

Kiss on the terrace. The Latest Trends in the Interpretation of the Right to Privacy in the Jurisprudence of the European Court of Human Rights, Reflecting on the Turkish Legal Developments

Erzsébet Szabó dr

Jurist, Student of ELTE European Human Rights LL.M.

E-mail: erzsebet.szabo.dr@gmail.com

ORCID ID:0001-6650-0644

Abstract. Did broadcasting private, intimate moments of a celebrity by a television channel exceed the limits of press freedom and had infringed the applicant's right to respect for her private life if the applicant did not present any evidence that broadcasting the images would have had any negative effect on her mental state, her professional life, and her reputation? In 2023 along what principles can the authorities find a fair balance between freedom of the press and the right to respect for the private life? How does the court evaluate the circumstances in which the images of the person concerned had been filmed and her behavior at the time they were taken in 2023? Where are the boundaries of a public person's private life and professional activity noting that how a celebrity and to what extent he/she had to be sufficiently attentive to protect his/her privacy and on the other hand, what elements needed to be proven in a dispute to underpin the unacceptable feeling of embarrassment. Through the case law of the European Court of Human Rights we can find the most important landmarks of the legal development to find the balance between the competing interests. I summarize the most important milestones of legal development¹ through the *Tüzünatac v. Turkey* case of the European Court of Human Rights (ECHR). *Birsen* has emerged victorious in a case heard by the ECHR, which condemned Turkey for failing to protect her private life. The ECHR ruled that despite their celebrity status, an individual's love life is considered strictly private, and that the video in question appeared to serve only the purpose of satisfying the curiosity of a particular audience.

Keywords: Republic of Turkey, Right to Privacy, Development of Law, Turkish Constitution, European Court of Human Rights

Introduction:

In today's world, the issue of privacy has become a crucial concern for individuals both in public and private sectors. Being a part of society requires us to live with others. However, the fact that an individual who has responsibilities towards society does not mean that they do not have their personality and private space and that they are an entity devoted to society with everything. Every person has a personal life apart from the society, should be respected by every other person and concerns only the individual. The rapid advancements in technology have made it easier than ever for personal information to be collected, shared, and even exploited without consent. This has led to an increase in the offense of invasion of privacy, where an individual's personal information is accessed or used without their permission. The invasion of privacy is a serious offense that can result in significant harm to an individual's reputation, emotional well-being, and financial stability.² Human rights, being living instruments, provide the individual with legal protection that is constantly changing and can be adapted to the needs of the age. The development of the human right to privacy in the last decade has been beyond imagination. The case law of the European Court of Human Rights on case-by-case basis has proven the

indispensability of this legal development. Moreover, the newest milestones always respond more expansively and sensitively to these changes, giving the wonderful logical chain of the path to the latest results.³

Methods

There is hard to find more obscure concept of law than the right to privacy, and it has several reasons. The protection of privacy is strongly linked to the relationship between the individual and the community, and the content and boundaries of protection are constantly changing. The definition of the concept of privacy is not only uncertain, but it cannot be defined permanently, because the form of an individual's social participation has always been changing, primarily because of technical developments. However, we already come across very different approaches regarding to what the extent the legal system must protect privacy as an independent right and to what extent other rights require protection.⁴

In particular, in a legal system that defines some personal rights - including the right to privacy - it is difficult to determine the content of the right to privacy and the limits of protection, because some content

¹ AFFAIRE TÜZÜNATAÇ c. TÜRKİYE (Requête no 14852/18) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-223366%22%5D%7D>

² Stanford Encyclopedia of Philosophy. Privacy and Information Technology. Summer 2020 Edition. <https://plato.stanford.edu/archives/sum2020/entries/it-privacy/>

³ George Letsas: The ECHR as a Living Instrument: Its Meaning and its Legitimacy. University College London, March 14, 2012. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2021836

⁴ Robert C. Post: Three Concepts of Privacy. The Georgetown Law Journal. Vol:89:2087. https://openyls.law.yale.edu/bitstream/handle/20.500.13051/1114/Three_Concepts_of_Privacy.pdf?sequence=2

elements of the right to privacy are covered by a number of personal or other rights, in particular the right to protect personal freedom, private residence, reputation, privacy and personal data, or the right to be photographed and recorded. In fact, these personality rights also constitute the content of the right to privacy in the sense of constitutional or human rights.⁵ Privacy is not only a constitutional (human) right, but also a general concept of rights with a general and special content, which is listed in Article 8 of the ECHR. The reverse is also true: the concrete content of the right to privacy is given by nominal personality rights. The general concept of the right to privacy includes for example, the protection of information about the individual, family life, private residence, or communication.⁶

In my study, I am searching for the answer to what the right to privacy means today in the EU, where are the most important milestones in the development of law, where are the current boundaries of the legal interpretation, and what are the elements which determines the balance of the legal harmony between the freedom of press and right to privacy. In my work, I examined the case law of the European Court of Human Rights how the expanding legal interpretation broadened the legal interests to be protected. My starting point was the *Tüzünatac v. Turkey* (No.14852/18) case, which currently provides one of the broadest interpretations of the protection of the right to privacy. Since the basic case also affects Turkish legal development, in addition to presenting the case law of the European Court of Human Rights, I have also collected the available Turkish rules and the justifications of the Turkish Constitutional Court relevant this issue.

Discussion

Tüzünatac v. Turkey

In 2023 Birsen Tüzünatac, the famous Turkish soap opera actress, has won a landmark privacy case at the European Court of Human Rights over a secretly filmed and broadcasted video of her kissing another celebrity on her terrace. The kiss was secretly filmed and later broadcasted on a television channel. Birsen had filed a suit in 2010 in Turkey against the parent company of the channel that had broadcasted the video of the kiss. Her claim of breach of the right to privacy was dismissed by an Istanbul court, stated that she was filmed from the street so there had been no infringement on her privacy. The ruling

was upheld by Turkey's Court of Cassation and its Constitutional Court. Relying on Articles 6 and 8 of the European Convention on Human Rights, Tüzünatac maintained that broadcasting the video showed intimate moments with her partner, had been filmed while they were on the terrace of her apartment, therefore it constituted an interference in her exercise of her right to respect for her private life. Besides she complained about the absence of an adequate judicial response to this interference, about the rejection by the national authorities to protect her against an infringement of her right to respect for private life which resulted from the dissemination of the images in question.⁷

General principles and theoretical background

The Court recalled that private life is a broad notion, not capable of an exhaustive definition, and it covers elements relating to the identity of a person, such as their name, their photograph, and his physical and moral integrity. It also implies the right to live in private, away from unwanted attention.⁸

The guarantee offered in this regard by Article 8 of the Convention is primarily intended to ensure the development of the personality of everyone in his relations with his fellow men without external interference. There therefore exists a zone of interaction between the individual and third parties which, even in a public context, may fall within the realm of private life.⁹ Furthermore, if a private person unknown to the public can claim special protection of his or her right to private life, the same cannot be said for public persons.¹⁰ In certain circumstances, a person, even if known to the public, can claim a "legitimate expectation" of protection and respect for his or her private life.¹¹

The publication of a photograph therefore interferes with the private life of an individual even if he or she is a public person. The Court has ruled on numerous occasions, that a photo could contain very personal, even intimate, "information" about an individual or their family. The Court also recognized the right of every person to their image, emphasizing that the image of an individual is one of the main attributes of his personality, since it expresses his/her originality and allows him/her to differentiate themselves from their peers. The individual's right to the protection of their image thus constitutes one of the essential conditions for their

⁵ Szűcs, Lászlóné Siska Katalin: A nemzetközi jog alapkérdései a nemzetközi kapcsolatok elméletének és történetének viszonylatában: tankönyv közigazgatási menedzsereknek. Debrecen, Magyarország: Debreceni Egyetemi Kiadó (2010), 255.

⁶ European Court of Human Rights: Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence. Updated on 31 August 2022. https://www.echr.coe.int/documents/d/echr/guide_art_8_eng

⁷ AFFAIRE TÜZÜNATAÇ c. TÜRKİYE (Requête no 14852/18) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-223366%22%7D>

⁸ Smirnova v. Russia, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-61262%22%7D>

⁹ Couderc and Hachette Filipacchi Associés v. France [GC], no. 40454/07, § 83, ECHR 2015. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-158861%22%7D>

¹⁰ Minelli v. Switzerland (dec.), no. 14991/02, June 14, 2005. https://www.google.com/url?sa=t&trct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj-iYHX8r-DAXYmmoFHQ-xASAQFnoECA4QAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fdocx%2F%3Flib_rary%3DECHR%26id%3D001-57540%26filename%3DCASE%2520OF%2520MINELLI%2520v.%2520SWITZERLAND.docx%26logEvent%3DFalse&usg=AOvVaw1lTP49tImjI8qvXbW0tjJy&opi=89978449

¹¹ Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, § 97, February 7, 2012. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-109029%22%7D>

privacy. It mainly presupposes control by the individual of his image, which includes the possibility of refusing its publication, but also the right for him/her to oppose the conservation and distribution reproduction thereof by others.¹²

To determine whether a publication infringes the right to privacy of the person concerned, the Court considered the way the information or photograph was obtained. It attaches importance to the fact that the consent of the persons concerned has been obtained or that a photograph arouses a strong feeling of intrusion.¹³

The Court observed that the photographs appeared in the so-called "sensational" press usually aimed to satisfy the public's curiosity for the details of the strictly private life of others¹⁴, are often carried out in an atmosphere of continuous harassment, which can lead to the person concerned having a very strong feeling of intrusion into their private life, or even persecution.¹⁵ The purpose for which a photograph was used and may be used in the future also important in the Court's assessment.¹⁶

The Court further recalled that although the press must not cross certain limits, particularly relating to the protection of the reputation and rights of others, it is nevertheless incumbent on it to communicate, while respecting its duties and responsibilities information and ideas on all matters of general interest. Thus, the information mission necessarily entails "duties and responsibilities", as well as limits, which the press organs must impose spontaneously.¹⁷

In addition to the function of the press which consists of disseminating information and ideas on matters of general interest, there is the right of the public to receive them. If it weren't, the press would not be able to play its essential role of "watchdog".¹⁸ Furthermore, it is not up to the Court, nor indeed the domestic courts, to take the place of the press in choosing the method of reporting in each case.¹⁹ Even if the disclosure of information on the private lives of public figures generally pursues the aim of entertainment, it contributes to the variety of information made available to the public and undoubtedly benefits from the protection of Article 10 of the Convention. This

protection may, however, yield to the requirements of Article 8 when the information in question is of a private and intimate nature and there is no public interest in its dissemination.²⁰ Indeed, when the situation does not arise from any political or public debate and the photographs published and the comments which accompany them relate exclusively to details of the private life of the person with the sole aim of satisfying the curiosity of a certain public, freedom of expression calls for a more restrictive interpretation.²¹

The Court further observed that, when it is called upon to rule a conflict between two rights also protected by the Convention, it must balance the interests at stake. In principle the outcome of the application cannot depend on whether it was submitted based on Article 8 of the Convention, by the person who was the subject of the disputed remarks or, based on Article 10, by the author of these remarks. Indeed, these rights deserve a priori equal respect.²² Therefore, the margin of appreciation granted to States should in principle be the same in both cases.²³ The Court should judge whether the State, within the framework of its positive obligations arising from Article 8 of the Convention, has provided a fair balance between the applicant's right to respect for his private life and the opposing party's right to freedom of expression protected by Article 10.²⁴ It has summarized in several judgments the relevant criteria for balancing the right to respect for private life and the right to freedom of expression, which include the following: the contribution to a debate of general interest, the notoriety of the person concerned, the subject of the report, the previous behavior of the person concerned, the content, form and repercussions of the publication, as well as, where applicable, the circumstances of the case.²⁵ If the balancing of these two rights was carried out in compliance with the criteria established by the Court's case law, serious reasons are required for it to substitute its opinion for that of the domestic courts.²⁶

The Court observed that the applicant is an actress enjoying considerable notoriety among the public. Given

¹² López Ribalda and Others v. Spain [GC], nos. 1874/13 and 8567/13, § 89, October 17, 2019. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-197098%22%5D%7D>

¹³ Von Hannover v. Germany, no. 59320/00, § 59, ECHR 2004-VI, Gourguénidzé v. Georgia, no. 71678/01, § 55-60, October 17, 2006, and Hachette Filipacchi Associés v. France, no. 71111/01, § 48, June 14, 2007.

<https://globalfreedomofexpression.columbia.edu/laws/ecthr-gurgenidze-v-georgia-no-7167801-2006/>, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-158861%22%7D>

¹⁴ Société Prisma Presse v. France (dec.), no. 66910/01, July 1, 2003, Société Prisma Presse v. France (dec.), no. 71612/01, July 1, 2003, and Hachette Filipacchi Associés (ICI PARIS) v. France, no. 12268/03, § 40, July 23, 2009. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-4733%22%7D%7D>

¹⁵ Von Hannover, cited above, § 59.

¹⁶ Reklós and Davourlis v. Greece, no. 1234/05, § 42, January 15, 2009, and Hachette Filipacchi Associés (ICI PARIS), cited above, § 52. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-90617%22%7D%7D>

¹⁷ Mater v. Turkey, no. 54997/08, § 55, July 16, 2013. https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/11/Guide_Art_10_ENG.pdf

¹⁸ Bladet Tromsø and Stensaas v. Norway [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, Pedersen and Baadsgaard, cited above, § 71, and Von Hannover (no. 2), cited above, § 102. <http://hudoc.echr.coe.int/eng#%7B%22display%22:%5B%22002-6396%22%7D%7D>

¹⁹ Jersild v. Denmark, September 23, 1994, § 31, Series A no. 298, and Stoll v. Switzerland [GC], no. 69698/01, § 146, ECHR 2007-V. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83870%22%7D%7D>

²⁰ Mosley v. United Kingdom, no. 48009/08, § 131, May 10, 2011. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-104712%22%7D%7D>

²¹ Hájovský v. Slovakia, no. 7796/16, § 31, July 1, 2021. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-13325%22%7D%7D>

²² Hachette Filipacchi Associés (ICI PARIS), cited above, § 41, Timciuc v. Romania (dec.), no. 28999/03, § 144, October 12, 2010, Mosley, cited above, § 111, and Couderc et Hachette Filipacchi Associés, cited above, § 91. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-101734%22%7D%7D>

²³ Von Hannover (no 2), cited above, § 106 and Couderc et Hachette Filipacchi Associés, cited above, § 91.

²⁴ Petrie, cited above, § 40.

²⁵ Von Hannover (no 2), cited above, §§ 108-113, see also Couderc and Hachette Filipacchi Associés, cited above, § 93.

²⁶ Palomo Sánchez and others v. Spain [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, ECHR 2011. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-106178%22%7D%7D>

the fame that her roles in films and television series had brought her, she was undoubtedly followed by the specialized press and well known to the public interested audiovisual culture. The Court recalled that the public or notorious nature of a person influences the protection from which their private life can benefit. It was recognized in several cases that the public has the right to be informed of certain aspects of the private lives of public figures.²⁷ In certain circumstances, a person, even if known to the public, can claim a “legitimate expectation” of protection and respect for his or her private life.²⁸ Thus, the membership of an individual in the category of public figures cannot - in any way, even in the case of exercising official functions, - authorize the media to transgress the deontological and ethical principles which should be imposed on them, nor legitimize intrusions into private life.²⁹

The Court then observed that the disputed video recording related exclusively to the strictly private life of the applicant in the context of a relationship that she had at a certain time with an actor known to the public. Indeed, it contained images of the interested party spending time with her partner on the terrace of her home. It showed the couple chatting, getting closer to each other and kissing. The broadcast of the video was announced by the presenter of the show with expressions likely to arouse the interest and attention of the public such as „the love bomb of the year”, „the revelation of the very secret relationship” of the person concerned and „the abnormal joy of the couple”. In addition, when the video was broadcasted, a journalist commented on the images by describing in detail each gesture of the protagonists appearing in them.

The Court recalled, in this context, that even if it has admitted in the past that elements of the private life could be revealed because of the interest that the public could have in becoming aware of certain traits of the personality of a public person³⁰, a person's love and sentimental life is in principle strictly private. Therefore, in general, details relating to the sexual life or intimate moments of a couple should only be made known to the public without prior consent to do so, in exceptional circumstances.³¹

The Court observed that having regard to the above-described content of the disputed video, its broadcast seems to have had the sole purpose of satisfying the

curiosity of a certain audience for the details of the applicant's private life.

This video cannot as such, - whatever the notoriety of the person concerned, - be considered to contribute to any debate of general interest for society.³² The Court reaffirmed that the general interest cannot be reduced to the expectations of a public fond of details regarding the private lives of others, nor to the taste of readers for the sensational or, sometimes, for voyeurism.³³

Further examining the circumstances in which the images in question were obtained by the journalists, the Court noted that the journalists filmed the entire scene with a telephoto lens to capture the details of the couple's interactions. The images were then broadcasted with explanations describing them in detail and editorial comments to arouse the interest and curiosity of the spectators. The Court recalled that the fairness of the means used to obtain information and return it to the public, as well as respect for the person who is the subject of information³⁴, are essential criteria to consider regarding the circumstances of obtaining and processing disputed information. Indeed, whenever information involving the private lives of others is in question, it is the responsibility of journalists to consider, as far as possible, the impact of this information and the images concerned before their broadcast. Certain events in private and family life are subject to reinforced protection regarding Article 8 of the Convention and must therefore lead journalists to exercise prudence and precaution when processing them.³⁵

The Court emphasized that in the circumstances of the case the applicant could not have expected to be filmed or to be the subject of a public report, and that she did not cooperate with the media. Consequently, significant weight must be given to the factor relating to his reasonable expectations of private life.³⁶ Indeed, even if the terrace of the applicant's apartment was visible from the public road where the journalists were, the comments they exchanged in the video suggest that they made the recording secretly. They therefore tried to hide so as not to be seen by the applicant and her partner while they were filming. It is particularly important to bear in mind that the video was made at 5 a.m., and not at a time of day when the public was flocking to the streets and where the applicant could have anticipated the

²⁷ Couderc and Hachette Filipacchi Associés, cited above, § 117.

²⁸ Von Hannover (no. 2), cited above, § 97.

²⁹ Couderc and Hachette Filipacchi Associés, cited above, § 122.

³⁰ see the cases of Ojala and Etukeno Oy v. Finland, no. 69939/10, §§ 54-55, 14 January 2014, and Ruusunen v. Finland, no. 73579/10, §§ 49-50, 14 January 2014.

presence of journalists outside. In any event, it is indisputable that the images at issue were taken without the applicant's knowledge and that they were distributed without her consent.

The Court thus reaffirmed that the notoriety or functions of a person can in no case justify media harassment or the publication of photographs obtained by fraudulent or clandestine maneuvers or revealing details of the private lives of persons and constituting an intrusion into their privacy.³⁷ As for the decisions rendered by the national courts, the Court noted that the high court justified the rejection of the request for compensation submitted by the applicant by emphasizing the attention that the public paid to it because of her celebrity, and on the fact that the images in question had been filmed from a public road. The Court of Cassation confirmed the decision of the first judges without providing further reasons for its conclusion. The Turkish Constitutional Court ruled in the context of the applicant's individual appeal that there had been no violation of her right to respect for private life, considering in particular that the applicant had not been careful enough to protect her privacy by choosing to approach her partner in a place on her terrace visible from the outside, and that the images which had been broadcast were not likely to cause unacceptable discomfort to the protagonists.³⁸

The Court noted that the national courts did not duly weigh the applicant's right to respect for her private life on the one hand and the freedom of the press on the other, in accordance with the relevant criteria. The content of the video broadcast, which related to details of the applicant's romantic and intimate life and in no way related to a subject of general interest and, on the other hand, the circumstances was not in conformity with the standards of responsible journalism, in which these images were obtained and disseminated by the journalists, without the consent of the person concerned, the domestic courts should have shown more rigor when weighed the different interests involved, as Turkish press was accused several times before the European Court of Human Rights.³⁹ In particular, the argument according to which the applicant was not careful enough to protect her privacy by approaching her companion in a place on the terrace of her apartment visible from the outside cannot be accepted. Acceptance of this criterion of "spatial

isolation" would mean unless she is in an isolated place sheltered from the public, she must agree to be filmed almost at any time. These images are then very widely disseminated, even if these images related exclusively to details of her private life; which would not be consistent with the Court's case law.⁴⁰ Furthermore, the emotional distress and the consequences on the applicant's private and professional life that the dissemination of the contested images may have caused the applicant do not appear to have been sufficiently taken into consideration by the national authorities.

The Court concluded that the national courts failed in their obligation to protect the applicant's right to respect for her private life against the infringement which had been made by the dissemination of the disputed images.

Domestic Laws and Regulations

According to the European Convention of Human Rights (Article 8) everyone has the right to respect their private and family life, home, and correspondence. According to the Turkish Constitution (Article 20) Everyone has the right to be respected in their private and family life. The privacy of private and family lives is inviolable.⁴¹ The Turkish Constitution has not regulated the exact meaning of private and family lives, the extent, and boundaries of privacy, that is according to Turkish Civil Code Article 24§ (1) amongst personal rights.⁴² The regulation can only be affected by judicial decision and has been protected by national and international legal texts.⁴³

Article 20/1 of the Constitution used the term "private life" which is a general and abstract term without exact definition in the Turkish Constitution as to what it means.⁴⁴ According to its interpretation there are two aspects of human life which predominantly divided into three: public, private, and secret. The public living space is the area where activities are open to everyone and where it is not harmful to be known by others. It is a general aspect of human life, and it does not need legal protection. However, individuals have the right to demand respect for the privacy of their private life in the public sphere. The decision of the Supreme Court in this regard is as follows: "The concept of private life does not only consist of the life and privacy of the person between the closed doors that he does not share with others, away from the eyes, between the four walls but also includes all of the completely private life events and information that everyone does not

³⁷ Couderc and Hachette Filipacchi Associés, cited above, § 123.

³⁸ AFFAIRE TÜZÜNATAÇ c. TÜRKİYE (Requête no 14852/18)

³⁹ Dr. Szűcs Lászlóné Dr. Siska Katalin: Az alapjogok korlátai és a közérdek sajátos értékelésének gyakorlata Törökországban. 2023.09.22. Kalliópé Kiadó. 9.

⁴⁰ Von Hannover v. Germany, no. 59320/00, §§ 74 and 75, ECHR 2004-VI

⁴¹ Szűcs, Lászlóné Siska Katalin-Szemesi, Sándor A nemzetközi jog története, Debrecen, Magyarország : Kossuth Egyetemi Kiadó (2006)

⁴² Siska, Katalin: A női jogok alakulásának áttekintése a Török Köztársaság megalakulásától napjainkig JOG ÁLLAM POLITIKA: JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT 2 pp. 39-54. , 16 p. (2017)

⁴³ Szűcs, Lászlóné Siska Katalin: Az emberi jogok az arab világban, Debrecen, Magyarország: Debreceni Egyetemi Kiadó (2012), 164 p., ISBN: 9789633181898, Szakkönyv (Könyv) | Tudományos [2227930] [Admin láttamozott]

⁴⁴ Constitution of the Republic of Turkey. The official translation published by the Grand National Assembly of Turkey, Department of Laws and Resolutions, May 2019 https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf

not know or should not know, which can be explained to other people when desired. Therefore, being in a public area does not imply consent to the listening, viewing, recording, and continuous and unauthorized possession of every image or sound in this area. Even when you are in a public area, the principle of not attracting attention in the crowd, being unrecognizable, obscure” is valid, and continuous auditing and inspection are carried out to determine what the person in the public area does during the day, where he goes, why, how, where and when he meets with whom. The information obtained because of his/her detention or his/her activities that he/she does not want to be seen and known by others, which are not doubtful when he/she enters his private life, are included in the concept of private life. However, events and information that do not contain continuity and are not included in the private life cannot be evaluated within this scope.” As a result, while determining whether an event or information is within the scope of the concept of private life, not only the characteristics of the physical environment, the position of the person in the society, his profession, duty, whether he is recognized by the public, his external behaviors, consent and predictions, social relations, etc. criteria such as the degree of intervention should also be considered.”⁴⁵

In the incident where the perpetrator, hiding in the coal pit near his house, focused the shooting direction of his working camera on the women and girls passing through the street, and recorded the images of their physical privacy without their knowledge and consent, the Turkish Supreme Court made the following determinations: “Although it is accepted that the accused secretly recorded the images of women in different age groups who were passing or standing on the street, focusing on the erogenous areas such as the face, hips, feet, legs, according to the concept of private life when it is in the public area, it is not just about the life and privacy of the person away from the eyes, that he does not share with others, between closed doors, between four walls, but also that everyone does not know or should not know, that can be explained to other people when requested, and that it contains all of the completely private imaginary events and information, considering that the principle of inconspicuousness, obscurity and obscurity in the crowd is valid. It is not possible to accept that every person who goes out into the public area consents to the recording of every image or sound in this area and to keep it permanently and without permission. It is not possible to detect or record an impossible private life

event because the women whose images are recorded can be seen and watched by any passerby as they are recorded. If the act of the accused is accepted as a crime, it is necessary to admit that the person who looks at an area of the woman passing by and advancing in front of him, which is zoomed from time to time, such as her butt, is also guilty.”

A subject that often causes controversy in practice is the publications made by the media, especially regarding the private life of famous people. When matters such as a model’s private conversations with her lover or a businessman’s extramarital affairs are made public by the mass media, the people concerned complain that their privacy is violated. In contrast, the media argues that these publications are in the public interest and are doing their journalistic duties. It is necessary to evaluate the situation of mass media, which announces such relations or behaviors of publicly known persons to the public, in terms of freedom of the press (ECHR article 10) and protection of private life (ECHR article 8). The right to criticize and inform is a part of the freedom of the press, which is under constitutional guarantee. However, in some cases, a conflict can occur between the right to inform-criticize and the right of personality.

Journalists have the right to report current events of public interest to the public after investigating them. For this condition to be considered fulfilled, the following conditions are required: the event must be real, being up to date, an explanation must contain public interest, to attract the interest of the public, between the news and the expressions used, the existence of an intellectual bond, expressions and value judgments should not be included in the article. It is necessary to examine the publication of matters that fall within the sphere of private life in terms of “public interest” in terms of Article 134 of the Turkish Penal Code.⁴⁶ About the public interest, the reader’s abstract curiosity (in the words of the Supreme Court, “morbid curiosity feelings”) are not oriented towards satisfaction. Here, the superior should aim to protect moral and legal values. Although some information about the person’s private life is disclosed by the press without the consent of the person, the above conditions and especially if there is a public interest in the making of this news, the broadcast will be lawful.⁴⁷

Conclusion

Overall the content of the video broadcast, which related to details of a celebrities’ romantic and intimate life and in no way related to a subject of general interest and, on the other hand, the circumstances must be in conformity with

⁴⁵ Constitutional Justice in Asia Constitutional Justice In Asia. “Respect for Private and Family Life” “Principles of Fair Trial” Editors: Murat AZAKLI-Dr. Mücahit AYDIN-Enise ÖZDEMİR, 4th Summer School of the Association of Asian Constitutional Courts and Equivalent Institutions 2nd Summer 2-9 October 2016 Asian Constitutional Courts and Equivalent Institutions, Ankara 2018. https://www.anayasa.gov.tr/media/6411/4th_summer_school.pdf

⁴⁶ Dr. Szűcs Lászlóné Dr. Siska Katalin: Az alapjogok korlátai és a közérdek sajátos értékelésének gyakorlata Törökországban. 2023.09.22. Kalliópé Kia dó.9.

⁴⁷ Law Nr. 5237 Criminal Code of Turkey. <http://www.lawsturkey.com/law/criminal-code-law-of-turkey-5237>

the standards of responsible journalism, in which the images were obtained and disseminated by the journalists, without the consent of the person concerned. Thus, a person's notoriety cannot - in any way, even in the case of exercising official functions - authorize the media to transgress the deontological and ethical principles which should be imposed on them, nor legitimize intrusions into private life. The domestic courts should show more rigor when weighed the different interests involved and should aim to protect moral and legal values. The argument that the victim was not careful enough to protect her privacy on a public place or a place visible from the street cannot be accepted. Acceptance of this criterion of "spatial isolation" would mean unless she is in an isolated place sheltered from the public, she must agree to be filmed almost at any time. The emotional distress and the consequences on the victim's private and professional life that the dissemination of the contested images may have caused the victim to have not been sufficiently

taken into consideration by the national authorities. Broadcasting private videos by the sensational press has only one sole purpose: satisfying the curiosity of a certain audience for the details of the victim's private life. This video cannot as such, - whatever the notoriety of the person concerned, - be considered to contribute to any debate of general interest for society. The reader's abstract curiosity or morbid curiosity feelings are not oriented towards satisfaction.

The explanations inherent in the justifications respond precisely to the constant, almost pathological, intrusion into intimacy these days. Watching each other's lives has become a part of our everyday life, so much so that we almost expect the daily press to provide us with this pleasure continuously. The call for increased responsibility of the press in the justifications, as well as the declaration of the public's wishful thinking as morbid, is a definite result on the way to remedying the issue. The emotional stress resulting from the situation and the constant monitoring does not justify financial compensation.

REFERENCES

1. AFFAIRE TŪZŪNATAÇ c. TŪRKİYE (Requête no 14852/18) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-223366%22%7D%7D>
2. Bladet Tromsø and Stensaas v. Norway [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, <http://hudoc.echr.coe.int/eng#%7B%22display%22:%5B%22%22002-6396%22%7D%7D>
3. Constitution of the Republic of Turkey. The official translation published by the Grand National Assembly of Turkey, Department of Laws and Resolutions, May 2019 https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf
4. Constitutional Justice in Asia Constitutional Justice In Asia. "Respect for Private and Family Life" "Principles of Fair Trial" Editors: Murat AZAKLI-Dr. Mücahit AYDIN-Enise ÖZDEMI , 4th Summer School of the Association of Asian Constitutional Courts and Equivalent Institutions 2nd Summer2-9 October 2016 Asian Constitutional Courts and Equivalent Institutions, Ankara 2018. https://www.anayasa.gov.tr/media/6411/4th_summer_school.pdf
5. Couderc and Hachette Filipacchi Associés v. France [GC], no. 40454/07, § 83, ECHR 2015. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-158861%22%7D%7D>
6. Dr. Szűcs Lászlóné Dr. Siska Katalin: Az alapjogok korlátai és a közérdek sajátos értékelésének gyakorlata Törökországban. 2023.09.22. Kalliopé Kiadó. 9.
7. Éditions Plon v. France, no. 58148/00, §§ 47 and 53, ECHR 2004-IV and Hachette Filipacchi Associés, cited above, §§ 46-49.
8. Egeland and Hanseid v. Norway, no. 34438/04, § 61, April 16, 2009. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-92246%22%7D%7D>
9. European Court of Human Rights: Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence. Updated on 31 August 2022. https://www.echr.coe.int/documents/d/echr/guide_art_8_eng
10. George Letsas: The ECHR as a Living Instrument: Its Meaning and its Legitimacy. University College London, March 14, 2012. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2021836
11. Hájovský v. Slovakia, no. 7796/16, § 31, July 1, 2021. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-13325%22%7D%7D>
12. Jersild v. Denmark, September 23, 1994, § 31, Series A no. 298, and Stoll v. Switzerland [GC], no. 69698/01, § 146, ECHR 2007-V. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83870%22%7D%7D>
13. Law Nr. 5237 Criminal Code of Turkey. <http://www.lawsturkey.com/law/criminal-code-law-of-turkey-5237>
14. López Ribalda and Others v. Spain [GC], nos. 1874/13 and 8567/13, § 89, October 17, 2019. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-197098%22%5D%7D%7D>
15. Mater v. Turkey, no. 54997/08, § 55, July 16, 2013. https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/11/Guide_Art_10_ENG.pdf

16. Minelli v. Switzerland (dec.), no. 14991/02, June 14, 2005. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj-iYHX8r-DAXXYmmoFHQ-xASAQFnoECA4QAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fdocx%2F%3Flibrary%3DECHR%26id%3D001-57540%26filename%3DCASE%2520OF%2520MINELLI%2520v.%2520SWITZERLAND.docx%26logEvent%3DFalse&usg=AOvVaw1lTP49t1mjI8qvXbW0tjJy&opi=89978449>
17. Mosley v. United Kingdom, no. 48009/08, § 131, May 10, 2011. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-104712%22%7D>
18. Palomo Sánchez and others v. Spain [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, §57, ECHR 2011. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-106178%22%7D>
19. Reklós and Davourlis v. Greece, no. 1234/05, § 42, January 15, 2009, and Hachette Filipacchi Associés (ICI PARIS), cited above, § 52. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-90617%22%7D>
20. Robert C. Post: Three Concepts of Privacy. The Georgetown Law Journal. Vol:89:2087. https://openyls.law.yale.edu/bitstream/handle/20.500.13051/1114/Three_Concepts_of_Privacy.pdf?sequence=2
21. Ruusunen v. Finland, no. 73579/10, §§ 49-50, 14 January 2012. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjVr-rZ9L-DAXXlmbAFHTRkBKEQFnoECB4QAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fdocx%2F%3Flibrary%3DECHR%26id%3D001-139989%26filename%3DCASE%2520OF%2520RUUSUNEN%2520v.%2520FINLAND.docx%26logEvent%3DFalse&usg=AOvVaw3heTht4mCtYt-5wpd15fj9&opi=89978449>
22. Siska, Katalin: A női jogok alakulásának áttekintése a Török Köztársaság megalakulásától napjainkig JOG ÁLLAM POLITIKA: JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT 2 pp. 39-54., 16 p. (2017)
23. Smirnova v. Russia, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-61262%22%7D>
24. Sociétés Prisma Presse v. France (dec.), no. 66910/01, July 1, 2003, Sociétés Prisma Presse v. France (dec.), no. 71612/01, July 1, 2003, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-4733%22%7D>
25. Stanford Encyclopedia of Philosophy. Privacy and Information Technology. Summer 2020 Edition. <https://plato.stanford.edu/archives/sum2020/entries/it-privacy/>
26. Szűcs, Lászlóné Siska Katalin-Szemesi, Sándor A nemzetközi jog története, Debrecen, Magyarország: Kossuth Egyetemi Kiadó (2006)
27. Szűcs, Lászlóné Siska Katalin: A nemzetközi jog alapkérdései a nemzetközi kapcsolatok elméletének és történetének viszonylatában: tankönyv közigazgatási menedzsereknek. Debrecen, Magyarország: Debreceni Egyetemi Kiadó (2010), 255.
28. Szűcs, Lászlóné Siska Katalin: Az emberi jogok az arab világban, Debrecen, Magyarország: Debreceni Egyetemi Kiadó (2012), 164 p., ISBN: 9789633181898, Szakkönyv (Könyv) | Tudományos [2227930] [Admin láttamozott]
29. Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, § 97, February 7, 2012. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-109029%22%7D>