

AMERICAN UNIVERSITY OF ARMENIA

MASTER'S THESIS

Invasion of right to privacy of public officials

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Introduction

Armenia is considered to be a democratic republic and such has ratified many conventions that protect basic human rights. The focus of this paper is the sanctions should be applied for the violation of the right to respect the private and family life in the context of the freedom of press. The purpose of this transaction is to find out those violations of privacy that can incur sanctions in Armenian legislation and what can be done to avoid the sanctions and instead to provide professional bodies to represent journalists to make self-regulation and a code of journalist conducts.

To explore the violation of the right to respect the private and family life, it is necessary to find the balance between two fundamental rights, freedom of expression and right to have privacy.

It is well known that each individual is entitled to have a private life free from media, unless the conduct of an individual appears to have a public interest, for example abuse of power, corruption, reporting intimate details of the lives of individuals, etc. However, freedom of press is not allowed to make money out of other people's trouble or misfortune.

Actors of this transaction are editors or publishers who have responsibilities and a wide power in generally to absorb every matter that can be subject of interest for the society and relates to the society. Then the individual or public official who feels there has been caused harm to his reputation due to a journalist act. On the other hand, the society has a right and interest to know about a person within a position that may have influence on the

society. Consequently, the society must be aware that each individual enjoys the right to have privacy and the public has to respect it.

The transaction itself can be significant because it touches upon one of the most important issues in the world in terms of privacy and freedom of speech.

This certain interest toward public officials or celebrities can be explained with several explanations.

- i) The public official: The society has voted for the public official to get a significant position in the government, and moreover pays taxes that gives a salary to the public official for his work.
- ii) The celebrities: It is well known that individuals from showbiz or movie stars cannot exist without a mass media or tabloids, because the media makes them more famous and more attractive and they somehow manage to be role models for many people.

By being a public figure, they have to be more or less transparent and have to tolerate more due to a journalist's offensive publications in accordance to their public duties and responsibilities.

Before examining what sanctions should be applied for the violations of the right to privacy, it is necessary to find out what does the Armenian legislation stipulate and whether there is a clear-cut border between the freedom of press and privacy.

Additionally, cases from the European Court of Human Rights (ECHR) will be analyzed, particularly the *Von Hannover* case where the court indicated/stressed that the freedom of

expression permits limitations to protect reputation of others, as well the British practice of press regulation.

Armenian Legal framework

The aim of this section is to 1) understand how this transaction is regulated in Armenia and provide a list of the domestic laws and regulations governing this transaction as well international treaties ratified by Armenia, and 3) Provide step-by-step instructions as to how the transaction can be completed according to Armenian law.

1. Armenian Domestic Laws and Regulation

The main domestic laws governing this transaction are

- RA Constitution, adopted in November 25, 2005¹ and
- RA law on Mass Media, adopted in December 13, 2003.

2. Freedom of Expression v. Right to have privacy

The freedom of expression is guaranteed by RA Constitution, Article 27, according to which- *“Everyone shall have the right to freely express his/her opinion...Freedom of mass media and other means of mass information shall be guaranteed”*².

¹ The first Constitution was adopted in July 5, 1995

² RA, Constitutional Law, Article 27

The protection of the privacy is regulated in Article 23³, according to which –“*everyone shall have the right to respect for his private and family life*”. Furthermore, “*the collection, maintenance, use or dissemination of any information about the person other than that stipulated by the law without the person’s consent shall be prohibited. The use and dissemination of information relating to the person for purposes contravening the aims of their collection or not provided for by the law shall be prohibited*”⁴.

To evaluate the obligations of a journalist’s right of freedom of expression, it is important to identify the balance between 1) the public interest and freedom of expression on one hand, and 2) the right to have privacy on the other hand.

There is no definition of privacy or a separate privacy law in Armenia, which makes it more complicated to understand the legal meaning and the boundaries of the privacy⁵.

3. The Freedom of Mass Media v. Private Life

A separate law regulates the freedom of mass media. The general rule of freedom of speech in the sphere of the media is guaranteed and protects the journalists to operate freely, due to their social duty⁶. The exception of the general rule is the Article 7 (1)⁷, which protects the rights of privacy, according to which “*It is prohibited to disseminate secret information as stipulated by law*”. However, the following provision 7(3), “*The dissemination of information related to one’s personal or family life is allowed if it is*

³ RA Constitutional Law

⁴ RA Constitutional Law

⁵ “Mass media and legislation”, by Shushan Dojdojan, 2007, p.1

⁶ RA The Law on the dissemination of mass information, Article 4, 1.

⁷ RA The Law on the dissemination of mass information

necessary for the protection of public interest”⁸. This boarder should be done by the journalist, and as above mentioned article 7 (3), also emphasized the balance between the freedom of press and right to privacy⁹.

Both RA Constitution and RA Law on Mass Media protect the rights of press and respect of the private life, which is necessary tool in the democratic society. The journalists shall work freely and be independent. The Article 7 is still not clear when and where the limits of freedom of speech begin and when the right to have privacy is protected. The law does not clearly describe these boundaries, which makes difficult to explore whether the violation resulted from the examination of freedom of speech or dissemination of the information related to one’s personal or family right was necessary for the protection of public interest.

4. International Treaties Ratified by Armenia

In addition to the Armenian National legislation by becoming a member of Council of Europe in 2001, Armenia has also ratified the European Convention on Human Rights¹⁰, which became a part of Armenian law. After becoming bound by the provisions of this Convention, Armenia has taken mass of commitments to protect the basic human rights. For example the Article 1 of ECHR obliges the members *“to secure everyone within their jurisdiction the rights and freedoms defined of this Convention.”*

According to Article 10 of ECHR, *“everyone has the right to freedom of expression”*, whilst the article 8 protects the right to respect for one’s private and family life. Article

⁸ RA The Law on the dissemination of mass information

⁹ Mass media and legislation”, by Shushan Dojdojan, 2007, p.3

¹⁰ ECHR

10 emphasizes the significance of the have freedom of expression in the democratic society, particularly for the press. Nevertheless, the article 8 of ECHR stresses the importance of right to have privacy, where everyone has the right to respect for one's private and family life. And it has been accepted that the freedom of expression must be limited to protect the reputation of an individual.

Neither the article 8 or 10 are absolute rights, which means that the Contracting Parties¹¹ have a wide discretion to prevent or to provide measures that can be necessary to protect one's right in the name of public order.

Armenia has also ratified International Covenant on Civil and Political Rights¹² in 23 June, 1993 according to which “*everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice*”¹³.

Nevertheless “*the exercise of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: For respect of the rights or reputations of others*”¹⁴.

5. Step by step analyzes

¹¹ ECHR, Article 1

¹² ICCPR

¹³ ICCPR, Article 19

¹⁴ ICCPR, Article 19, 3, a.

When a public official knows that the press has private information that is going to be published and potential violation can occur, the public official can negotiate with the press and ask them not to publish the article that contains private information and may badly harm his/her reputation¹⁵. This can happen very rarely, because usually the person is informed after the article is published.

So what are the steps for a public figure to restore his/her reputation if the publication has violated his/her right to privacy?

Article 19 of the RA Constitution, provides that “*Everyone shall have a right to restore his/her violated rights*”.

- i) In this occasion, the public official can claim to get a public apology from the publisher.

OR

- ii) The parties involved in this dispute, may resolve the dispute through an alternative dispute resolution mechanisms, which may be done either through:
 - iii) Arbitration, or
 - iv) Mediation

If the negotiation fails and the public official can not convince the press that the outcome of the publication of an article has violated his/her rights, then there is a possibility to file a lawsuit, if the latter failed to mediate or arbitrate the dispute. If the court finds that there

¹⁵ RA The Law on the dissemination of mass information, Article 7, 1.

is violation of privacy, it may impose sanctions stipulated by the Criminal Code Article 144.

After ratification of ECHR, the victims may also apply for international remedies if they have exhausted all effective domestic remedies and are still not satisfied with the outcome¹⁶

In order to apply to the European Court of Human Rights the victims have to submit their application within the 6-month of limit after the final domestic decision¹⁷.

International Best Practice

Under this section 1) the balance between Article 8 and 10 of ECHR will be discussed, 2) case of Von Hannover v. Germany will be analyzed, 3) The British legislation regarding the privacy.

1. Article 10 v. Article 8 of ECHR

Article 10¹⁸ is one of essential foundations of a democratic society. Article 10, is related not only to “information” that are inoffensive or indifference, but also those that offend or shock. This was the case of Handyside v. UK, where the Court Article 10, is related not only to “information” that are inoffensive or indifference, but also those that offend

¹⁷ ECHR, Article 35

¹⁸ Se page Armenian Legal framework

or shock. emphasized the importance of democratic society, which included the demand of pluralism, tolerance and broadmindedness¹⁹.

Article 8 provides “*the right to respect for his private life and family life*”. Definition of private life is not given, but it has been invoked in different contexts. It can include psychological and moral integrity, a right to personal development, establish and develop relations with other human being.²⁰

2. Von Hannover v. Germany

i) The Facts of the case

The Case was brought to Court of Human Rights by Princess Caroline Von Hannover of Monaco. Since 1991 she tried through the Courts to prevent several photographs about her personal life published²¹. She had unsuccessfully applied to the German courts to ban any further publication of the photographs in German magazines, which she assumed infringed her right to respect for her private life²².

ii) The proceedings in the German courts

The German Courts dismissed that as a figure of “par excellence” had a protection when she was in a public place, and she had to tolerate those kinds of publications, because she was regarded to be as a role model due to her behavior on her official engagements²³.

¹⁹ Handyside v. UK, Judgment of 7 December 1976, Series A no.24, p.23, para.49

²⁰ ECHR p.235-236

²¹ Von Hannover v. Germany, Judgment of 24 June 2004, (VH. V. G), p. 2, para. 9

²² <http://www.echr.coe.int/Eng/Press/2004/June/AnnouncejudgmentvonHannovervGermany.htm>

²³ (VH. V. G), p. 9

The Court²⁴ held that those photos had a character of not to inform people, but rather to entertain them, which is why photos showing the Princess with her children had infringed her right to the protection of her personal life and that children's protection of privacy was greater than of the adults. The Court was considered to make a "*fair balance between respect for personality rights and the community's interest in being informed*"²⁵. She had to tolerate those publications, even though the pictures did not show her official engagements, but rather her daily life.

iii) The Proceeding at the Court of Human Rights

The applicant complains the decisions of German Courts under Article 8 of ECHR. She upholds that the German Courts had failed to protect her private life and failed to prevent the publications of photographs, which was taken unaware and secretly on the ground that she was a figure of "par excellence". Complains were also based on an infringement of her right to respect for her family life.

The Court made no doubt on that the publication of photos of the Princess in her daily life falls within the scope of her private life.²⁶

The protection of private life and freedom of expression must be balanced. The Court emphasizes the importance of freedom of expression in democratic society, by mentioning the case of *Handyside v. UK*; due to this the press plays a crucial role in a democratic society and plays a role of a "watchdog".

Nevertheless, the Court held that the freedom of expression "*must not overstep certain bounds; in particular in respect of the reputation and rights of others, its duty*

²⁴ Federal Constitutional Court; Judgment of 15 December 1999

²⁵ (VH. V. G), p. 7, para. 25

²⁶ (VH. V. G), p. 21, para. 53

*nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest”.*²⁷

The Association of German Magazine Publishers²⁸ added that their role is important for the society, and they mentioned that there was no European standard how to protect the private life, which is why the State had a wide margin of appreciation in this matter. Furthermore, the AGMP was accusing the Princess and her Royal family to be responsible for the public interest, because they always attract media attention.

However, the Court distinguished between public figures who did exercise official functions and those who did not exercise official functions. In addition, the fact that the Princess was not doing any official functions, the Court sorted her as a private figure. The Court reiterates how important it is to protect private life; not only the private family circle but also a social dimension, and in any event, the Court considers that, in these conditions... *“The State complies with its positive obligation under the Convention to protect private life and the right to use of ones image”.*²⁹

The Court concluded that the criteria, which were the ground for domestic courts to make decisions *“were not sufficient to protect the applicant’s private life.”*³⁰ Moreover, the Court meant that there has to be a balance between protection of private life and freedom of expression, and the balance is that the debate and publications regarding public figures must be of general interest. Those publications did not contribute to make a debate of general interest.

²⁷ (VH. V. G), p. 23, para. 58

²⁸ AGMP

²⁹ (VH. V. G), p. 26, para. 72

³⁰ (VH. V. G), p. 26, para.74

iv) *ECHR*

The ECHR is concerned whether the attacks made by journalist are personal or professional. In *Krone Verlag GmbH & Co. KG³¹ v Austria* publications of articles and photographs about a member of the Austrian National Assembly and the European Parliament where the article alleged him that he received three salaries unlawfully according to Austrian law. The domestic Court meant that *the photographs did not had any informative value and the fact that the applicant was not generally known.*³² However, the Court³³ appointed that he was a politician and by being a politician he also enters the public arena. The Court stated that this principle goes for those persons who voluntarily enter the public arena. Those persons must have a certain position in the public, and besides politicians it also includes prominent businessmen.

v) *Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy*

The Parliamentary Assembly of European Council decided to pass the resolution on privacy after the accident that cost the Dianna's³⁴ life in August 1997.

The resolution calls upon on two important and substantial rights, the freedom of expression and to have privacy. Both rights are equal, however to find a balance between those rights can be interpreted differently.

³¹ Judgment of 26 February 2002

³² The European Convention on Human Rights, By Jacobs and White; 4th edition, p. 325

³³ The Court of Human Rights

³⁴ Princess of Wales

The resolution is regarded to public figures and in what extend they can enjoy the right to have privacy. The right to privacy is “*the right to live one’s own life with a minimum of interference.*”³⁵

The Assembly is aware that the lives of public figures often can be invaded through the media. However, the Assembly is also aware that the public figures have a special position in society.

The definition of public officials the Assembly gives the following; *persons holding public office and or using public resources and...all those who play a role in public life, whether in politics, the economy the social sphere...*”³⁶

3. British legislation

The British legal system is the basis of common law, which means that it is made by judges.

There was no privacy law in UK, before fully incorporation of the Convection of Human Rights into UK law³⁷. The lawyers have “*learned to accept that English law recognizes no right of privacy*”.³⁸ Which meant that the freedom of expression was justified of public interest.

Before going into how does the freedom of expression and privacy works in British legislation, it is necessary give a definition of privacy.

³⁵ Resolution 1165 (1998), para. 4; Declaration on mass communication media and human rights, Resolution 428 (1970),

³⁶ Resolution 1165 (1998), para. 7

³⁷ Human Rights Act (1998) Incorporation on 2 October 2000.

³⁸ Civil Liberties; cases and materials; by Bailey, Harris and Jones; 5th edition; p. 927

The Younger Committee³⁹ had difficulties to define the privacy, but they divided the privacy in two aspects;

*“The first of these is freedom from intrusion upon oneself, one’s home, family...The second is privacy of information, that is the right to determine for oneself how and to what extent information about oneself is communicated to others.”*⁴⁰

However, the definition of privacy was given by the Judge Cooley, *“the right to be left alone”*.⁴¹

The current argument of the incorporation of ECHR is the Article 8 and 10.

In UK exists Press Complaints Commission⁴² for the newspapers, which is a self-regulatory body. The Commission is independent of both the newspaper industry and the government. Being a self-regulatory body it does not require any payments of financial compensation from the industry. However, if there is any complains against the newspaper, the newspaper must publish the Commission’s critical adjudication against the newspaper. The Commissions main work is to conciliate try to make an informal dispute resolution and make a censure of an editor, moreover to protect the industry from legislative controls. So far the newspaper industry supports the Commissions work and its Code of Practice.

The Code of Practice is binding, which is the fundamental of the self-regulatory system, and the industry is very much engaged to follow the Code, because in case if they fail, the government would interfere and will impose a statutory system.

³⁹ an official inquiry into privacy which reported in 1972: Report of the Committee on Privacy

⁴⁰ Ibid 18, p.909

⁴¹ Civil Liberties; cases and materials; by Bailey, Harris and Jones; 5th edition; p. 909

⁴² PCC established in 1991

The code of Practice works for public interest, nevertheless it has limits, particularly in cases where a child is involved. The child interest will almost always be an exception of public interest. And in cases involving privacy intrusions, the freedom of press and right to have privacy must be balanced. In most occasions the press always invoke the interest of public as justifications of its act. The public interest can also be invoked when there has to be restrictions on freedom of expression.

After the death of Princess Diana, the newspaper industry immediately made changes of Code of Practice, because the self-regulation was obviously not working effectively.

When UK incorporated ECHR under the provisions of Human Rights Act, there were not any requirements of this Act that the UK newspaper industry must make any changes regarding the Code of Practice. In fact the Act can change the status of PCC to become a public authority even though the PCC does not receive any financial support from the government, which PCC does not want to happen. On the other hand if the PCC closes up, the government must provide professional bodies to do the tasks of PCC. Moreover, the parliament must regulate the definition and limits of freedom of expression and privacy. But the government is not ready for that the government might *“have to re-invent it (PCC) as a bona fide public authority with statutory powers and responsibilities.”*⁴³

This Act makes also PCC to challenge with the courts of UK, and in such challenges the Court may even decide that PCC has violated its own Code of Practice. And a number of celebrities are using this Act.

⁴³ Press Freedom and Press Regulation - Current Trends in their European Context
<http://www.pcc.org.uk/news/?article=NDM1NA>

The case of Michael Douglas, Catherine Zeta Jones and OK! is a celebrity case, regarding intrusion of their privacy by publishing the couples wedding photos. This case was one of the first cases after the incorporation of the ECHR and judges were forced to use the ECHR. One of the judges stated, “*we have reached to a point at which it can be said with confidence that the law recognizes and will appropriately protect a right to personal privacy*”.⁴⁴ And another judge pointed, “*the Court is not in a position to decide the extent to which the Act is imported a privacy law into UK.*”⁴⁵

With the case of Douglas and incorporation of Human Rights Act it shows that celebrities and other public officials in UK enjoys the right of privacy and they can use this Act to protect their rights.

This Act had brought discussions in UK, because it provides the public officials to have a benefit from the journalist’s point of view. Nevertheless, no one is in doubt that the press considers to be the best safeguard in the democratic society.

One of the main advantages of self-regulation is that it is accessible for everyone, no matter of their position in the society. Self-regulation must be independent and impartial of all parties involved in it.

According to professor Robert Pinker, “*self-regulation can work effectively if its codes of ethical conduct are based on the civil traditions and customary values of industry, which it oversees, and the general public, which it serves and protects*”.⁴⁶ Furthermore the regulators must work within their own principles and must take into consideration the general principles of the society by its political and cultural view.

⁴⁴ Ibid 23

⁴⁵ Ibid 23

⁴⁶ Ibid 23

Reform and recommendation

As above mentioned, the legislations regarding the right to have privacy v. freedom of speech and the case law of ECHR shows that how difficult it is to make a clear-cut boarder between those two rights.

There were issues concerning publication of articles or photos of public figures, and whether those publications can be a violation or not of privacy. Bellow the real and potential issues of different publications will be illustrated and what is considered to be violation or not.

ISSUE

- 1) Publishing a photo of a public figure with his/her children;
- 2) Publishing a photo where the public figure wears a swimsuit;
- 3) Publishing an article relating a politician building a restaurant;
- 4) Publication relating a presidents state of health

ARGUMENTS

- 1) Considers to be a violation of privacy, because it relates the children and the protection of children is above of the public interest.
- 2) Those details concerns exclusively private life, because even public officials enjoys the right to have privacy.

- 3) Building a restaurant by a politician is a matter of public debate. The public has a right to be informed of the politician's financial state, because politicians are using public resources. This is not a violation of the right to have privacy.
- 4) This publication with no doubts has a general public interest, which is why it is not a violation of private life⁴⁷.

The RA legislation regarding right to have privacy is not sufficient, which makes it difficult to understand the definition of it and to what extent this right is protected. However, Article 144⁴⁸ can be used when the judge decide that there has been a violation of the right to have privacy.

Which is why it is required from the government to make an official clarification of the law which will help the judges and journalists to know the limits of freedom of expression.

The resolution of the Council of Europe⁴⁹ contains a guideline for member states to pass legislation. The guideline concerns mainly the journalists and what needs to be done to avoid as much as possible the violation of freedom of speech.

- i) Economic penalties should be provided for invading people's privacy;
- ii) Promote professional bodies who will represent the journalists
- iii) Encourage self-regulation and a code of journalistic conduct

⁴⁷ Plon v. France

⁴⁸ RA, Criminal Code

⁴⁹ Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy

- iv) Provide training programs within the law, by emphasizing the importance on one hand the right to have privacy and on the other (general) public interest
- v) Each journalist must bear a responsibility towards the media users.

Conclusion

This transaction has shown how difficult it can be to make a clear distinguish between freedom of expression and the right to have privacy. In one hand, the transaction has shown how important it is to have freedom of speech and on the other hand, the public figure enjoys the right to have a private life. However, by claiming the right to have private life, many public figures that are corrupt can hide behind Article 8⁵⁰ and can prevent publications relating to their misbehavior.

It is recommended to those individuals who enter public arena must be aware of the freedom of the press and the public interest. Nevertheless, the freedom of press must not make money by publishing information that has not a general public interest.

⁵⁰ ECHR

Reference:

Jacobs and White, The European Convention on Human Rights; Clare Ovey and Robin White; 4th edition, 2006

Civil Liberties cases and materials; S.H.Bailey, D.J. Harris, D.C.Ormerod; 5th edition, 2001

Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy

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Von Hannover v. Germany, Judgment of 24 June 2004