, legitimacy, freedom of speech (expression) and pluralism[31]. This is why censorship[32]; forcing the implementer of media activity or a journalist to disseminate or refrain from the dissemination of information; the interference with the legitimate professional activities of a journalist are prohibited[33].

Howbeit, the terms "obligation" and "responsibilities" means that a pressman should act in good faith and provide accurate, complete and reliable information in accordance with the ethics of journalism[34]. Journalists are, as a matter of principle, obliged to respect the applicable law and ethical codes while reporting news. They cannot disseminate secret information, as well as information violating the right to privacy of one's personal or family life[35].

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[27] Recommendation of the Parliamentary Assembly of the Council of Europe N 1506 "On Freedom of expression and information in the media in Europe" (2001).

[28] The press has been described as "a vital institution of a free society". See the Report of the Committee on Privacy, Cmnd. 5012 (1972), para. 126.

[29] Francome v. Mirror Group Newspapers, Case No: 1 W.L.R. 892 (1984).

[30] Oberschlick v. Austria, App. No: 204 (1991).

[31] The RA Law "On Mass Media", Article 3 (1).

[32] The RA Law "On Television and Radio", Article 4.

[33] The RA Law "On Mass Media", Article 4 (3).

[34] See e.g. Pedersen And Baadsgaard v. Denmark, App. No: 49017/99 (2004).

[35] The RA Law "On Mass Media", Article 7(1).

In addition to the legal rights and obligations set forth in the relevant legal norms, the media have an ethical responsibility towards citizens and society.

A basic principle of any ethical responsibility of journalism is that a clear distinction must be drawn between news and opinions, making it impossible to confuse them. News is information about facts and data, while opinions convey thoughts, ideas, beliefs or value judgments on the part of media companies, publishers or journalists. As the Court has held although the press must not overstep certain bounds, for example in respect of the rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest[36]. The public interest concerned matters which affected the public to such an extent that it might legitimately take an interest in them, which attracted the public's attention, or which concerned the public to a significant degree. That especially included matters which affected the well-being of citizens or the life of the community, or which were capable of giving rise to controversy, or concerned an important social issue, or which involved a problem that the public had an interest in being informed about[37]. As an example, the in Bodrožić v. Serbia[38] case, the Court found it acceptable for a journalist to criticize a historian by calling him an "idiot" and "fascist" because his opinion was published in response to an appearance by the historian on a television show where he had discussed ethnic and national tensions in the Balkans. The offensive words were thus not to be interpreted as statements of facts, but as an opinion in reaction to the historian's own intolerance towards national minorities. In the Savva Terentyev v Russia case, the Court viewing the journalist's comments on burning "infidel cops" as a provocative metaphor, observed that the journalist had not called for such violence against a particular officer or officers. His comments had rather been aimed at the police as a public institution and had not been made on a background of sensitive social or political issues or amid a general security situation in the region that was tense. Nor had there been any clashes, disturbances, anti-police riots, or atmosphere of hostility and hatred that meant his statements could have caused a real threat of physical violence against officers. In addition, it was difficult to regard the police as a vulnerable group which needed a heightened level of protection. In fact, the police had to portray a particular tolerance to criticism unless they were faced with inflammatory speech that could lead to immediate violence against them[39].

[36] Bladet Tromsø and Stensaas v. Norway, App No: 21980/93 (1999).
[37] The Sunday Times v. the United Kingdom, App. No: 6538/74 (1979).
[38] Bodrožić v. Serbia, App. No: 1180/2003 (2005).
[39] Savva Terentyev v. Russia, App. No: 10692/09 (2018).

News broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and it should be presented, described and narrated impartially. Rumors must not be confused with news.

Having regard to the requisite conditions and basic principles enumerated above, the media must undertake to submit to firm ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions[40].

The media must be diligent to not publish inaccurate, misleading or distorted information or images, including headlines that aren't supported by the text[41]. It follows that journalists are required to ascertain data before they publish it. Aside from the same requirement doesn't apply when they report and circulate value-judgments. However, even opinions must have some factual grounds.

In certain cases, it is justified for journalists to verify the accurateness of factual statements. By way of illustration, when journalists report on the official record or information from the government or the public authorities, they aren't required to carry out an additional independent investigation to verify those facts. Thus, the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the content of official reports without having to undertake independent research[42].

Although in their sphere of decision-making to determine how a press story is to be presented and a journalist is entitled to use a certain degree of exaggeration or even provocation. They may, therefore, enhance articles and attempt to present them in an appealing manner. However, they aren't allowed to misrepresent or mislead their readers.

Whenever possible and practical, journalists should ask for comments from the subjects of their reports. Albeit, such subjects aren't bound to give any representations before the publication or broadcast. This the first step to responsible journalism.

As part of their responsibilities, journalists should be delicate when publishing information concerning people who are affected by the tragedy of grief. Such publication might lead to a violation of the right to privacy of those affected whilst simultaneously hurting their feelings. As an example, in the Hachette Filipacchi Associés v. France[43] case, when a weekly magazine published an article illustrated by a photograph of a murdered higher official's body

[40] Recommendation of the Parliamentary Assembly of the Council of Europe N 1003 "On the ethics of journalism" (1993).
[41] Article 1 (i) of the UK Editor's Code of Practice.
[42] Pedersen and Baadsgaard v. Denmark, App. No: 49017/99 (2003), see also Article 8(8) of the RA Law "On Mass Media".
[43] Hachette Filipacchi Associés v. France, App. No: 40454/07 (2014).

lying on the road, facing the camera. Family members successfully sued the magazine for an invasion of privacy. However, Judge Loucadies, who did not share a view of the majority, separately, personally considered that the publication of the photograph and accompanying comment should be taken as a clear condemnation of the assassination, an expression of sympathy for and solidarity with the family, and a general appeal to public opinion to share the horror of that act. Such publication could not cause "the trauma" of the family, a trauma which originated from the killing itself, and a photograph wasn't in itself, responsible for their grief. He also added, "… relatives of public figures like Prefect Erignac must be prepared to suffer the consequences of the publicity such personalities attract.".

For this case, Judge Vajic gave his dissenting opinion as well. He stated, "this case raises the question – in a particularly serious context – of the balance between freedom of information and protecting people's rights of privacy. There was a conflict between Prefect Erignac's right to respect for his dignity after his death, and the rights of his family in mourning, and the public's right to be informed. He emphasized "subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society"".

Also, journalists must exercise special care when reporting on vulnerable groups or groups which have specific needs. For example, children and young people should be protected because of the inherent vulnerability that their age implies, which also applies in the context of media coverage. Special consideration should be given to the maturity of a child when quoting his/her comments. The child may not be sufficiently aware of the impact of his/her words, and the media have an ethical responsibility to not cause damage to a child. Furthermore, in cases where parents or legal representatives' issue negative, sensitive or other inappropriate comments about children under their care, journalists should pay particular attention to the best interest of the child. They should only publish such information when there is an overriding public interest, but avoid mentioning the name of the child, unless necessary, in order to avoid a lifelong association with negative or embarrassing comments. In such cases, where the name of the child isn't mentioned and their face isn't shown, journalists should also avoid publishing information indirectly identifying the child (such as photographs of the parents or the precise location of the family, etc.).

The same rule must be applied when conducting research among people requiring protection. Restraint is called for, especially with regard to persons who aren't in full

possession of their mental or physical capacities or who have been exposed to an extremely emotional situation. Journalists should avoid exploiting the vulnerability of these persons in order to gain information.

Journalists should pay particular attention when reporting on sensitive information which concerns an individual's health, grief, some personal feelings, and emotions. According to this point, the public has a legitimate interest in being informed about crimes, investigation proceedings and trials. While the aim of crime reporting is to inform the public, a journalist should nevertheless report in good faith by refraining from publishing groundless and unverified accusations. In particular, journalists should not present a person as guilty until a conviction has been pronounced by a court. A clear distinction should be made between suspicion and conviction. As a matter of good practice, the media could specify whether a person has pleaded guilty or not, taking into consideration that a confession of guilt should not be presented as a pang proven guilt[44]. In journalism, information and opinions must respect the presumption of innocence, in particular in cases which are still *sub judice,* and must refrain from making judgments[45].

In Egeland and Hanseid v. Norway[46], two newspapers had published, albeit without consent, photographs of an individual about to be taken away to serve a long prison term to which she had just been sentenced. Although the photographs had concerned a public event and had been taken in a public place at a time when her identity was already well known to the public, the Court found that the newspapers' portrayal of her had been particularly intrusive as she was in tears and in great distress. She had just been arrested inside a courthouse after having been notified of a verdict convicting her of triple murder entailing the most severe sentence[47].

In the Mitkus v. Latvia[48] case the Court stated that even when the applicant himself had explicitly consented to the publication of sensitive data about him in the mass media, the state had an obligations to adopt measures designed to secure the right of privacy even in the sphere of relations between individuals[49] and the protection of private life has to be balanced, among other things, against the freedom of expression guaranteed[50]. Concerning the nature of the

[44] Presumption of innocence is a legal right of the accused in a criminal trial, and it is an international human right under the Universal Declaration of Human Rights, Article 11.

[45] Recommendation of the Parliamentary Assembly of the Council of Europe N 1003 "On the Ethics of Journalism" (1993).

[46] Hanseid v. Norway, App. No: 34438/04 (2009).

[47] See, e.g., News Verlags GmbH & CoKG v. Austria, App. No: 31457/96 (2000).

[48] Mitkus v. Latvia, App. No: 7259/03 (2013).

[49] Evans v. the United Kingdom, App. No: 6339/05 (2007).

[50] Karakó v. Hungary, App. No: 39311/05 (2009).

disclosed information, the Court emphasized: "the importance of the protection of personal data, and in particular of medical data, paying particular attention to the importance of the protection of the confidentiality of a person's HIV status …, *inter alia* because of the risk of ostracism of HIV-positive persons". The Court found that since the prisoner's features were clearly visible (his first name and the first letter of his surname, details of his criminal record and place of imprisonment were mentioned), it was perfectly possible that his fellow prisoners and other persons could identify him and behave differently to him based on this state of health[51].

It is perfectly reasonable when subservience to professional good practice becomes overridden by the search for truth itself, it is a sad day for the freedom of expression[52]. A mistake of one journalist cannot affect the reputation of others, but it is crucial that we always all remember the loud cases in mass media at the beginning of the 21st century which caused Mr. Brian Leveson to write his famous report in 2012[53]. There Mr. Leveson stated that during the past years there had been a recklessness in prioritizing sensational stories in the industry, "almost irrespective of the harm that the stories may cause and the rights of those who would be affected". The report pointed to evidence that journalists had targeted actors, footballers, writers, pop stars in a way that affected them and their families negatively, "whether or not there is a true public interest in knowing how they spend their lives". The report stated there was evidence about surveillance and phone hacking by violating that persons' right to secrecy of communication[54] just to satisfy the public curiosity on some "stars". The worst side of such activity was that even some political parties had had or developed too close a relationship with the press in a way which had not been in the public interest. All these were the result of the lack of regulatory legislation and journalistic ethics, and furthermore, the indifference of the competent state bodies where there could not be any plurality. The big uproar led to immense steps being taken in the UK to create responsible journalism which is required in the democratic society.

[51] Judge Myjer gave dissenting opinion emphasizing the fact that the applicant had given his consent to be interviewed and give provide his personal data. See, e.g., Feldek v. Slovakia, App. No: 29032/95 (2001).

[52] Flux v. Moldova, App. No: 22824/04 (2008), dissenting opinion of judge Bonello, joined by judges Davíd Thór Björgvinsson and Šikuta.

[53] Lord Justice Brian Leveson "An inquiry into the culture, practices and ethics of the press", London (2012), the Stationary Office.

[54] Such right is granted under the RA Constitution (Article 33(1)).

CHAPTER 2: RESPECT FOR PRIVATE LIFE, PERSONAL DATA PROTECTION

The right to privacy[55] means that all private and public actors have the right to live privately away from unwanted eyes assuredly including some exceptions.

Privacy as a concept is notoriously resistant to definition[56]. It includes a wide range of personal interests or claims which would place limits on the right of society and of its members to acquire knowledge of, and to take action regarding, another person. At its core lies the desire of the individual to maintain control over information, possessions and conduct of a personal kind, and, as a corollary, to deny or control access thereto by others. As such, it is now universally recognized as a human right,[57] and is to be distinguished from other interests such as confidentiality.

In the early 1970s, the Canadian Privacy Act[58] identified three categories of claims to privacy: territorial privacy, privacy of the person and privacy in the information context. These it described as follows: "*Territorial Privacy*: A man's home is her/his castle[59]. At home she/he may not be disturbed by trespassers, noxious odors, loud noises. No one may enter without her/his permission, except by lawful warrant. *Privacy of the Person*: That the physical person is deemed to be surrounded by a bubble or aura protecting her/him from physical harassment. But, unlike physical property, this "personal space" isn't bounded by real walls and fences, but by legal norms and social values. *Privacy in the Information Context*: The third category of claims to privacy is based essentially on a notion of the dignity and integrity of the individual, and on their relationship to information about her/him". This notion of privacy derives from the assumption that all information about a person is in a fundamental way her/his own, for her/him to communicate or retain for herself/himself as she/he sees fit. And this is so whether or not the information is subsequently communicated accurately, and whether or not it is potentially damaging to her/his privacy. Competing social values may require that an individual disclose certain information to particular authorities under certain. She/he may

[55] See Article 8 of the European Convention on Human Rights.
[56] See, e.g., E.J. Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser," (1964) New York University Law Review.
[57] See Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights.
[58] Canada's Federal Privacy Law, available at https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/200744E#a2 (last visited on May 11, 2020)
[59] See, e.g., Alkaya v. Turkey, App. No: 42811/06 (2013).

decide to make it available in order to obtain certain benefits. Nevertheless, she/he has a basic and continuing interest in what happens to this information, and in controlling access to it[60]. When it comes to the protection of personal data which are in the public domain, the fact that information is already in the public domain will not necessarily remove the protection of Article 8 of the Convention[61]. Where there has been compilation of data on a particular individual, processing or use of personal data or publication of the material concerned in a manner or degree beyond that normally foreseeable, private-life considerations arise. This article provided for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy as regards data which, albeit neutral, are collected, processed and disseminated collectively and in such a form or manner that the Article 8 rights of the individuals concerned are engaged

As an example to this, in the Douglas v. Hello! Ltd. case, an essential question that the UK court had to consider was whether the Douglas' had a right of privacy, taking into consideration that they were prepared to share their experiences with the public through OK! and possible other forms of press at a later date.

If the information is obviously private, the situation will be one where the person to whom it relates to can reasonably expect her/his privacy to be respected. Hence, there is usually no need to go on and ask whether it would be highly offensive for it to be published. Where the person publishing the information knows or ought to know that there is a reasonable expectation that the information in question will be kept confidential the threshold is reached where the court will have to balance the claimant's interest in keeping the information private against the countervailing interest of the recipient in publishing it.

Where the information is private, it will normally impose on anyone publishing that information the duty to justify what, in the absence of justification, will be a wrongful invasion of privacy.

The photographs can be particularly intrusive and have shown a high degree of willingness to prevent the publication of photographs, taken without the consent of the person photographed but which the photographer or someone else sought to exploit and publish. This protection extended to photographs, taken without their consent, of people who exploited the commercial value of their own image in similar photographs, and to photographs taken with the consent of people but who had not consented to that particular form of commercial

[60] Egeland and Hanseid v. Norway, App. No: 344/38/04 (2009).
[61] Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, App. No: 931/13 (2017).

exploitation, as well as photographs taken in pubic or from a public place of what could be seen if not with a naked eye, then at least with the aid of powerful binoculars. Even though the fact that the Claimant went to the brothel and the details as to what he did there weren't to be restrained from publication, the publication of the photographs taken there without his consent could still constitute an intrusion into his private and personal life and would do so in a peculiarly humiliating and damaging way. It did not seem to be remotely inherent in going to a brothel that what was done inside would be photographed, let alone that any photographs would be published. Thus, the Douglas' were entitled to damages for breach of confidence and interference by Hello! Magazine[62].

As mentioned previously, the concept of privacy is a broad term with no strict and certain definition[63]. This notion covers the physical and psychological integrity of a person and multiple aspects of a person's identity such as gender identification and sexual orientation, name or elements relating to a person's right to their image. A person's good reputation and image are also parts of this right.

A person's image composes one of the basic attributes of her/his personality, as it demonstrates the person's unique characteristics and features, and distinguishes the person from others. Journalists should secure the consent of the person when taking her/his picture[64]. The person is to decide who, how and when they can be photographed. Otherwise, a crucial feature of personality (the image) is dependent on third parties. One of the most discussed and best examples to illustrate this statement is the Mgn Limited v. the United Kingdom case[65]. The Mirror published an article about the supermodel Naomi Campbell with the title on its cover page which read "*Naomi: I am a drug addict*" and a longer article inside the newspaper elaborated on Campbell's addiction treatment accompanied by photos taken secretly near the Narcotics Anonymous center that she was attending. National courts concluded that the publication of the information was justified as a matter of public interest. It was because Campbell had previously publicly denied drug use and the articles disclosed the truth. However, although the publication of that information was justified, the Court separately found that the additional publication of photographs was offensive and distressing for her and infringed on her right to respect for private life, and particularly her image[66].

[62] Douglas v Hello! Ltd., Case EWCA Civ 595 (No. 3) (2005).
[63] See, e.g., Smirnova v. Russia, App. Nos: 46133/99 and 48183/99 (2003).
[64] Reklos and Davourlis v. Greece, App. No: 1234/05 (2009).
[65] Mgn Limited v. the United Kingdom, App. No: 39401/04 (2011).
[66] See, e.g., Müller v. Germany, App. No: 54963/08 (2014), where the publication of the photograph without the applicant's consent was considered a violation of the applicants' privacy, however, the accompanying article was

That is why there are tougher requirements for journalists to follow when publishing articles and photos on private persons. Journalists should refrain from publishing footage taken by closed-circuit television (CCTV) featuring private persons without masking the pictures, unless that information contributes to a debate of general interest. In Peck v. United Kingdom[67], a private individual (who was suffering from depression yet wasn't accused of any criminal offence) was recorded while walking in the street with a kitchen knife in his hand and subsequently attempted to slit his wrists. While broadcasting that news, national TV did not mask the face of the applicant. The Court held that there was no necessity to disclose the identity of the person even for the prevention of a crime. The disclosure by the Council of the relevant footage therefore constituted a serious interference with the applicant's right to respect for his private life and reputation.

As a matter of general principle, a publication concerning strictly private matters infringes the right to respect for private life, unless the concerned person gives her/his consent, or such publication is considered to be in the public interest[68].

The right of privacy, like every other right that rests in the individual, may be waived by her/him or by any authorized person who is empowered to act on her/her behalf. Such waiver may allow an invasion of privacy only to such an extent as may be legitimately necessary and proper in dealing with the matter which has brought about the waiver.

The other aspect of the right to privacy is the means of personal data processing. The colossal increase in facilities capable of transferring any data created the necessity for legal recognition of an individual's right to be let alone. This is to protect a person from unnecessary suffering when interfering into her/his life.

To the extent that a so-called "right to be forgotten" is recognized in some jurisdictions, states should ensure that any such "right" is limited to the right of individuals under data protection law to request search engines to delist inaccurate or out-of-date search results produced on the basis of a search for their name. On principle, de-listing requests should be subject to ultimate adjudication by the courts or independent adjudicatory bodies with relevant expertise in the freedom of expression and data protection law. At the same time, search engines are more likely to be the first port of call for such requests. Therefore, it is vital that

accurate and in no way defamatory. The combined effect of those factors diminished the gravity of the violation of privacy, so there was no award.

[67] Peck v. United Kingdom, App. No: 44647/98 (2003).

[68] See, e.g., Standard Verlags GmbH v. Austria, App. No: 21277/05 (2009).

both parties have the right of appeal to an independent and impartial court or adjudicatory body in disputed cases.

Processing of personal data should be based on principles such as: respect for individuals' basic rights; lawfulness, fairness and transparency; data minimization; ensuring adequate level of protection; accuracy; storage limitation; integrity and confidentiality.

"Processing" covers any operation or group of operations which is performed on personal data, which includes biometric; special category; publicly available data; and/or data on personal life[69], or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

A person shall have the right to require from the processor to erase her/his personal data ("right to be forgotten") and to prevent processing in specific circumstances:

(i) Where the personal data is no longer necessary in relation to the purpose for which it was originally collected and/or processed;
(ii) When the purpose of the processing of personal data is achieved;
(iii) When a person withdraws her/his consent;
(iv) When there is no overriding legitimate interest for continuing the processing.

In any case of processing personal data and disseminating information about a person's personal and family life, it is necessary that the media outlet (journalist) sets the goal of processing the data and assesses whether there is a public interest for the protection of which it is necessary to subordinate the interest of the protection of one's personal data[70] and to disseminate information about one's personal and family life.

At the same time, the goal should be clear and legitimate. For example, the protection of public interest should not be an excuse, but should actually reflect the social need and importance of disseminated information (in this case, information containing personal data), and published personal data should commensurate with the set goal, to be fit, necessary and moderate, to be processed in the amount necessary to achieve the set goal, and the processing of data that isn't necessary for the purpose or is incompatible with it should be excluded.

[69] In other words such data is called "Sensitive data" and cover information on an individual's racial and / or ethnic origin; political view; religious or philosophical beliefs; trade union membership; physical and / or mental health and / or condition(s); genetic data, and biometric data where; sex life and / or sexual orientation; personal and / or family life; physical, physiological, mental and / or social condition(s).

[70] Under the RA Constitution, "Everyone shall have the right to protection of data concerning him or her" (Article 34).

In the world-famous Google Spain case[71], Mr. Mario Costa Gonzalez was arguing his right to be forgotten. In 1998, the Spanish newspaper La Vanguardia published an article about Mario Costa Gonzalez, a Spanish citizen, which contained information about his tax liabilities. In 2010, Gonzalez applied to the Spanish Data Protection Agency, demanding the periodical removal of the above-mentioned material from its website or make it technically impossible for such data to appear on search engines. For Gonzalez, the problem was that every time he searched for his name on the search engine, the publication appeared, in which the available data was no longer relevant, as he had long since paid off his tax liabilities. Thus, the information presented the Spanish citizen in a bad light, which was published for journalistic purposes and legally, lost its relevance years later, but continued to have a negative impact on him. As a result of Gonzalez's case, the Court upheld the man's right to be forgotten. According to this position, on the one hand the Agency took into account the specifics of access to data on the Internet (without limiting time and space), on the other hand, it took into account the exceptional role of journalists in democratic societies, their importance in serving the public interest, and found that it is necessary to take into account the right to be forgotten in cases where the purpose of the program has been exhausted (usually when some time has passed since the publication of the article). On the other hand, non-up-to-date information continues to interfere with a person's right to privacy (the person has applied and reported it). The Agency found that the main solution to the issue raised by the citizen in the case was in the field of journalistic ethics and proposed to establish structures as a mechanism of self-regulation, within the framework of which it would be possible to ensure the right of a person to be forgotten. To restrict (make it impossible) access to the publication or information relevant to the right to privacy on the platforms that are under the management of the media. The only ground which can justify the ongoing use of the date when such information is deemed to be in the scope of general public interest.

Under the new European Union’s legislative framework, with the General Data Protection Regulation[72], the rights of individuals will be further strengthened and individuals will receive more comprehensive information at the time of the collection and will have, for instance, the right to have information erased, the right to the portability of their personal data, etc.

[71] Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, App. No: C-131/12 (2014).

[72] Regulation No 2016/679 of the European Parliament and of the Council (2016).

Under personal data protection rules an individual may demand from the person who processes her/his personal data to respect individuals' rights; to process personal data lawfully, fairly and in a transparent manner in relation to them; to collect personal data for specified, explicit and legitimate purposes and not further process in a manner that is incompatible with those purposes; to don't transfer personal data to the third parties without an individual's prior written consent[73], except for the cases provided by the applicable law[74]; etc.

Regarding online activities, information associated with specific dynamic IP addresses facilitating the identification of the author of such activities, constitutes, in principle, personal data which isn't accessible to the public. The use of such data may therefore fall within the scope of Article 8 of the Convention as well[75].

It is well known that technological developments of recent years make it possible to acquire, record and store vast amounts of the most detailed information about an individual. There is a real danger that such data may be acquired and used to the detriment not only of the individual concerned but also of society at large, and also that information which has been legitimately obtained may be used for illegal aims[76].

The protection of personal data is of fundamental importance to a person's enjoyment of her/his right to respect for private and family life, as guaranteed by Article 8 of the Convention. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of this Article. The need for such safeguards is all the greater where the protection of personal data undergoing automatic processing is concerned. The domestic law should notably ensure that such data is relevant and not excessive in relation to the purposes for which it is stored; and preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which that data is stored. It must also afford adequate guarantees that retained personal data was efficiently protected from misuse and abuse[77].

[73] Under the RA Law "On Personal Data Protection" these basic rights are granted to the individuals as well.
[74] See e.g. the RA Law "On Personal Data Protection" Articles 9(1) and 12.
[75] Benedik v. Slovenia, App. No: 62357/11 (2015).
[76] In Armenia there is no established court practice on the personal data protection, however, in recent years Personal Data Protection Agency of the RA Ministry of Justice has been taking active steps to develop this field keep our citizens informed on such issues, find more here: http://moj.am/storage/uploads/2019Annual-report-2019-ATPG.pdf (last visited on May 11, 2020).
[77] S. and Marper v. the United Kingdom, 30562/04 (2008).

CHAPTER 3: RELATIONSHIP BETWEEN PRIVACY AND FREEDOM OF EXPRESSION

Freedom of expression and privacy are mutually reinforcing rights – all the more so in the digital age. Both are essential foundations for open and democratic societies, and among the basic conditions for their progress, and each individual's self-fulfillment. For democracy, accountability and good governance to thrive, freedom of expression and opinion must be respected and protected. The same is true of the right to privacy, which also acts as a powerful bulwark against state and corporate power in the modern age.

While freedom of expression is fundamental to diverse cultural expression, creativity and innovation as well as the development of one's personality through self-expression, the right to privacy is essential to ensuring individuals' autonomy, facilitating the development of their sense of self and enabling them to forge relationships with others.

What if there is a conflict between these two rights and one of them should be restricted? Who can find a balance and how are they to do it in a manner that will not violate such fundamentals of a human being's life?

Based on the Court practice in all cases such restriction or interference should be done in accordance with the law or prescribed by the law, pursue one or more legitimate aims, be necessary in a democratic society.

The Court has repeatedly affirmed that any interference by a public authority with an individual's right to respect for private life and correspondence, and the right to freedom of expression first of all must be done in accordance with the law. This expression doesn't only necessitate compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law[78]. Moreover, the word "law" in the expression "prescribed by law" covers not only statute but also unwritten law. It would clearly be contrary to the intention of the drafters of the Convention to hold that a restriction imposed by virtue of the common law isno't "prescribed by law" on the sole ground that it isn't enunciated in legislation: this would deprive a common-law State which is Party to the Convention and strike at the very roots of that State's legal system[79].

[78] Halford v. the United Kingdom, App. No: 20605/92 (1997).
[79] The Sunday Times v. the United Kingdom, App. No: 6538/74 (1979).

The national law must be clear, foreseeable, and adequately accessible[80]. This includes sufficient foreseeability that individuals are able to act in accordance with the law, as well as a clear demarcation of the scope of discretion for public authorities. Absolute certainty in this matter could not be expected[81]. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail[82]. As the Court articulated in the surveillance context, for example, the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any measures of secret surveillance and collection of data[83]. In addition to that, these provisions must be accessible so that a person may become acquainted with them[84].

Besides such interference should pursue legitimate aims for the relevant and sufficient purposes of § 2 of Articles 8 and 10 of the Convention[85], namely the protection of national security and public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals[86], the protection of the rights and freedoms of others. § 2 of Article 10 of the Convention provides additional grounds for restrictions of this right like protection of the reputation of others, the prevention of the disclosure of information received in confidence, the maintenance of the authority and impartiality of the judiciary[87]. It must be stressed that those "purposes" are exhaustive, and no other bases can be applicable to restrict these rights.

Similarly, the Court has gradually elucidated the meaning of necessity in a democratic society. It has stated that necessity is a stricter test than desirability or reasonableness, and that necessity is to be assessed by reference to the type of democratic society which the Convention was meant to uphold, that is, a liberal democracy which values pluralism and tolerance and which is the antithesis of an authoritarian state. Two key elements of the test are that the

[80] Silver and Others v. the United Kingdom, App. Nos: 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/7 (1981).
[81] Dubská and Krejzová v. the Czech Republic, App. Nos: 28859/11 and 28473/12 (2014).
[82] See e.g. Tolstoy Miloslavsky v. the United Kingdom, App. No: 18139/91 (1995).
[83] Shimovolos v. Russia, App. No: 30194 (2011).
[84] The law may take any form, e.g. statute, secondary legislation, case law. See, e.g., Huvig and Kruslin v. France, App. No: 176-A (1992).
[85] See e.g. Roman Zakharov v. Russia, App. No: 47143/06 (2015).
[86] The Sunday Times v. the United Kingdom, App. No: 6538/74 (1979); "the "requirements of morals" varies from time to time and from place to place, especially in our era", and "State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements".
[87] Almost similar bases are provided under Articles 31(2), 32(2), 33(2) and 42(3) of the RA Constitution.

interference must be a response to "a pressing social need" and that its impact on the applicant must be proportionate to the legitimate aim or aims pursued. One particularly problematic aspect of the necessity criterion concerns the state's "margin of appreciation" in relation to the necessity of the interference. It is clear that this margin isn't uniform in all cases. The Court said that, "The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background"; and that it "will depend not only on the nature of the legitimate aim pursued but also on the particular nature of the interference involved[88]".

It should be separately noted that the member states of the international documents, which guarantee such rights and freedoms, generally bear a positive obligation to protect those "greats" against the intrusion thereon by the other non-state actors[89].

In cases which require the right to respect for private life to be balanced against the right to the freedom of expression, the Court considers 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 thereof by the publisher. Indeed, as a matter of principle these rights deserve equal respect[90].

Accordingly, the margin of appreciation should in theory be the same in both cases. The relevant criteria defined by case-law are as follows: contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, and, where appropriate, the circumstances in which the interference was done[91].

It is well known that the freedom of press includes two inseparable elements, the right of the publisher to publish and the right of the people to an adequate press, and to be properly informed[92]. The clash of the privacy doctrine with the freedom of the press focuses attention on the latter aspect of the concept, for if a publication is privileged, it is because it contributes material which enables the public to be well informed.

As a general rule, personal information should not be made public without the consent of the concerned person. Consent is an important element in determining whether a publication of a detail from private life interferes with the right to privacy. The second component of such publication is a public interest.

[88] Leander v. Sweden, App. No: 116 (1987).
[89] Such duties are declared under the RA Constitution, Article 3(2).
[90] See e.g. Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina, App. No: 17224/11 (2011).
[91] See e.g. Axel Springer AG v. Germany, App. No: 39954/08 (2012).
[92] The Sunday Times v. the United Kingdom, App. No: 6538/74 (1979).

That being said, information about individuals can also be published without consent if there is an overriding public interest. For example, if the disclosure of information is justified by a general interest or concern, which is considered to prevail over the considerations of the concerned individual's privacy. The concept of public interest may therefore constitute an "alternative justification" for a publication. It should be stressed that not everything which is of public interest is in the public interest.

However, in any publication without consent the rule is, "the more private the matter, the greater the call for caution". It is difficult to define public interest clearly because of the risk of excluding some matters or of proposing an overly narrow definition. Generally speaking, public interest relates to matters affecting the public to such an extent that it may rightfully (legitimately) take an interest in them, attracting its attention or concerning the public significantly. Areas considered to be of public interest include yet aren't limited to the misuse of public office, improper use of public money, protection of public health, safety and environment, protection of national security, crime and social behavior and similar political and socioeconomic topics. The decision on whether to publish personal information about a public figure or private person will always depend on the circumstances of the case. Journalists are thus expected to apply the public interest test and balance the strength of considerations in favor and against disclosure on a case-by-case basis.

Journalists may publish ordinarily personal information when it serves a greater value and is used to discuss a matter in the public interest (published personal information should serve some important purpose). The greater the information value for the public, the more the interest of a person in being protected against the publication has to yield, and vice versa.

It goes without saying that the most common targets of journalists' criticism are public figures. Those are actors who play a role in public life, regardless of whether the sphere of their activities is in politics, economy, arts, the social sphere, sports or other. Yet public figures should know that the position they hold in society – in many cases by choice – automatically entails increased pressure on their privacy. Still, public figures should not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts[93].

A distinction has been drawn in the French case law between private life and public activities, though it isn't always clear into which category a particular matter will fall. Linked as the concepts of private life and public activities are to the social custom of the day, the line between the two will not necessarily be drawn in the same place over time. Persons have

[93] Egill Einarsson v. Iceland, App. No: 24703/15 (2017).

generally been regarded as giving tacit consent to the making of inquiries about their public activities and publication thereof whereas express consent is needed if inquiries and publications relating to private life are to be accepted as lawful. Privacy is reduced in public places. The taking and publication of a person's photograph in a public place is lawful when the photograph is incidental to the overall context of the picture being taken, as when a person is photographed in a crowd or visiting a national monument[94]. However, consent is generally required if a person is singled out from others[95]. Persons in the public eye are entitled to respect for their private lives as are ordinary citizens, but the scope of this respect will be somewhat less in their case since the public is regarded as having a legitimate interest in greater information about them than about the ordinary citizen[96].

The Court has underlined that a fundamental distinction needs to be made between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions and reporting details of the private life of an individual who doesn't exercise official functions. The Court has accepted that the right of the public to be informed can in certain special circumstances even extend to aspects of the private life of public figures, particularly where politicians are concerned. However, anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life[97].

Journalists should respect the legitimate expectations of public actors to privacy when they engage in simply private activities. In the Standard Verlags GmbH v. Austria[98] case the Court held that journalists can report information concerning politicians' state of health, which might prevent them from exercising their duties, but the same freedom doesn't apply to pointless gossip about their marriages and private lives in general, as there cannot be any justified public interest. However, even public figures may legitimately expect to be protected against the propagation of unfounded rumors relating to intimate aspects of their private lives.

It is necessary to find out whether the factual data presented in the given situation, with their content, was of superior public interest, whether the information was significantly necessary for the public, whether the society followed the dissemination of that information, and waited for its further publication, taking into account that the media is responsible for

[94] See, e.g., Xv. Commandant Y and Others, Tribunal de grande instance, Lyon, Référés, Case J:507 (1980).
[95] See, e.g., Tribunal de grande instance, Case Gaz. Pal. 1987.1.138 (1987).
[96] See, e.g., Giorgi Nikolaishvili v. Georgia, App. No: 37048/04 (2009).
[97] Van Hannover v. Germany (1), App. No: 59320/00 (2004).
[98] Standard Verlags GmbH v. Austria, App. No: 21277/05 (2009).

disseminating information on issues of public interest, including the dissemination of ideas. The publisher must prove that before the publication she/he has taken measures that have enabled her/him to come to the conclusion that the factual data is conditioned by the overriding public interest and could correspond to reality. In addition, the publisher must disclose the above information in good faith. In this case, good faith implies a complete, meaningless statement of factual data[99].

But even private activities can have room for public interest. In the famous cases of Van Hannover v. Germany[100] the Court raised a question on the balance between the right of the publishing companies to the freedom of expression and the right of the public figures to respect for their private life taking into account the circumstances in which the photos have been taken. Although freedom of expression also extends to the publication of photos, this is an area in which the protection of the rights and reputation of others takes on particular importance. The present case doesn't concern the dissemination of "ideas", but of images containing very personal or even intimate "information" about an individual. Furthermore, photos appearing in the tabloid press are often taken in a climate of continual harassment which induces in the person concerned a very strong sense of intrusion into their private life or even of persecution. As an outcome the Court considered that the publication of the photos and articles in question, the sole purpose of which was to satisfy the curiosity of a particular readership regarding the details of the applicant's private life, cannot be deemed to contribute to any debate of general interest to society despite the applicant being known to the public, and anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life. Lastly, the distinction drawn between figures of contemporary society "par excellence" and "relatively" public figures has to be clear and obvious so that, in a State governed by the rule of law, the individual has precise indications as to the behaviour he or she should adopt. Above all, they need to know exactly when and where they are in a protected sphere or, on the contrary, in a sphere in which they must expect interference from others, especially the tabloid press. In this case the Court also gave relevant criteria for cases which involves the balance between the right to respect for private life and the right to the freedom of expression as follows:

(i) contribution to a debate of public interest;

(ii) the degree of notoriety of the person affected;

[99] Tatul Manaseryan v. "Skizb Media Kentron" LLC, Case No: ԵԿԴ/2293/02/10 (2012).
[100] Van Hannover v. Germany (1), App. No: 59320 (2004).

(iii) subject of the news report;

(iv) the prior conduct of the person concerned;

(v) the content, form and consequences of the publication;

(vi) the circumstances in which any photographs had been taken; and

(vii) the way in which the information had been obtained, and its veracity; and

(viii) the gravity of the penalty[101] imposed on the journalists or publishers.

In case law the level of protection of the right to privacy of public figures' relatives is also discussed in light of public interest in their lives. In the case of Couderc and Hachette Filipacchi Associés v. France[102], the Court held that: "Publication of a photograph may thus interfere with a person's private life even where that person is a public figure. … a photograph may contain very personal or even intimate "information" about an individual or his or her family". The Court stressed the importance of obtaining the consent of the persons concerned, and the more or less strong sense of intrusion caused by a photograph[103]. Relatives of the public figures should be treated as an ordinary person when such publication casernes of their private live, but they enjoy less protection where aspects of their lives are crucified with the activities of a public figure.

In its turn, when private individuals voluntarily involve themselves in controversial undertakings, they cannot expect absolute privacy. In this regard, by choosing to engage in a highly controversial business, these private individuals have entered the public domain and thus opened themselves to scrutiny from journalists[104]. In the case of Selistö v. Finland[105], the Court found that the health care system was reasonably in the scope of the public interest. Practising doctors in public hospitals occupied positions of such public-office nature that they could and had to accept even strong criticism of their behaviour. However, in any case the criticism had to be appropriate and based on facts. So when the journalist was convicted and fined for having defamed a surgeon by writing two articles alleging that a patient had died as a result of the surgeon's alcohol consumption during the night preceding the operation, his right of the freedom of expression was violated, because surviving widower as well as matters of patient safety as such raised serious issues affecting the public interest[106].

[101] It is important to note that the Article 8 of the Convention does not necessarily require monetary compensation to the victim if other redress mechanisms are put in place. See e.g. Kahn v. Germany, App. No: 16313/10 (2016).
[102] Couderc and Hachette Filipacchi Associés v. France, App. No: 40454/07 (2015).
[103] See, e.g., Lillo-Stenberg and Saether v. Norway, App. No: 13258/09 (2014).
[104] As it is said: "he who lives in a glass house may not have the right to throw stones".
[105] Selistö v. Finland, App. No: 56767/00 (2004).
[106] See also Fürst-Pfeifer v. Austria, App. Nos: 33677/10 and 52340/10 (2016).

In sum, these rights are neither absolute nor in any hierarchical order, since they are of equal value. Indeed, as a matter of principle these rights deserve equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases[107].

The media plays a crucial role in shaping a healthy democracy and is the backbone thereof. It makes us aware of various social, political and economic activities happening around the world. As the public has a legitimate interest in being allowed to judge whether the personal behavior of the individuals in question, who are often regarded as idols or role models, convincingly tallies with their behavior on their official engagements, mass media ensures that such interest is satisfied. People holding office in public life are entitled to protection for their privacy except in those cases where their private life may have an effect on their public life. The fact that a person holds a public post doesn't deprive her/him of the right to respect for her/his privacy. In the journalist's profession the ends don't justify the means; therefore, information must be obtained by legal and ethical means[108].

[107] Couderc and Hachette Filipacchi Associés v France, App. No: 40454/07 (2015).

[108] Recommendation of the Parliamentary Assembly of the Council of Europe N 1003 "On the ethics of journalism" (1993).

CONCLUSION

One person's right to freedom of expression may impinge on someone else's right to privacy and vice versa. This tension is exacerbated by digital technologies which present serious challenges to the enforcement of the right to privacy and related rights because personal information can be collected and made available across borders on an unprecedented scale and at minimal cost for both companies and states.

At the same time, the application of data protection laws and other measures to protect the right to privacy can have a disproportionate impact on the legitimate exercise of the freedom of expression.

States should ensure that the right balance is to be struck between the competing rights, any clash between them is avoided, and choose adequate means to make such interference proportionate to the aim pursued[109].

Relevant authorities should ensure that the right to freedom of opinion and expression, the right to information and the right to privacy are enshrined in domestic constitutional provisions or their equivalent, in accordance with international human rights law. Domestic legislation should include that everyone has:

(i) *The right to freedom of expression,* which includes the freedom to seek, receive and impart information and ideas of all kinds held by or on behalf of public authorities, or to which public authorities are entitled bylaw to have access, and information held by private bodies exercising public functions and required for the exercise or protection of any right or fundamental freedom, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media or other platforms of her/his choice. The right to freedom of expression includes the right to offend, criticize, comment or talk about others, including on aspects of their private life, which are either private or known to the public, without their consent;

(ii) *The right to privacy,* which includes the right of individuals to respect for their private and family life, home, and communications and the right to the protection of the law against arbitrary or unlawful interference or attacks against them. The right to private life extends to aspects relating to personal identity, such as a person's name, images, or physical and moral integrity; it is primarily intended to ensure the development, without outside interference, of

[109] Fernández Martínez v. Spain, App. No: 56030/07 (2014).

the personality of each individual in his/her relations with other human beings. The possibility of taking an action under civil law should be guaranteed, to enable a victim to claim possible damages for invasion of privacy[110];

(iii) *The right to personal data protection*, which may be derived from, and be related to the right to privacy; and which regulates the way in which information about individuals, which may be either private or public, is collected, processed, stored and retained electronically by both public and private bodies. Personal data must be processed lawfully and fairly for specified purposes and on the basis of the informed consent of the person concerned, or some other legitimate basis laid down by law. Personal information may be processed without the consent of the individual if the information is publicly available. Everyone should have the right of access to data held by third parties (data controllers) concerning her/him, and the right to have it rectified or deleted, subject to legitimate exceptions.

Reasonably, the adaption of relevant legislation cannot solve and cover all possible issues. Any dispute settlement body should have an opportunity to "correct" the situation by awarding effective remedies[111]. The right to an effective remedy before a national authority doesn't cover only situations where a person's rights or freedoms have actually been violated. Where an individual considers herself/himself to have been prejudiced by a measure allegedly in breach of her/his rights and/or freedoms, she/he should have a remedy before a national authority both to have her/his claim decided and, if appropriate, to obtain redress. Even in this scenario, one's rights cannot be protected by the total restriction of the rights of the other[112].

[110] Under Armenian current legislation non-pecuniary damage is granted for cases of insult and slander (Article 1087.1 of the RA Civil Code). For other cases the victims may only demand compensation for pecuniary damages. This may become a problem for the relevant courts to give a satisfactory remedy while the Convention recognise rights which must be respected and protected even in the absence of any instrument of positive law. See e.g. The Observer and Guardian v. The United Kingdom, App. No: 51/1990/242/313 (1991).

[111] See, e.g., The European Convention on Human Rights, Article 13, "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

[112]"Chilling" effect of the fear. See, e.g., Wille v. Liechtenstein, App. No: 28396/95 (1999).

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