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LOOKING AT PHOTOGRAPHS FROM THE PERSPECTIVE OF THE RIGHTS OF PERSONALITY AND THE EUROPEAN CONVENTION OF HUMAN RIGHTS

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Abstract. *Relevant decisions of the European Court of Human Rights have shaped the „right to one's image", as a part of the right to private and family life protected by Article 8 of the European Convention on Human Rights. The Court described the „image" as the individual characteristics of each person, as well as the inner personality of someone, consisting of one's morality, beliefs, or habits. Photographs can easily capture both and, associated or not with text, can be damaging for one's reputation or simply intrusive. When the right to one's image has to be weighed against the right to freedom of expression protected by Article 10 of the Convention, the Court is analysing a set of criteria. Jurisprudence of the European Court of Human Rights proves that the importance of each criterion is changing according to the particular situation. It also proves a tendency to offer a relaxed interpretation to the notion of "debate of public interest", often passing from the acts of public officials or breaching of public values to the simple curiosity of the public for the life of well-known persons.*

Keywords: *private and family life; right to image; photograph; freedom of expression; human rights.*

1. INTRODUCTION

Following the Roman notion of persona as a subject of law, the Enlightenment philosophy attached to humans the idea of human dignity and the concept of natural rights; later on, legal sanctioning of the violation of the rights attached to the human lead to the concept of personality rights (Brüggemeier, 2010, p. 7).

A creation of the case law of the European Court of Human Rights in the interpretation of Article 8 of the European Convention on Human Rights (that will be further referred to as the Convention), the right to one's image has been invoked in various situations. The case law revealed that this right is not only about the

mere image that presents the individual characteristics of each person, but also about the message that a photograph is transmitting about the one's inner personality, morality, beliefs, or habits. Also, very often, a simple portrait photograph is associated with texts that refer to the portrayed personality, creating an ensemble view of one's personality.

The Convention has not only a vertical effect, obliging the contracting states not to breach, through their actions, the rights protected by the convention, but also a horizontal effect, in the case of the right to one's image, as in many cases the breach is committed by private persons. The contracting states have an obligation to sanction and prevent such breaches (Sudre, 2006, p. 314). As Article 8 is one that allows limitations regarding the protected right, for each case there is to be made a thorough analysis of the fair balance between one's right and the public interest that may justify a limitation. Very often, the balance analysis is made regarding the prevalence of two competing rights: the right to private and family life, including the right to one's image, against the right to freedom of expression, when presenting information to the public. The judgements of the European Court of Human Rights have identified, among the possible limitations of the right to one's image, the "public interest", although this is not mentioned among the possible limitations regarding article 8, but it is connected to the freedom of expression, a right protected under Article 10 of the Convention.

The article is looking into the connection of photographs not only with the right to private life but also with the right to family life. The tendencies in evaluating the criteria established by the European Court of Human Rights for balancing the rights protected by Article 8 with the ones protected by Article 10 are also commented. Relevant cases are discussed from new perspectives.

2. ONE'S PHOTOGRAPH PRESENTING EXTERIOR CHARACTERISTICS OF THE PERSONALITY

Article 8 of the European Convention on Human Rights states that everyone has the right to respect for his or her private and family life, home and correspondence. Throughout its jurisprudence, the European Court of Human Rights included in the private and family life the image of the person. In the *von Hannover v. Germany (no. 2)* judgement, the Grand Chamber apreciated that a "person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her components of personal development".

Although in a great number of cases, one's image has been associated only with the right to private life, giving credit to the opinion that the "private and family life" is a single general concept (Sudre, 2006, p. 316), there have been situations when the link with the right to family life could be identified. In the case

of *Hachette Filipachi Associés v. France*, the Court analysed the publication in the weekly magazine "Paris Match" of a photograph presenting the lifeless body of a French prefect lying on the ground in a pool of blood. The photograph was taken moments after the murder. It presented the body facing the camera, on two pages of the magazine, in colour. The prefect's widow and children lodged an urgent aplication to the national courts based on their right to respect for their private life. A court decision was issued ordering the magazine to publish a statement that the photograph of the prefect had been published without his family's consent, subjected to a penalty for non-compliance. The magazine complained to the European Court of Human Rights alleging a violation of the freedom of expression protected by Article 10 of the Convention. The Court found the complaint ill-founded, especially because the publication of such a photograph in a magazine with very high circulation resulted in the intensification of the trauma felt by the victim's close relatives. Although the European Court of Human Rights based its decision also on the right to the protection of private life, as did the national courts, it is clear that, in both cases, the main factor was the family relation between the deceased who apeared in the photograph and the ones affected by its publication. The private lives of the family of the victim who apeared in the photograph were affected. Both at national and European level, the courts sought to protect against the trauma induced by the existence of family relations with the person pictured in the photograph. In the absence of such relations, there would have been no ground to penalise the publication.

In a similar manner the European Court of Human Rights ruled in the case of *Société de Conception de Presse et d'Edition v. France*. When the monthly magazine "Choc" published, without being authorised, on the front cover and, again, four times on inside pages a photograph of a young man that has been kept captive, wearing shackles and showing visible signs of ill-treatment, taken by his torturers, the national courts convicted the aplicant. The European Court of Human Rights considered that the action of the national courts was right, because the photograph has not been intended for public viewing and constituted serious interference with the private life of the young man's relatives. Like in the aforementioned case, the lack of consent from the ones affected by the photograph was an important element in establishing the breach of article 8 of the Convention. As we will see below, this criteria has less relevance in the case where the photograph is in connection with the debate of a subject of public interest, where the freedom of expression that gives satisfaction to the right to receive and impart information may take precedence over the consent of the person figured in the photograph.

A connection between portrait photographs and the right to private life has been discussed in the case of *Lillo-Stenberg and Saether v. Norway*. The aplicants complained about the publication by the press of photographs from their wedding, portraying the bride, the bride being brought to the groom by her father and the bride and groom returning to the mainland on foot, by crossing the lake on steping stones. National courts ruled, in the end, against the couple, on the grounds that there

has been no intrusion in their private life, as the marriage was celebrated in a place that was accessible to the public. The national Supreme Court also pointed out that the photographs were simply portraits, and there were neither offensive nor negative remarks in the accompanying article. The European Court of Human Rights found that the defendant state has not breached any obligations that were imposed under Article 8 of the Convention. The main point apears to be that the photographs were published without any intent of harming the couple's reputation. In another previous case [*von Hannover v. Germany (1)*], this had not been a point and the simple publication of photographs taken in a public space without the consent of the subjects, without the intent of offending, has been considered a violation.

It has been considered (Masons, 2009) that the European Court of Human Rights has expanded the reach of privacy rights when deciding in the case of *Reklos and Davourlis v. Greece*, in a manner consistent with holding any private information (e.g. holding DNA) under the provisions of Article 8 of the Convention. The case concerned photographs of a new-born baby, taken inside a private clinic, without the parent's consent, and the retention of negatives. The professional photographer placed himself in a sterile unit, where only medical stuff of the clinic had access. In the photographs, the baby was shown facing the camera. The parents became aware of the photographs only when the mother was presented with two of them, the next day after they were taken. In front of national courts, the parents complained about the fact that the clinic had not responded to their complaints about the intrusion of the photographer in an environment where only medical personal had access, the possible annoyance caused to the baby when photographed from the front and the demand for the negatives of the photographs. The action sought for damages, but was rejected as unfounded. The European Court of Human Rights found a violation of Article 8 of the Convention, based on the lack of parental consent for obtaining and keeping the image of their baby in an identifiable form, with the possibility of subsequent use against the wishes of the parents or the child, later on. The court considered the child's right to private life has been breached. In this case, the Court "reiterated that the concept of private life was a broad one which encompassed the right to identity".

The novelty of the decision resided in the assertion that "effective protection of the right to control one's image presuposes, in the present circumstances, obtaining the consent of the person concerned when the picture was being taken and not just when it came to possible publication". We have to observe that in this case the subject of the photograph has not placed himself or, being a child, has not been placed by an adult, into a public space. The photographer placed himself into a space that was open only for medical stuff and took the photographs without consent from the family.

It is clear that a breach of the right to private life exists only if the taken and stored photograph is intended to capture one's image. Otherwise, it would become impossible to take pictures presenting yourself, for example, in crowded touristic places that would also capture images of others, sometimes facing the camera. It

also raises the issue of photographing the crowds, without the intent of publishing the photo, when a great number of persons can be easily recognised. Regarding the positive obligations of the contracting states, it has been decided that if the police is keeping in a file a photograph taken at a public march, there is no breach of the right to private life as long as the photograph was only taken to present the event, and will not be used to identify the persons in it with the help of information contained in other police data bases (Bârsan, 2005, p. 602–603).

The Court also decided, in the case of *Giorgi Nikolaishvili v. Georgia* that posting the photograph of a person, with the label "wanted", on the public premises of several police stations, in different parts of the country, is a public dissemination, as it can be easily accessed by the population at large. The Court concluded that there has been an intrusion into the private life of the person. The association that the libel attached to the photograph made with a murder case, damaged the person's reputation, social identity and psychological integrity at a time he was not the subject of a criminal prosecution and ought to be considered an "ordinary person" (Roagna, 2012, p. 18).

The modern technologies in photography allow different alterations of reality. In the case of *Verlagsgrupe Handelsblatt BmbH & Co.KG v. Germany*, the European Court of Human Rights upheld the decision of the national court stating that unnecessary alterations to a photograph of a well-known person, representing his face, conveyed an untrue message regarding his apearance. Because the manipulation had not been negligible and had led to an unfavourable and negative presentation of the person, his general personality rights had been infringed in a manner that cannot be justified by the freedom of expression. The case was about a photomontage representing a crumbling magenta-coloured "T", the logo of German Telecom, with a person sitting on top of it. The picture was put together using the body of a model in a sitting position and a photograph of the head of one of German Telecom's managers. The accompanying article criticized the manager for his management. To fit the body and head together, the photograph of the head was vertically stretched and horizontally shrunk.

3. PHOTOGRAPHS REVEALING ONE'S INNER PERSONALITY, MORALITY, BELIEFS, HABITS AND THE BALANCE CONSIDERING THE PUBLIC INTEREST

The same decision of the European Court of Human Rights, given in the case of *von Hannover v. Germany (no. 2)*, concluded that "freedom of expression includes the publication of photos … This is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photos may contain very personal or even intimate information about an individual or his or her family". We can observe that freedom of expression has to

be balanced against the right to maintain the reputation, as an inner quality of a person. Very often, photographs of people are used by the press to give authenticity to a text regarding their life. The photograph also has a powerful impact, as it may transmit emotional or very intimate attitudes of its subject. Generally, a photograph says more than it shows (Vasiliu, 2010, apud Săvinescu 2012, p. 22). Reputation may be damaged by allegations associated with a portrait photograph or by photographs depicting persons in different attitudes or contexts, accompanied or not by texts. In the *von Hannover (1)* judgement, the Court motivated the fact that private life has to be protected even in public places, and, between the individual and third persons, there is an interaction area that may be attached to private life even in a public context (Renucci, 2009, p. 249).

The limitations of the right to private and family life comprised in the 2nd paragraph of Article 8 of the Convention have to be in accordance with the law and to be necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Article 10 of the Convention, protecting the freedom of expression, shows that this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Among the limitations permitted in connection with this right, there are the ones in accordance with the law with the purpose of the protection of others' reputation or rights. The right to impart information has been recognised by the European Court of Human Rights as surpassing the right to private and family life when there was a matter of "public interest". A short review of relevant cases (Press Unit. European Court of Human Rights, 2016), highlights what the Court considered as being of public interest.

First of all, in the sphere of politics and administration, the Court constantly has decided on the priority of the public interest in the activity and life of high profile political and administrative actors, the public officials. In the case of *Schüssel v. Austria*, the Deputy Prime Minister of Austria complained about the use of his picture on stickers. His portrait was half-overlaped by the face of the right-wing politician Jörg Haider, and the result was accompanied by the slogan: "The social security slashers and the education snatchers share a common face". As national courts dismissed his complaint, the aplicant sought protection to the European Court of Human Rights. The Court found the aplication manifestly ill-founded. It decided that the limits of acceptable criticism were wider with regard to a politician than with regard to a private individual. The Court also found that the Austrian Supreme Court had correctly weighed the freedom of expression in regard to the general interest in an open political debate against the aplicant's interest in protection against the publication of his picture.

The public officials' private life has been found of public interest in different situations. In the case *Couderc and Hachette Filipacchi Associés v. France*, the weekly magazine "Paris Match" published several photographs under the title

"Albert of Monaco: A., the secret child", following the previous publication of an article on the subject. The publication director and publisher were convicted by the French courts. The European Court of Human Rights considered that the national courts had not given due consideration to the principles and criteria for balancing the right to freedom of expression against the right to respect of private life. Given the hereditary nature of the Prince's functions as the Monegasque Head of State, the Court considered that the aplicants contributed to the coverage of a subject of public interest and the child's existence went beyond the private sphere.

The "public figure" notion has sometimes extended to people who had no official positions, but had personal relations to such persons. In the case of *Flinkkilä and Others v. Finland*, the conviction of the aplicants for publishing information concerning the girlfriend of the National Conciliator, accompanied by her photo and full name, was considered by the European Court of Human Rights a violation of Article 10. The Court pointed out that, although the National Conciliator's girlfriend was not herself a public figure, being involved in an incident outside the home of a public figure that had received widespread media coverage included her in the public domain. In this case, the Court also found that the sanction aplied to the press in this situation was disproportionate, as the National Conciliator's girlfriend had obtained damages from other magazines that published articles on the same incident, disclosing her identity. Two observations can be made. One is that the Court considered the compensation obtained by the private person and used the principle of proportionality in solving the case. The difference between the discretionary power of state authorities and their excess of power lies in the principle of proportionality (Andreescu, 2014, pg. 16–20). Thus, as the private person obtained compensation, she was no longer a victim and there was no point to aply other sanctions to the press. Second, the conclusion that the private person linked to the National Conciliator's life could be included in the public domain widens substantially the "public domain" and limits the private life area. There was no comment about the fact that the extramarital relationship has influenced the fulfilment of the professional activity of the public official, but the Court considered that the right of the private person to maintain her anonymity has vanished.

Coverage of the political crimes has also been considered to incline the balance in favour of freedom of expression. When the Austrian Broadcasting Corporation made public information about the release on parole of the head and the deputy of the neo-Nazi organisation who had been sentenced under the National Socialist Prohibition Act, a picture of the deputy at his trial was shown for several seconds during the broadcast. In front of the national courts, the deputy successfully brought proceedings under the Copyright Act with the consequence of restraining the corporation's right to publish the photograph. In this case, the photograph was not adding credibility to the text and was not revealing anything about the inner side of its subject. It was only associating the situation described by

the text to a face. The Court found a violation of freedom of expression protected by Article 10, taking into consideration several aspects: the deputy's notoriety and the political nature of his crime, the fact that the information presented were correct and complete, the picture shown was related to the content of the report and other media remained free to publish the deputy's picture in the same context. In such circumstances, the fact that the information was correct and complete only presents importance after it is established that the subject is of public interest (a political crime). If this main condition is not fulfilled, and the subject would have been of a private nature, there would have been of no relevance the completeness and accuracy of the information in substantiating the prevalence of Article 10 of the Convention.

The same conclusions can be drawn when the photographs are related to the subject. The cases *Küchl v. Austria* and V*erlagsgrupe News GmbH and Bobi v. Austria* demonstrates it. Both cases originated from the same situation and the solution given to both aplications reveals the importance of a photograph upon the image of the human personality. The story in both cases was that an article was printed in a news magazine about the principal of a seminary where future Roman Catholic priests were trained. The article stated that the principal has had sexual relations with seminarians and was accompanied by a photograph showing the principal with his hand between the legs of one of the seminarians. The photograph has been taken in the home of the principal at a party and was published without the consent of the principal. Only the face of the principal could be distinguished, the face of the seminarian being blurred. In front of the national courts, the principal of the seminar brought proceedings against Verlagsgrupe News GmbH, the magazine's publisher, requesting compensation for defamation and for violating his strictly personal sphere. At the same time, an injunction was issued prohibiting the publisher and the editor-in-chief of the magazine from publishing the principal's picture in connection with allegations of unwanted homosexual advances towards seminarians. Both parties complained to the European Court of Human Rights, the principal for the violation of Article 8, protecting the right to private life and the press for the violation of Article 10, protecting the freedom of expression. Both aplications were found unfounded by the Court. In deciding so, the Court checked if the national courts have apreciated both rights according to the following criteria: (i) contribution to a debate of general interest; (ii) how well known is the person concerned and what is the subject of the report?; (iii) prior conduct of the person concerned; (iv) method of obtaining the information and its veracity/circumstances in which the photographs were taken; (v) content, form and consequences of the publication; (vi) severity of the sanctions imposed. Considering the aplication of the principal of the seminar, the Court found that all the criteria were complied with by the magazine and the fact that the photograph was not intended for publishing and was published without the principal's consent was compensated by the public interest in the subject and the veracity of the

circumstances, as established by the national courts and decided that the rejection of the claim for damages did not violate Article 8 of the Convention protecting the right to private life. On the other hand, in determining if there has been a violation of the right to freedom of expression when the national courts issued the injunction prohibiting the publication of the photo in suporting other allegations of a sexual nature, the Court referred to the fact that "while freedom of expression includes the publication of photos, this is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photos may contain very personal or even intimate information about an individual". Despite the fact that the text of the article proved correct and accurate and it contributed to a debate of "public interest", the Court decided that, because the photograph has been taken in a very private space, namely the home of the subject, and because it was not intended for the eyes of the public and was referring to very private matters, namely the sexual life of adults, the injunction has not violated the right to freedom of expression, but it was a necessary measure for protecting the rights of others.

Publication of photographs joining the report of crimes against general social values was also considered protected by the right to freedom of expression, as the condition of a debate of public interest was an important criterion. There is no need to exist a conviction, if the crime is of general interest. In such circumstances, associating portrait photographs to comments about an alleged crime may fall under the protection of Article 10. In the case *Verlagsgrupe News GmbH v. Austria (no. 2)*, an injunction was ordered by national courts against the publishing company, prohibiting it from publishing photographs of a businessman in the context of reports on investigations against him on the suspicion of large-scale tax evasion. The injunction came after a weekly magazine had printed an article on the investigation in progress, accompanied by a photograph of the businessman. The Court considered that, because the magnate owned one of the country's most prestigious firms, he was, by virtue of his position, a public figure and the article reported on a matter of public interest. Wealth does not make a person a public figure. The situation where a company ensuring a great number of jobs is in jeopardy due to the owner's illegal activities makes the subject of interest, and confers public importance to the owner. The importance and consequences of the alleged crime would suffice to give a greater importance to the right to impart information under Article 10. A similar conclusion has been drawn in the case *Eerikäinen and Others v. Finland.* After an article reporting on the pending criminal proceedings against a businesswoman accused of fraud against the social security scheme and some insurance companies has been published, the Finish Supreme Court ordered the publishing company and editor-in-chief of the magazine to pay damages. The article did not mention the woman's name, but it was set alongside another wholly unrelated article that the journalist has written previously for another magazine with her consent and which contained two photographs and gave her full name. The European Court of Human Rights considered that there has been a violation of Article 10, as the article leading to the

obligation to pay damages was based on a public document concerning a subject of legitimate public interest and aimed to be part of the public discussion on the subject. The Court also mentioned that the portrayed person's consent existed for taking the pictures, even if for the purposes of another article, in a different context. The last conclusion is debatable. The purpose of the consent for using photographs is important, as we may supose that the same person will not consent to the publication of her photograph in a context that may be damaging for her "image". The question of the storage of an image, for further use, may arise. Once a photograph is obtained with the consent of the subject, in a certain context, should it be stored and used at any time and in any context? In its case law, the European Court of Human Rights commented on the systematic recording and storage of images of private persons in a public space, or the publication of such images, considering that such a conduct represents a violation of the right to private life (Bârsan, 2005, p. 602). The voluntary presence of a person in a public space has not been considered sufficient grounds for the press to publish photographs of that person taken in such a space. The European Court of human Rights decided in the case of von Hannover v. Germany (no. 1) that images representing the quotidian activities of a person, even if developed in public spaces, are a matter of private life. We can conclude that one may agree to have one's photograph taken at some point, without agreeing to storage and publication in another particular context. This conclusion is sustained by the decision in the case of *Egeland and Hanseld v. Norway*. The editors-in-chief of two major national newspapers in Norway complained about their conviction and sentencing to a fine for publishing photographs of an individual about to be taken away to serve the long prison term to which she had just been sentenced for her involvement in a triple murder. The Court decided that there had been no violation of Article 10, one of the reasons being that the fact that the previous cooperation with the press could not deny a person the protection in the case she did not consent to the photographs being taken or to their publication.

In the case of *Khuzin and Others v. Russia*, one of the aplicants complained against the use of his passport photograph, taken from his criminal file, in a television show where prosecution officials discussed the charges brought to him for kidnaping and torture. The photographs have been given to a journalist by the police, without the aplicant's consent. Although a subject of general interest, the European Court of Human Rights considered that the release of the photograph from the criminal file to the press was a violation of the right to private life. No limitations to this right under the paragraph (2) of Article 8 were justified, as the aplicant was not a fugitive from justice and no need to establish his whereabouts was necessary. The Court also considered that there was no public interest, as the trial had not yet begun at the time the photographs were published.

The problem of invading the privacy of public persons by press photographers caught the attention of the EU officials after the accident that ended the life of Diana, former Princess of Wales. The Parliamentary Assembly adopted

the 1165 (1998) Resolution on the Right to privacy. Although the Resolution was considered a strengthening of the protection of private life at European level (Renucci, 2009, p. 250), this act mostly encourages states to provide measures for the victims of paparazzi to obtain damages. The most useful recommendation in preventing the release of photographs is the one stating that provision should be made for anyone who knows that information or images relating to his or her private life are about to be disseminated to initiate emergency judicial proceedings, such as summary aplications for an interim order or an injunction postponing the dissemination of the information, subject to an assessment by the court as to the merits of the claim of an invasion of privacy. Unfortunately, as we will see below, in the case of *Mosely v. the United Kingdom (2011)*, the European Court of Human Rights showed little regard to the requirements of this resolution.

Protecting the reputation and rights of people is meant to restrain the liberty of the press when there is no general interest, but merely a commercial interest to satisfy the curiosity of a certain public about the private life and day to day activities of a celebrity. This is the idea transpiring from the case of *von Hannover v. Germany (no. 1)* (Sudre, 2006, p. 320). In several decisions, the title of "public figure" was given to celebrities that have no relation to state functions or dignities. Their only connection with the notion of "public" is that they are known by a large number of people. So, the condition of a subject of general interest has been surpassed by the condition of how well-known is the person concerned. If it is a well-known person, a lot of information about his or her life may be considered as contributing to a subject of public interest. For example, in the case of *Mosely v. the United Kingdom*, the Court found no violation of Article 8 of the Convention, when a weekly newspaper published a front-page article, including intimate photographs taken from secretly recorded video footage, about the alleged "Nazi" sexual activities of a well-known figure in the International Automobile Federation and Formula One. The aplicant complained of the absence of any legal requirement for a newspaper to give individuals advance notice of the publication of material concerning their private life in order to provide an oportunity to seek for an interim court injunction. The Court rejected the complaint, considering that "although the disclosure of the information on the private lives of those in the public eye was generally for the purpose of entertainment rather than education, it undoubtedly benefited from the protection of Article 10 (freedom of expression) of the Convention". The Court also admitted that the protection given by Article 10 might cede to the one provided by Article 8 if the information was of a private and intimate nature and there was no public interest in its disclosure. Nevertheless, the Court concluded that having regard to the chilling effect to which a pre-notification requirement risked giving rise and to the doubts of the effectiveness of a notification, together with the wide margin of apreciation afforded to the United Kingdom in that area, the Article 8 of the Convention did not require a legally binding pre-notification requirement. In judging so, the Court gave no possibility of oposition to the publication of images that were of an intimate nature, taken in a

private space, with no intention to be released to the public and without contribution to a public debate. The Court also disregarded the recommendations of the Resolution 1165 (1998), as it is difficult to have information that will help to obtain an injunction, if the press may give to publicity intimate images from one's life without warning. The Court also ignored that the passage of the Human Rights Act (1998) forged a new jurisprudence in the UK that repeatedly ordered restrictions on press materials that unjustifiably invaded individual privacy (Moosavian, 2014, p. 234).

Another example is the case of *Mgn Limited v. the United Kingdom*. An article was published in a national daily newspaper giving details of the drug-addiction treatment of a very well-known model, accompanied by photographs, one of them taken secretly near Narcotics Anonymous centre she was attending at the time. National courts decided that there has been an infringement of the right to private life of the model and imposed the publisher of the newspaper to pay damages and the "success fees" agreed between the model and her lawyers in the proceedings. The European Court of Human Rights decided there has not been a violation of Article 10 in obliging the publisher to pay damages, as the photographs were distressing, taken covertly and not necessary to ensure the credibility of the story. But, the Court found a violation of Article 10 regarding the obligation to pay the "success fees", as the model was wealthy and not at risk from being excluded from access to justice for financial reasons, and, on the other hand, the sanction imposed to the publisher was disproportionate having regard to the legitimate aim sought to be achieved. The legitimate aim was considered to be the "public interest" in the story. We ask ourselves, what was the public interest in the story? The condition for the subject of the image (or story) to be known by a large number of persons (a well-known person) is distinct from the one that the photograph should contribute to a debate of public interest. The private life of a person, even if it is a person known by many, is not necessarily a subject of public interest, as the Court pointed out in the case *von Hannover v. Germany (no. 1)*, even if it involves drugs. Even if generally drug addiction is a problem of public interest, the drug addiction of one particular private person is not, no matter how many persons are acquainted with her face. The condition of a legitimate aim being set aside, the obligation of the press to pay the success fee will not be disproportionate any more, regardless the wealth of the one claiming it.

In the case *Minelli v. Switzerland*, a well-known lawyer and journalist, who frequently took part in public debates, claimed a breach of his right to private life when his photograph was published, accompanying a text making his profile that used the term "poacher". The Court declared the complaint manifestly ill-founded, because through his activities, he placed himself in the public eye and because the photograph had been taken at a televised event in which the aplicant took part. Although the dissemination of photographs depicting persons performing an activity dedicated to the public is not violating any right, using such photographs in a different context, a

context that may prove damaging for the subject of the photograph, and without his or her consent, should be regarded as a violation of his or her right to private life. The right to one's image contains the right to opose to the reproduction or dissemination of a photograph (Radu, 2016, p. 134).

It apears that the Court has relaxed the restrictions regarding the invasion of the private life in the case of well-known persons that are not public officials. When, in 2012, Princess Caroline von Hannover sought again for protection of her private life to the European Court of Human Rights, the decision was different [*von Hannover v. Germany (2)*]. The fact that the press has published details of her villa without her consent was no more considered a breach of Article 8, as this time the Court considered that the aplicants were public persons and thus they cannot benefit from the same protection of private life as other people. It seems that notoriety that does not derive from a public office entitles other people to invade one's privacy. It is clear that we can no longer talk about a "subject of public interest" in an old fashioned way, when the notion "public" depicted a connection with the state. More and more, the term "public" is connected with simple notoriety and "public interest" can be a "curiosity of the public".

The Court proved vigil in protecting children's right to private life. In the case of *Kahn v. Germany* the aplicant complained that the responding state failed to protect the private life of his children because of the repeated publication of photographs of them accompanying him, in spite of a blanket ban on publication ordered by the national court. The European Court of Human Rights found no violation of Article 8. For deciding against the aplicant the Court considered the following: the publisher has been ordered to pay fines totalling aproximatively 68% of the amount the aplicants claimed, the faces of the children were not visible or had been pixelated so they could only be identified on the photographs through the presence of their parents, the accompanying text was not focusing on the children, but on their parent's divorce. Thus, not only the aplicants could not claim to be victims, as they have been compensated, but there had been no damage to the children's private life, too.

In the case *Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria* the Court found a violation of the right to private life when, accompanying an article about a dispute between parents over the custody of the child, a photograph had been attached showing the child in a state of aparent pain and despair. The Court stated that, although the subject was one of public concern, neither the child nor his parents were public figures or had previously entered the public sphere, and publishing the photograph from which the child could be recognised was not essential for the understanding of the article. In our opinion, the judgement should not have been different if the parents or the child were notorious people. The protection of the private life of children cannot be subjected to the same criteria as the ones for adult persons, as they cannot choose notoriety and cannot express a valid consent concerning taking their picture or publishing it.

4. CONCLUSIONS

One's image is a component of the personality rights.

Although the right to private and family life may be seen as a single one, and most of the time a violation of the right to private life is discussed in relation with photographs, there are situations when the family ties lead also to a violation.

In the case of the right to one's image, as protected by the European Convention on Human Rights, the general criteria mentioned by the European Court of Human Rights in the cases *Küchl v. Austria* and *Verlagsgrupe News GmbH and Bobi v. Austria* cannot be applied in the same way to all situations. For persons that do not meet the criteria of being well-known, the Court exhibits a tendency of enhancing the protection of the right to privacy, deciding that even taking one's photograph without consent, without the intention of disseminating it, is a violation of one's right to privacy. When it comes to well-known persons, the right to private life has to be balanced with the right to impart and receive information, as components of the right to freedom of expression. In respect to publishing or disseminating photographs, it seems that the Court establishes the fulfilment of the criteria of contributing to a debate of public interest (that would give priority to the right of freedom of expression) in accordance with the notoriety of the subject of the photograph. The jurisprudence of the Court seems to move from state officials as "public persons" or "persons placed into the public eye" to all persons that are well-known for different reasons like sportsmen, television reporters, artists, performers, royalty without state functions. This is a tendency contrary to the one of the European Union institutions and the tendency of the national legislation of European countries that have previously been very permissive with the intrusions into the private lives. In all situations, children should benefit from an enhanced protection of their right to private life, as they cannot express a valid consent about being placed in the public eye, taking or disseminating their photograph.

Regarding the consent of taking and disseminating one's photograph, it should not be considered that one's apearance in a public space equals a consent for taking and disseminating one's photograph, nor that a photograph taken with one's consent in a certain context could be attached to a text creating another context, especially one damaging for the subject of the photograph.

As a photograph can reveal the most inner emotions and the most intimate gestures of a person, the courts should be very careful in balancing the right to private life with the right to freedom of expression. It should not be considered that granting damages to the victims is the best way of straighten things out. The possibilities for preventing the dissemination of damaging photographs should always prevail.

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