Lala Abdurrahimova[*]

THE CASE LAW OF THE ECHR ON THE CONTRADICTIONS ARISING FROM THE RIGHT TO PRIVATE LIFE AND FREEDOM OF EXPRESSION

Abstract

Both, the right to private life and freedom of expression are universal, inalienable, interdependent and indivisible human rights. They also interact with each other. But in some cases the right to private life can clash with the right to freedom of expression at multiple levels and at different aspects of daily life. The article is namely dedicated to find out their interplay, conflicts, controversial issues arising from these conflicts and also to uncover the criterias for the solution of controversial issues, which have been defined by the international mechanisms.

Annotasiya

Həm şəxsi həyata hörmət hüququ, həm də ifadə azadlığı universal, ayrılmaz, müstəqil və bölünməz insan hüquqlarıdır. Onlar həmçinin bir-biri ilə qarşılıqlı əlaqədədir. Lakin bəzi hallarda şəxsi həyata hörmət hüququ gündəlik həyatın müxtəlif aspektlərində və müxtəlif səviyyələrdə ifadə azadlığı ilə toqquşa bilər. Məqalə də məhz bu hüquqların qarşılıqlı əlaqəsini, ziddiyyətini və bu ziddiyyətdən yaranan mübahisəli məsələləri aşkar etməyə və həmçinin mübahisəli məsələlərin həlli üçün beynəlxalq mexanizmlər tərəfindən müəyyən olunmuş meyarları ortaya çıxarmağa həsr olunmuşdur.

CONTENTS

Introduction 67

I. The public interest as a principle of balancing between the right to private life and freedom of expression and ECHR approach on this issue 68

A. Axel Springer v. Germany 69

B. Von Hannover v. Germany 71

C. Rubio Dosamantes v. Spain 72

II. Criticism and private life of political figures and public officials 74

Conclusion 78

[*] Baku State University Law School, 2nd year Master's Degree student on Human Rights.

Introduction

Both, freedom of expression and the right to private life are fundamental rights. They are equally recognised in the Universal Declaration of Human Rights and other international conventions such as the European Convention on Human Rights (hereinafter "the Convention") and in many national constitutions. There are some important questions as to how two rights relate to each other. How should conflicts between privacy and freedom of speech be resolved? It is necessary to take into account that the law can not protect both rights at the same time when these conflicts arise – neither is absolutely protected.

The privacy and freedom of expression are two sides of the same coin, each an essential prerequisite to the enjoyment of the other. The relationship between the right to privacy and the right to freedom of expression is a complex one,[1] which implies that it can be analysed from multiple perspectives and at multiple levels. Both rights are inalienable human rights and are generally mutually supportive and interdependent. They have a central role along with the values of autonomy, identity and dignity in the realization of human self-development. Today more than ever, privacy and free expression are interlinked; an infringement upon one can be both the cause and consequence of an infringement upon the other. In terms of specific impacts on freedom of expression, a number of different areas can be identified, as described below.

In most situations, the European Court of Human Rights (hereinafter "the Court") will be confronted with a conflict rendering the above solution impossible. In such cases, a course of action that upholds both human rights to the extent possible should be preferred over a situation, in which one right is sacrificed for the sake of the other.[2]

This research unveils the relationship between privacy and freedom of expression. Moreover, the article investigates how the Court deals with privacy and freedom of expression. The article illustrates the tension between these two fundamental rights by looking at the judgements of the Court. The article will attempt to show that the Court developed tests to determine which right should reign supreme in any given situation.

This article is structured in two primary parts. The first and the main part of this article reviews the public interest as a principle of balancing between the right to private life and freedom of expression and ECHR approach on this issue. Under this section one can find specific judgements of the Court

[1] Eric Barendt, Freedom of Speech 165 (2nd ed. 2007).

[2] Eva Brems, Introduction to Conflicts between Fundamental Rights 4-6 (2008).

related to this issue. The second part of this article is about criticism and private life of political figures and public officials.

I. The public interest as a principle of balancing between the right to private life and freedom of expression and ECHR approach on this issue

The right to privacy is often considered an essential requirement for the realization of the right to freedom of expression,[3] insofar as privacy protection plays an important role in the creation of the content required for adequate exercising of the rights to freedom of opinion and expression. For instance, it is well understood that individuals need private spaces protected against external pressures and interferences in order to develop their own thoughts, opinions and ideas, which is important not only for self-development, but also to promote innovation and social development.[4]

The principle of the indivisibility of human rights requires, however, that both rights carry equal weight. Therefore, the two human rights conflict with one another. Neither right can be used as a trump over the other and alternative means must be employed to resolve the conflict.[5]

It is well established under international law that where a conflict arises between two non-absolute rights freedom of expression and privacy, reference should be had to the overall public interest, or some such analogous test, to decide which interest should prevail.

While Article 10 of the Convention guarantees the right to freedom of expression, its second paragraph expressly refers to "the protection of the reputation or the rights of others" as one of the legitimate grounds for restricting that right.[6]

However, balancing of fundamental rights in general is not immune to criticism. Some argue that accepting the assignment of different burdens to some human rights, where such burden depend on the circumstances framing a particular case, shifts character of human rights principles. They also argue that the process of balancing can possibly restrain the rights. One solution against such critiques is to stick to the proportionality principle, by limiting power from interference.[7]

[3]Frank La Rue (Special Rapporteur), Rep. on The Promotion and Protection of The Right to Freedom of Opinion and Expression, UN Doc. A/HRC/23/40 (April 17, 2013).

[4]Joseph A. Cannataci et al., Privacy, Free Expression and Transparency 77 (2016).

[5] Stijn Smet, *Freedom of Expression and The Right to Reputation: Human Rights in Conflict*, 26 AM.U.INT'L L. REV. 184, 184-185 (2010).

[6] European Convention on Human Rights, Art. 10.

[7] Başak Çalı, *Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions*, 29 HUM. RTS. Q. 251, 253-254 (2007).

First and foremost, in order to make a fair decision, the Court should identify whether the concerned relationships constitute a private life or not. According to the Court, private life is a broad concept which is incapable of exhaustive definition.[8] The concept is clearly wider than the right to privacy, however, and it concerns a sphere within which everyone can freely pursue the development and fulfilment of his personality.[9] In 1992, the Court said that:

> …. it would be too restrictive to limit the notion [of private life] to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom 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.[10]

A. Axel Springer v. Germany

The European Court of Human Rights delivered some crucial judgements recently concerning the appropriate balance exercise during a conflict between Article 8 and Article 10 of the Convention, the right to freedom of expression and the right to respect for private life. In these cases, the Court has set out in some detail the key balancing criteria to be taken into account when a conflict arises between freedom of expression and privacy.

One of the most significant cases is Axel Springer v. Germany. In this case, the applicant was the publisher of the German tabloid newspaper Bild. The newspaper published a front page article detailing the arrest of a well-known television actor for possession of cocaine at a festival. The article noted that the actor had a previous conviction for importing a small amount of cocaine, and quoted the public prosecutor confirming the circumstances of the arrest.

The Grand Chamber firstly set out its well-established Article 10 jurisprudence, and also took the opportunity to reiterate that the right to protection of reputation was a right protected by Article 8. The Court confirmed that in order to engage Article 8, an attack on a person's reputation must attain a certain level of seriousness and causing prejudice to this right (citing A. v. Norway, para. 64). Moreover, it stated that Article 8 cannot be relied upon to complain of a loss of reputation which is the foreseeable consequences of a person's actions such as the commission of a criminal offence (citing Sidabras and Džiautas v. Lithuania, para. 49).[11]

---

[8] Costello-Roberts v. the United Kingdom, App. No. 13134/87, Eur. Ct. H.R., § 36 (1993), http://hudoc.echr.coe.int/eng?i=001-57804.

[9] Ursula Kilkelly, The Right to Respect for Private and Family Life: A Guide to The Implementation of Article 8 of The European Convention on Human Rights, 11 (2001).

[10] Niemietz v. Germany, App. No. 13710/88, Eur. Ct. H.R., § 29 (1992), http://hudoc.echr.coe.int/eng?i=001-57887.

[11] Von Hannover v. Germany (No.2), 2012-I Eur. Ct. H.R. § 83.

The Grand Chamber stated as a matter of principle that Article 10 and Article 8 deserved "equal respect", and consequently the Court may be required to verify whether the domestic authorities struck a "fair balance" when these two values come into conflict. In this regard, the Grand Chamber enunciated its standard of review: where the domestic courts have engaged in the appropriate balancing exercise consistent with Article 10 principles, the Court will require "strong reasons" to substitute its views for those of the domestic courts (citing MGN Limited v. the United Kingdom and Palomo Sánchez v. Spain).

The Court then proceeded to set out the six criteria for such a balancing exercise, and applied it the German courts' analysis:

***(a) Contribution to a debate of general interest*:** the Court considered that the articles concerned an arrest and conviction, which were "public judicial facts", which presented a degree of general interest. However, the degree of public interest may vary according to how well-known a person is.

***(b) How well-known is the person and subject matter*:** the Court stated as a matter of principle that it was primarily for domestic courts to assess how well-known a person is. However, the Court noted the different conclusions reached in the German courts, and held the actor was sufficiently well-known to qualify as a "public figure", which reinforced the public interest in being informed of his arrest and conviction.

***(c) Prior conduct of the person*:** the Court held that the actor had "actively sought the limelight", and coupled with his public figure status, meaning his "legitimate expectation" that his private life would be effectively protected was reduced.

***(d) Method of obtaining information and its veracity*:** it was held that the articles had a sufficient factual basis, the truth of which was not in dispute, and the information had not been published in bad faith.

***(e) Content form and consequences of publication*:** the manner in which a person is represented in an article or photograph is a factor to be taken into consideration. The Court held that the first article "merely related" to the actor's arrest, with the second article only reporting on the sentences imposed at the end of a public hearing. For the Court, the article did not therefore reveal details about the actor's "private life".

***(f) Severity of sanction*:** a final consideration was the severity of the sanctions, namely injunctions and fines totalling 11,000 euro, which the Court considered lenient, but capable of having a chilling effect.[12]

In light of these considerations, the Court concluded that the interference with freedom of expression had not been necessary in a democratic society, as there was no reasonable relationship of proportionality between the

[12] *Id.*, § 89-95.

restrictions and the legitimate aim pursued.[13] The applicant was awarded 50,000 euro in damages and costs.

B. Von Hannover v. Germany

The first case (*Von Hannover v. Germany*, 2004) involved a number of photos of Princess Caroline of Monaco, including of her riding on a horse, on a skiing holiday and tripping over something on a private beach. The photos were published in various magazines in Germany. The German courts, for the most part, upheld the publication of the pictures (with the exception of certain pictures taken in places where the princess had a reasonable expectation of privacy and some pictures involving her children). The Court, on the other hand, found that publication of the pictures represented a breach of the applicant's right to privacy. The Court once again highlighted the importance of freedom of expression, stating that "In the cases in which the Court has had to balance the protection of private life against the freedom of expression it has always stressed the contribution made by photos or articles in the press to a debate of general interest".[14] The Court recognised that photos are a protected form of freedom of expression.

In distinguishing between public interest debate and protected private life in the Hannover case, the Court stipulated that:

> The Court considers 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, for example, and reporting details of the private life of an individual who, moreover, as in this case, does not exercise official functions.197 The domestic courts had held that Princess Caroline was a figure of contemporary society "par excellence" and therefore had no right to privacy unless she was in a secluded place out of the public eye. The European Court held that this standard might be appropriate for politicians exercising official functions, but was not applicable in the present case. As the Court noted in relation to the applicant, "the interest of the general public and the press is based solely on her membership of a reigning family whereas she herself does not exercise any official functions.[15]

The situation was largely the same in the second case (*Von Hannover v. Germany*, No. 2, 2012) with the exception that the photos in question focused mostly on the issue of the illness of the reigning Prince of Monaco, Prince Rainier, and the way his family were looking after him during his illness. The

[13] *Id.*, § 110.

[14] Von Hannover v. Germany, 2004-VI Eur. Ct. H.R. § 60.

[15] *Id.*, § 72.

Court reiterated many of its basic principles concerning privacy, including its primary purpose:

> The concept of private life extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life. Publication of a photo may thus intrude upon a person's private life even where that person is a public figure.[16]

The Court also addressed the question of a possible hierarchy between the rights to freedom of expression and privacy, the different ways in which cases might come before the Court and how that might affect the margin of appreciation and the relative protection for each of these rights, stating "In cases such as the present one, which require the right to respect for private life to be balanced against the right to 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 article, or under Article 10 by the publisher. 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".[17]

In cases of *Von Hannover v. Germany* (No. 1, 2004) and *Von Hannover v. Germany* (No. 2, 2012) the Grand Chamber of the European Court of Human Rights has used the above mentioned key balancing criteria to settle a conflict, which arise between freedom of expression and privacy.

C. Rubio Dosamantes v. Spain

In case of *Rubio Dosamantes v. Spain*, the European Court of Human Rights determined that Spain had violated the right to respect for private life of applicant. The case concerned a complaint by the pop singer Paulina Rubio that her honour and reputation had been harmed by remarks made on television about her private life.[18] Ms. Rubio had challenged several TV programmes broadcast in the spring of 2005 that had reported on various aspects of her private life such as her sexual orientation, the relationship with

[16] Von Hannover v. Germany (No. 2).

[17] *Id.*, § 106.

[18] Rubio Dosamantes v. Spain, Eur. Ct. H.R. (2017), http://hudoc.echr.coe.int/eng?i=001-171528

her boyfriend and his drug abuse. The Spanish courts had considered that the programmes had not impugned her honour and reputation.

Referring to its own case law, and notably the criteria set in its second Von Hannover decision of 2012, the ECHR observed that the comments had been frivolous, unverified and had exclusively concerned Ms. Rubio's private life. Furthermore, they had not contributed to a debate of public interest that would have justified their disclosure.

The Court also underscored the media's duty of care when reporting on aspects pertaining to a person's private life. It made clear that the "spreading of unverified rumours or the limitless broadcasting of random comments on any possible aspect of a person's daily life could not be seen as harmless". The media is required to balance the competing rights of Article 8 ECHR, a person's right to respect for their private life and Article 10 ECHR, the media's right to freedom of expression including the public's right to information, when determining whether or not to publish or air information. The ECHR concluded that the Spanish courts had violated their positive obligation in this respect.

The Court emphasized that even if information is already in the public domain without the person concerned having objected to its dissemination, this does not imply that the information is no longer private and individuals can no longer rely on their rights under Article 8. Even if Ms. Rubio was a subject of enhanced media attention, this did not give free the right broadcasters to publish "unchecked and unlimited comments" about her private life.

This case underpins the importance of the right to private life in today's society where information is susceptible to spreading instantly and globally, thus having a lasting damaging effect on a person's reputation and honour. The right to freedom of expression is so essential for the functioning of modern democracies is, nonetheless, limited where the private life of celebrities is concerned.

The public interest should be taken into account when applying the privacy exception to the right to access information held by public bodies (right to information). Thus, in a Joint Declaration adopted in 2004,315 the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression in 2004 stated: The right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information.[19]

[19] Toby Mendel et al., Global Survey on Internet Privacy and Freedom of Expression 99 (2012).

II. Criticism and private life of political figures and public officials

Another major and controversial issue of concern is criticism and private life of political figures and public officials by journalists and an ordinary people.This raises several difficult and overlapping set of questions. First of all, are people entitled to know the moral record of politicians? Secondly, can it be argued that even politicians are entitled to some privacy?

To explore these questions, let's lay out an approach of the European Court of Human Rights on this issue. Ever since Lingens v. Austria case, the Court has distinguished between several categories of plaintiffs in defamation proceedings and established the limits of acceptable criticism against them.

In its first case on defamation, the European Court of Human Rights stated:

> The limits of acceptable criticism are … wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance.[20]

The Court has held that governments must tolerate even more criticism than politicians. In case of Castells v. Spain the Court stressed that:

> The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion.[21]

Moreover, Article 1 of "Declaration on freedom of political debate in the media" (Adopted by the Committee of Ministers on 12 February 2004 at the 872nd meeting of the Ministers' Deputies) stipulates that freedom of expression and information through the media Pluralist democracy and freedom of political debate require that the public is informed about matters of public concern, which includes the right of the media to disseminate negative information and critical opinions concerning political figures and public officials, as well as the right of the public to receive them.[22]

---

[20] Lingens v. Austria, App. No. 9815/82, Eur. Ct. H.R., § 42 (1986), http://hudoc.echr.coe.int/eng?i=001-57523.

[21] Castells v. Spain, App. No. 11798/85, Eur. Ct. H.R., § 46 (1992), http://hudoc.echr.coe.int/eng?i=001-57772.

[22] Declaration on Freedom of Political Debate in The Media, Article 1.

The Court has made it clear that enhanced protection also applies to governmental officials. In the case of *Thoma v. Luxembourg*, 2001, the Court stated that debate about officials, acting in their official capacity, is also covered by the heightened protection standard:

> Civil servants acting in an official capacity, like politicians are subjected to wider limits of acceptable criticism than private individuals.[23]

The Court has made it clear that this heightened degree of protection does not just apply to political debate, but extends to all matters of public interest, stating that there is "no warrant" for distinguishing between the two.[24]

In *Cihan Öztürk v. Turkey*, 2009, the applicant had published critical remarks about the protection of a historic building. He had worked as a manager, unveiling secrete and wasteful spending of public money in what was ultimately an unsuccessful restoration project. It resulted in the partial collapse of the building. The Court came out in favour of very strong protection for statements, which expose official wrongdoing or corruption:

> In this context, the Court observes that, while paragraph 2 of Article 10 of the Convention recognises that freedom of speech may be restricted in order to protect the reputation of others, defamation laws or proceedings cannot be justified if their purpose or effect is to prevent legitimate criticism of public officials or the exposure of official wrongdoing or corruption.[25]

Noting the importance of public debate on democratic issues in the public interest, the Court further said that freedom of the media provides the community with one of the best tools for discover and formulate opinions about political leaders' ideas and approaches. In general, the freedom of political debates lies at the heart of the concept of a democratic society.

In case of *Obershlick's v. Austria* (N2), the journalist called Mr. Hayderi (head of the Austrian Freedom Party) "Idiot'". Mr. Oberschlick's passage, entitled "P.S.: 'Trottel' statt 'Nazi' ("P.S.: 'Idiot' instead of 'Nazi'), read as follows: "I will say of Jörg Haider, firstly, that he is not a Nazi and, secondly, that he is, however, an idiot".[26] He used this phrase after the phrase "Mr. Hayder called the German soldiers fighting for peace and freedom in World War II". The court stressed that:

> The most important of these is Mr. Haider's speech, which Mr. Oberschlick was reporting on in his article. In claiming, firstly, that

[23] Thoma v. Luxembourg, 2001-III Eur. Ct. H.R. § 47.

[24] Thorgeir Thorgeirson v. Iceland, App. No. 13778/88, Eur. Ct. H.R. (ser. A), § 64 (1992), http://hudoc.echr.coe.int/eng?i=001-57795.

[25] Cihan Öztürk v. Turkey, Eur. Ct. H.R., § 32 (2009), http://hudoc.echr.coe.int/eng?i=003-2756454-3021135.

[26] Oberschlick v. Austria (No. 2), App. No. 20834/92, Eur. Ct. H.R., § 9 (1997), See: http://hudoc.echr.coe.int/eng?i=001-57716.

> all the soldiers who had served in the Second World War, whatever side they had been on, had fought for peace and freedom and had contributed to founding and building today's democratic society. Secondly, it suggested, that only those who had risked their lives in that war were entitled to enjoy freedom of opinion, Mr. Haider clearly intended to be provocative and consequently to cause a strong reaction.[27]

Finally, the Court found that the word "Idiot" can be considered as a disproportionate expression to caused Mr. Hayder's anger.

Furthermore, it should be mentioned that the people have a right to know about those in power to make decisions. There are some reasons for this finding. First and foremost, their salaries are paid by the people through taxes. Moreover, the decisions of public political figures affect many aspects of people's lives. In exchange the people have the right to make informed judgements about the kind of leaders they have. Any attempt to restrict what may be reported about public figures in the press could easily become a conspiracy to keep voters in the dark and to manipulate them. For example, many would think that, a politician who had an extra marital affair was equally capable of breaking his promises and lying to his country. Or if a tabloid paper reveals that a politician took drugs at university and justifies publication of that story with the argument that voters are entitled to know the moral record of someone who is standing for election as a member of parliament.

The ECHR has identified that politicians must display wider tolerance to media criticism:

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention. The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.[28]

Besides the above-stated, a free media is essential to the functioning of a free-market economy, exposing corruption and dishonesty on the part of public officials and businesses in the democratic society. If investigative journalists are prevented from scrutinising the private lives of public figures,

---

[27] *Id.*, § 31.

[28] Monica Macovei, A Guide to the Implementation of Article 10 of The European Convention on Human Rights, 50 (2nd ed. 2004).

then corruption and crime will be much easier to hide. For example, how does a senior civil servant afford a Ferrari, a yacht and a villa in Monaco on his government salary?

The similar provisions found their reflection in the "Declaration on freedom of political debate in the media". Article 4 of the mentioned Declaration lays down that public scrutiny over public officials. Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions.[29]

Apart from that, Article 7 of the same Declaration prescribes that, the private life and family life of political figures and public officials should be protected against media reporting under Article 8 of the Convention. Nevertheless, information about their private life may be disseminated where it is of direct public concern to the way in which they have carried out or carry out their functions, while taking into account the need to avoid unnecessary harm to third parties. Where political figures and public officials draw public attention to parts of their private life, the media have the right to subject those parts to scrutiny.[30]

Taking into account the above-stated, it is necessary to note that in terms of public interest the private lives of public figures should be partly open to press scrutiny.

At this point, it should be particularly mentioned that, journalists serve as watchdogs over governments and the private sector and draw the public's attention to important issues. Governments and private actors in many places try to silence journalists and create threatening environments for them. Watchdog reporting covers an array of malfeasance: from sex and personal scandals to financial wrongdoing, political corruption, enrichment in public office, and other types of wrongdoing.

The role of "public watchdog" is something that the ECHR has stressed on many occasions:

> Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog.[31]
>
> And:
>
> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the

[29] Declaration on Freedom of Political Debate in The Media, Article 4.

[30] *Id.*, Article 7.

[31] Thorgeir Thorgeirson v. Iceland, App. No. 13778/88 , Eur. Ct. H.R. (ser. A), § 63 (1992).

> opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[32]

The crazy statements are particularly vulnerable when it comes to responding to provocation. In the case of *Lopez Gomes da Silva v. Portugal,* journalist criticized Mr. Resender's political relationship with a candidate for membership in the municipality and called it "ridiculous", "clown" and "rude". This criticism was directed after Mr. Resender's statement. In those statements, he made abusive statements about a number of political figures, including insulting their physical characteristics. The court considered the conviction of a journalist as a violation of Article 10.

The freedom to criticise the government was explicitly upheld by the Court in 1986: it is incumbent on the press to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them.

The Court's view that the scope of criticisms by public institutions, public and political actors is derived from the important role that freedom of expression plays in managing and developing a democratic society.

Conclusion

As was argued in this essay, the principle of "public interest" is the best approach to solve the contradictions between the right to private life and freedom of expression. In order to make a fair decision, courts should test the phrase "public interest". It is difficult to make a fair decision without putting the question to test.

In matters of public interest, the media should have a higher degree of protection than other persons exercising freedom of expression.

Summarising the case-law of the European Court of Human Rights reveals that the permissible limits for media criticising public bodies, political and official persons are wider than those of ordinary people. The degree of tolerance of criticism should be broader if the person has the ability to influence the social and political processes. The debate on political issues and other issues that are of interest to the public should tolerate harsh, whipping, and sometimes harsh words about politicians, government, and officials. Statements about politicians can be restricted only when this is absolutely necessary. The interest of protecting the authority of political and official persons should be balanced with public interest in the open discussion of political and public issues. The protection of the authority of the public

[32] Castells v. Spain, App. No. 11798/85, Eur. Ct. H.R. (ser. A), § 43 (1992), http://hudoc.echr.coe.int/eng?i=001-57772.

authority may only be consistent with the legitimate aims set out in Article 10 of the Convention, to protect the reputation of justice. The journalist may use certain episodes or even provocation to draw more attention to a publicly-debated subject. As media is playing an indispensable role in a democratic society, it should enjoy wider range of liberties. The permissible limits of political criticism are broader than those of public and other public organizations.