

Right To Private Life

Aghayeva Farida

Master degree student at Department of
UNESCO Chair on Human Rights and Information Law
Law Faculty, Baku State University

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ABSTRACT

This article is dealt with the article 8 of European Convention on Human Rights [1] especially the theme of right to private life. The term 'private life' is a broad term not susceptible to exhaustive definition. Other than 'privacy', the notion 'private life' is not confined to a secluded space free from interference by others. To a certain extent, it also encompasses the relationships of an individual with his social environment, the protection of personality rights and personal autonomy as well the possibility to personal development.

Açar sözlər: şəxsi həyat, fiziki toxunulmazlıq, mənəvi toxunulmazlıq, şəxsi nüfuz, ad seçmək hüququ, cinsi mənsəbiyyət

XÜLASƏ

Bu məqalədə Avropa Konvensiyasının 8-ci maddəsində təsbit olunmuş şəxsi həyatın toxunulmazlığı hüququndan bəhs edilir. Şəxsi həyat tam anlayışı verilməsi mümkün olmayan geniş əhatəli termdir. "şəxsi həyat" anlayışı fərdin özəl həyatına nisbətən başqaları tərəfindən müdaxilə olunmayan sahə ilə məhdudlaşır. Müəyyən dərəcədə o, şəxsin ətraf aləmlə münasibətlərini, həmçinin onun şəxsiyyətin qorunması hüquqlarını və öz taleyini özünün həll etməsini eləcə də şəxsi inkişaf imkanı ilə bağlı münasibətləri əhatə edir.

Ключевые слова: личная жизнь, физическую неприкосновенность, моральной целостности, репутации, право на имя, половая принадлежность

РЕЗЮМЕ

В данной статье рассматривается в статье 8 Европейской конвенции о правах человека в частности тему права на частную жизнь. Термин «частная жизнь» является широким термином, не поддается исчерпывающему определению. Кроме «Приватность», понятие «частная жизнь» не ограничивается изолированным пространстве, свободной от вмешательства со стороны других. В определенной степени, он также охватывает взаимоотношения человека с его социальной среды, защиты прав личности и личной автономии, а также возможность личного развития.

The European Court of Human Rights has never offered a clear and precise definition of what is meant by private life. In the case of Costello-Roberts v. United Kingdom Court noted that "in its view private life is a broad concept, incapable of exhaustive definition" In Niemietz v. Germany case the Court declared, "The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of "private life". However, it would be too restrictive to limit the notion to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude there from entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings." The Court observed that the notion of 'private life' should not be taken to exclude activities of a professional or business nature since, it is in the course of their working lives that the majority of the people have a significant opportunity of developing relationships with the outside World [2].

What is clear is that the notion of private life is

much wider than that of privacy, encompassing a sphere within which every individual can freely develop and fulfill his personality, both in relation to others and with the outside world. Instead of providing a clear-cut definition of private life, the Court has identified, on a case-by-case basis, the situations falling within this dimension. The result is a rather vague concept, which the Court tends to construe and interpret broadly: over the years the notion of private life has been applied to a variety of situations, including bearing a name, the protection of one's image or reputation, awareness of family origins, physical and moral integrity, sexual and social identity, sexual life and orientation, a healthy environment, self determination and personal autonomy, protection from search and seizure and privacy of telephone conversations. In addition, the Court has held that the recognition of an individual's legal civil status comes within the scope of Article 8 and has found the provision applicable.

The application of Article 8 to naturalization claims has proven to be sensitive: although the provision does not guarantee the right to acquire a particular nationality, in the *Genovese* case the Court stated that it could not be ruled out that an arbitrary denial of citizenship might, in certain circumstances, raise an issue under Article 8 of the Convention because of the impact of such a denial on the social identity aspect of the private life dimension protected by that provision [3]. An excessive delay in the registration of a marriage has also been considered to fall under the remits of the provision.

The scope of the right to private life under article 8 ECHR encompasses (but is not limited to) the following aspects:

- Right to one's reputation
- Right to physical and moral integrity
- Sex life, sexual orientation and sexual identity
- Gender identity: right to a name

In 2007 Strasburg Court, with a judgment representing a progressive step in the development on the right to respect for private life. In the case of *Pfeifer v. Austria* the Court expressly recognized that Article 8 applies to the protection of one's reputation. In the case of *Petrina v. Romania* it stated that a reputation forms part of the individual identity and psychological integrity, imposing a duty of protection on national courts, even if the criticism is expressed in the context of a public debate.

Depending on the circumstances, "private life" can extend to the moral and physical integrity of the person, leading to a possible overlap with Article 3

situations particularly. Nonconsensual or compulsory medical treatment or examination, regardless of how minor, will certainly fall within the protective scope of private life under Article 8. Examples of cases where physical or moral integrity were (or could have been) looked at from an Article 8 perspective include: the administration of medications to a severely handicapped child by hospital staff against the wishes of his mother (*Glass v. United Kingdom*); a strip search of all visitors of a prison, regardless of any reasonable suspicion of having committed a criminal offence (*Wainwright v. United Kingdom*); forcible administration of emetics to a suspected drug trafficker in order to provoke vomiting of the psychotropic substance swallowed (*Jalloh v. Germany*); and the forcible gynaecological examination of a detainee (*Y.F. v. Germany*). Examples of psychological integrity include: the deportation of a mentally ill person to a place where his condition would go largely untreated (*Bensaid v. United Kingdom*); and repeated psychiatric examinations at short intervals in connection with similar criminal cases before the same court (*Worva v. Poland*) [4].

The right to private life under article 8 ECHR embraces a person's sex life (*Stübing v Germany*). Since interferences with the sex life touch upon a particularly intimate part of the life of the affected person, the margin of appreciation accorded to the contracting states in this area is narrow. In addition to the requirement to be based on a law, interferences with the sexual life of a person have to respond to a pressing social need.

In a number of resolutions, the Court has scrutinized legislation pertaining homosexuals. In the case *Dudgeon v UK*, the applicant complained about laws in force in Northern Ireland according to which homosexual acts between consenting adult males constituted a criminal offence. The applicants house had been searched by police for drugs. On this occasion, private correspondence and diaries were confiscated. Since homosexual activities were described in these documents, the applicant was questioned by police about his private and sex life. No charges were brought against the applicant. At this point of time, no proceedings for homosexual acts between adults over the age of 21 had been instituted for several years already. The Court stated that the very existence of legislation sanctioning homosexual acts amounted to an interference with the right to private life, regardless of the fact that in general no proceedings were initiated against consenting adults engaging in homosexual activities.

The Court pointed also to the fact that, while as a matter of practices the prosecution discontinued proceedings in such cases, there was no official policy to this effect in place.

The European Court of Human Rights has initially adopted a restrictive approach to the impact which the Convention has on these issues. In *Rees v UK*, the applicant was a female-to-male transsexual. After changing his name to a male name, he requested a new passport. While the passport was issued under the new name, the authorities refused to include the prefix 'Mr'. They also did not grant his request to alter the birth register. The Court held that the lack of legislation governing the change of official documents and registers did not amount to a violation of article 8 ECHR. It pointed to the margin of appreciation contracting states enjoy concerning the measures to adopt in view of transferring the guarantees enshrined in article 8 into national law. While there were by-laws to resolve issues such as the one brought forward by the applicant were in place in some Council of Europe member states, the ECHR stated that the UK could was not compelled by article 8 to enact similar legislation.

In *Cossey v UK*, the Court has confirmed this approach. The applicant had undergone gender re-assignment and wished to marry. Authorities had informed her that she was legally still considered a man. The Court stated that there were no reasons to depart from its judgment in the *Rees* case, since there were no scientific or social developments which would justify or require a different evaluation.

The issue of the applicability of Article 8 to the choice of first and last names was first examined by the Court in the early 1990s. In *Burghartz*, a case concerning the use of the wife's last name by her spouse, the Court clearly stated that despite not being explicit in Article 8, one's name, as a means of personal identification and of linking to a family, must be viewed as part of one's private and family life, which must be enjoyed without discrimination based on gender [5]. In the case *Guillot v. France*, which was about the refusal of the French authorities to register the applicant's daughter with the name "Fleur de Marie" as it was not listed in the Saints' Calendar, the Court further clarified that the choice of a child's forename by parents amounts to a personal, emotional matter and therefore comes within their private sphere.

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