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**PRIVATE LIFE IN A PUBLIC SOCIETY
IN THE LIGHT OF THE CASE-LAW
OF THE EUROPEAN COURT
OF HUMAN RIGHTS: SURVEILLANCE
IN A DEMOCRATIC SOCIETY**

Introduction

The democratic society strives for rules to maintain peace and well-being of the citizens¹. Rules may limit individuals but shall also give them freedom and safety. Human rights are an essential basis of the democracy; therefore, the European Human Rights Convention plays a pivotal role in ensuring these special and necessary rights and freedoms. Right to private life expressed in Art. 8 of the Convention secures a boundary between a public image and a private one, which, however, tends to be breached.

“We live in a society” has become a quote engraved into the modern perspective of the special bond between an individual and the State. Even though the dichotomy of such a relationship perpetuates around public and private matters, a single person is still a separate being in the society build within a State. The juxtaposition of a private life (accessible only to one individual) with a public society (perceived as a structure of a state grouping various individuals with equal rights and freedoms) enables a new level of comprehension of privacy in a public eye, bringing new reasoning beside just a wordplay. The assessment of the right for private life in a very public society brings up one question – to what extent is our life exclusive, confidential, and secret?

Therefore, the hypothesis of whether surveillance measures imposed by the State in a democratic society interfere with private life of an individual shall be

¹ R.A. Khan, *Article 8 of the European Convention on Human Rights and UK Immigration Law*, University of Glasgow 2022, p. 102, <https://theses.gla.ac.uk/83225/1/2022KhanRaiAPhD.pdf> (2.06.2023).

tested via a methodology of qualitative doctrinal research. Such methodology allows assessment and evaluation in terms of getting acquainted with existing literature and mostly analysing case-law. Familiarising with cases of the European Court of Human Rights enables understanding of the way of interpreting the Convention and complying with case-specific terminology used by the Court itself and its judges. Literature plays the role of the introduction whereas case-law is the key and the heart of comprehension of the Court's reasoning, thus the research shall be focused on the case-law of the European Court of Human Rights.

The concept of private life

Article 8 of the Convention says "Everyone has the right for his private and family life, his home and correspondence"². Thus, in order to invoke Art. 8 a case must fall within the scope of one of these four interests – private life, family life, home, and correspondence. The first aspect, private life, is widely discussed as its enigmatic meaning may cause controversies in understanding³. Especially as the European Court of Human Rights itself declared it impossible to create an exhaustive definition of private life⁴. As the Court has consistently held, private life is viewed as a right to identity as well as a physical and psychological integrity of a person⁵. It may relate to personal identity, such as a person's name, physical and moral integrity, or even a photo and an image.

However, a zone of interaction with others may fall within a scope of private life, even if these relations exist solely in a public context⁶. Consequently, on the contrary to the general belief, private life extends to life outside our homes as well. Nevertheless, there is no establishment in the Court's case-law that may suggest extending private life to activities of essentially public nature⁷, such as

² *Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe Treaty Series 005, Council of Europe 1950, Art. 8 paragraph 1.

³ R. Stancescu-Cojocaru, *Overview of the recent case-law of the European Court of Human Rights on the balance between the right to private life and the right to freedom of expression*, Berlin–Heidelberg 2023, p. 2.

⁴ *Niemietz v. Germany*, app. no.13710/88, § 29.

⁵ *Paradiso and Campanelli v. Italy*, app. no. 25358/12, § 159; *Ciubotaru v. Moldova*, app. no. 27138/04, § 49-50; *Peck v. United Kingdom*, app. no. 44647/98, § 57; *Reklos and Davourlis v. Greece*, app., no. 1234/05, § 39; *Hadri-Vionnet v. Switzerland*, app. no. 55525/00, § 51.

⁶ *Von Hannover v. Germany (no. 2)*, app. no. 40660/08 and 60641/08, § 95.

⁷ *Friend and Others v. the United Kingdom*, app. no. 16072/06, § 42; *Nizolae Virgiliu Tănase v. Romania*, app. no. 41720/13, § 128.

taking part in an assembly at the main square or public activity on the Internet, even though such activities are also often protected by Art. 8⁸.

Values of Art. 8 include, among others, protection of personal data and a person's image. According to Art. 2 of the Convention 108+, *personal data* means "any information relating to an identified or identifiable individual"⁹. A person's image constitutes one of the key factors of personality, as it reveals the person's unique characteristics and enables to distinguish a person from others¹⁰. Article 8 also covers right to object to the recording, conservation, and reproduction of one's image¹¹.

Nowadays, the State may use modern electronic devices for data storage of images and recordings of the citizens. Any private life considerations may emerge when systematic or permanent record comes into existence, therefore, the Court declared that files obtained by security services fall within the scope of Art. 8, even when they were not gathered by using intrusive methods¹². Surveillance might interfere with physical and psychological integrity as well as with the right to private life¹³. Recordings of residents might be explained with proper legislation enabling the State to intrude within the private life of the inhabitants as it is prescribed by law. A citizen may claim to be a victim of violation of Art. 8 when such legislation permits secret surveillance measures¹⁴. In order to assess whether gathering files by surveillance is violation of Art. 8 or not, the proportionality test must be conducted.

Protecting private life by the State

The Convention imposes certain obligations on the States to secure rights for individuals¹⁵. Not only does the State possess positive obligations under Art. 8 such as ensuring the citizens of respect of privacy and acting, but also negative

⁸ K.A. Strzpek, *Zakres ochrony Artykułu 8 Europejskiej Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności – uwagi ogólne na tle orzecznictwa Europejskiego Trybunału Praw Człowieka*, „Prawo i Więź” 2020, Vol. 33, No. 3, p. 285.

⁹ *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, Council of Europe Treaty Series 108, Council of Europe 1981, Art. 2 letter a.

¹⁰ *Von Hannover v. Germany* (no. 2), § 96.

¹¹ *López Ribalda and Others v. Spain*, app. no. 1874/13 and 8567/13, § 89; *Reklos and Davourlis v. Greece*, § 40; *De La Flor Cabrera v. Spain*, app. no. 10764/09, § 31.

¹² *Rotaru v. Romania*, app. no. 28341/95, § 43–44; *P.G. and J.H. v. the United Kingdom*, app. no. 44787/98, § 57.

¹³ D. Hamad, *Issues of Surveillance in Bulgaria: Violation of Article 8 of the European Convention on Human Rights*, „Human Rights Brief” 2022, Vol. 25, Issue 2, pp. 125–126.

¹⁴ *Roman Zakharov v. Russia*, app. no. 47143/06, § 154; *Kennedy v. the United Kingdom*, app. no. 26839/05, § 123–124.

¹⁵ K. Trykhlid, *The principle of proportionality in the jurisprudence of the European Court of Human Rights*, EU and comparative law issues and challenges series (ECLIC) 2020, Issue 4, p. 129.

obligations to refrain from interferences¹⁶. However, the boundaries of negative and positive obligations are not precisely defined¹⁷.

Positive obligations may involve the introduction of measures aimed to secure respect for private life¹⁸ by enhancing fundamental values or essential aspects of privacy. Negative obligations indicate respecting these values of privacy to such extent that the State shall not interfere with private life. However, the State enjoys a certain margin of appreciation, a margin of error and understanding, that allows it to interfere with freedoms such as right to private life. There will often be a wider margin if the State is required to find a fair balance between competing interests of the community and of an individual or Convention freedoms and rights¹⁹. Nonetheless, the margin of appreciation is not unlimited as the interference shall always fulfill the rule of proportionality.

Surveillance via monitoring as an interference with private life

According to the Court's case-law, the monitoring of individuals in public places without prior consent is a plain invasion of private life when data is collected and stored in a systematic or permanent way by the authorities²⁰. It is a breach of privacy especially when the individual possesses the justified expectation of privacy²¹. On the other hand, surveillance via municipality cameras monitoring public places and producing CCTV footage might still be rationalized provided that the State complies with the test defined in the *López Ribalda and Others v. Spain*, i.e., the level of privacy, number of people that has access, the monitoring of individuals shall be clarified in the light of circumstances and explained by the specific goals²².

Collection, storage, and destruction of data are components of *data processing* in the meaning of the Convention 108+. According to Art. 5 paragraph 4 of the Convention 108+ processing of data shall be fair, transparent, relevant, in relation to the legitimate purpose, keeping a fair balance between rights and

¹⁶ J. Gerards, *General Principles of the European Convention on Human Rights*, Cambridge University Press 2023, p. 175.

¹⁷ M.A. Nowicki, *Komentarz do Konwencji o ochronie praw człowieka i podstawowych wolności [in:] Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warszawa 2021, p. 786.

¹⁸ *Evans v. the United Kingdom*, app. no. 6339/05, § 75.

¹⁹ *Aksu v. Turkey*, app. no. 4149/04 and 41029/04, § 62; *Ress v. United Kingdom*, app. no. 9532/81, § 37; *Evans v. the United Kingdom*, § 77.

²⁰ *Rotaru v. Romania*, § 43–44; *Amann v. Switzerland*, app. no. 27798/95, § 65–67; *Peck v. United Kingdom*, § 59.

²¹ *López Ribalda and Others v. Spain*, § 93.

²² *Ibidem*, § 116.

freedoms at stake and when necessary, shall be updated²³. Moreover, minimum safeguards established in the Court's case-law, such as "the nature of offences which may give rise to an interception order; a definition of the categories of people liable to (...) [be monitored]; a limit on the duration of (...) [monitoring]; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed"²⁴ shall be met. Secret surveillance or monitoring and resulting from that data storage must be tolerable for the individuals — that is necessary for safeguarding the democratic institutions²⁵.

Article 8 paragraph 2 of the Convention says "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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"²⁶. To justify such interference, the introduced limitations of one's right to privacy by the public authority shall pursue the proportionate aim and correspond with the pressing social need, simultaneously taking into consideration margin of appreciation afforded to the State. The proportionality test is the assessment of these three parts of interference for it to be justified. Therefore, for the interference (monitoring using CCTV or surveillance by municipality cameras on the streets) to be legal and legitimized, it must be 1) in accordance with the law; 2) necessary in a democratic society; 3) according to a legitimate aim.

In accordance with the law

Restrictions that may interfere with one's right to private life may be justified only when they are prescribed by law. Moreover, the legal aspect of interference with private life is more complex and differentiated between various States.

The interference is in accordance with the law when it is easily obtainable to the person concerned and foreseeable as to its effects²⁷. Therefore, the Court

²³ *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, Council of Europe Treaty Series 108, Council of Europe 1981, Art. 5 paragraph 4.

²⁴ *Roman Zakharov v. Russia*, § 231.

²⁵ *Klass and Others v. Germany*, app. no. 5029/71, § 42.

²⁶ *Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe Treaty Series 005, Council of Europe 1950, Art. 8 paragraph 2.

²⁷ *Roman Zakharov v. Russia*, § 231; *Rotaru v. Romania*, § 52; *Kennedy v. the United Kingdom*, § 151.

decides on the quality of the domestic law of the States. Regulations enabling interference with Convention's rights and freedoms must be qualitative. The national law shall be clear, foreseeable, and accessible by citizens²⁸.

Domestic regulations might impose specific form of law that enables interference, e.g., freedoms might be restricted only via statutory law (an act ratified by the parliament) or with precisely designated *vacatio legis*. Consequently, a domestic legal system regarding data processing is compatible with provisions of Convention 108+ and their mirror image. The surveillance measure must have some basis in domestic law and be compatible with the rule of law²⁹.

National law must be sufficiently foreseeable, explaining in what circumstances and on what conditions the authorities are entitled to interfere with rights protected by the Convention³⁰. Such foreseeability need not be particular as the individuals must be able to foresee just to a reasonable degree³¹ in what situations public authorities might take measures affecting rights and freedoms of the citizens. Moreover, the law must be easily accessible and understandable for ordinary people, no specific knowledge should be necessary to understand how to foresee where cameras might be and when they are recording (in what situations). One's profession might only indicate that this certain individual should have known and predict the interference regarding his or her ability to foresee legal consequences³².

Therefore, there are three aspects of the prescribed law entitling the State to use monitoring and storing data of the citizen's image. Firstly, the law must have certain quality, e.g., regulations indicating that municipality cameras might collect CCTV footage of the inhabitants running their everyday errands and simultaneously storing their private image and information regarding their private life such as where they are at a particular time might be only imposed via a statutory law. Secondly, the law must also be foreseeable for ordinary people and especially for professionals, indicating circumstances of the interference to a reasonable degree, e.g., in a government institution such as tax office, one may expect cameras collecting footage of every person entering a building for safety reasons. Moreover, openly visible cameras in public places may indicate the foreseeability of monitoring too. Thirdly, the law must have basis in domestic provisions, e.g., national law specifies details of interference with private life via monitoring.

²⁸ *Silver and Others v. United Kingdom*, app. no. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75, § 87.

²⁹ *Kennedy v. the United Kingdom*, § 131.

³⁰ *Fernández Martínez v. Spain*, app. no. 56030/07, § 117; *C.G. and Others v. Bulgaria*, app. no. 1365/07, § 39.

³¹ *Slivenko v. Latvia*, app. no. 48321/99, § 107.

³² *Versini-Campinchi and Crasnianski v. France*, app. no. 49176/11, § 55.

Necessary in a democratic society

Criterion of necessity of interference with rights or freedoms in a democratic society focuses on the margin of appreciation the most, regarding other aspects of the proportionality test. This provision must be narrowly interpreted as “powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions”³³. Otherwise, the interference shall be viewed as an abuse on the part of the authorities.

In one of the earliest cases on the subject, the Court clarified that “necessary” shall not be used as a synonym to “useful”, “reasonable”, or “desirable” and might be only understood as an existence of a “pressing social need” for the interference with rights and freedoms³⁴. Moreover, it is a duty of the respondent State to demonstrate the existence of a pressing social need behind the interference³⁵. A pressing social need might be strictly linked with the fulfillment of a legitimate aim and remain proportionate to it.

Surveillance of citizens via monitoring that interferes with their private life might be explained only due to a pressing social need. Taking into consideration worldwide events of 2020 and a pandemic of a virus SARS-CoV-2 resulting in a COVID-19 disease, such coronavirus pandemic might be viewed as a pressing social need for interference³⁶. For instance, as COVID-19 is easily transferred among people and many States prohibited assemblies, street cameras could monitor whether citizens comply with restrictions in order to maintain public health and ensure safety³⁷.

As mentioned above, the State enjoys a certain, but not unlimited margin of appreciation. In the assessment of the necessity of the interference with a right to private life in a democratic society, the Court must examine the decision-making process of the public authorities. Especially whether their actions remained within the margin of appreciation and if the undertaken measures were fair and respectful towards the interests granted to the individual by the Art. 8 of the Convention³⁸.

All in all, the interference of the State might occur only when it is necessary in a democratic society. The Court shall thus assess the existence of pressing social need corresponding with a legitimate aim and take into consideration the margin of appreciation given to the national authorities.

³³ *Szabó and Vissy v. Hungary*, app. no. 37138/14, § 54; *Klass and Others v. Germany*, § 42.

³⁴ *Dudgeon v. the United Kingdom*, app. no. 7525/76, § 51–53.

³⁵ *Bagiński v. Poland*, app. no. 37444/97, § 89; *Piechowicz v. Poland*, app. no. 20071/07, § 212.

³⁶ S.R. Vinceti, *COVID-19 compulsory vaccination and the European Court of Human Rights*, „Acta Bio Medica” 2021, Vol. 92, Supp. 6, p. 2.

³⁷ *Ibidem*, p. 2.

³⁸ *A.-M.V. v. Finland*, app. no. 53251/13, § 82–84.

According to a legitimate aim

The purpose of the whole interference must be legitimate and reasonable. Article 8 paragraph 2 enumerates aims that explain the infringement upon the right to private life: “in the interests of national security, public safety or the economic wellbeing 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”³⁹. Practice of the Court verifies that the interference shall pursue a quite succinct legitimate aim⁴⁰. Once again, it is for the respondent State to demonstrate that the interference pursued a legitimate aim⁴¹.

Municipality cameras or street cameras collecting CCTV footage of citizens might serve to the interests of national security, public safety or the economic wellbeing of the country. In a situation of danger, when the State is under attack of a different country or suspects it soon due to international affairs, interfering with private life of citizens via monitoring enables proper preparation for defense. Moreover, surveillance via processing a person’s image obtained in a recording might accelerate a search for a missing person and therefore pursue an aim of prevention of disorder or crime. Protection of health and morals can be explained on the example of the COVID-19 pandemic as well, as surveillance of individuals enables the State to prevent spreading of the virus⁴². Controlling inhabitants for the better good of maintaining public health by monitoring their behaviour and compliance with restrictions according to processed data might be a reason to assess a legitimate aim too. When two or more rights or freedoms are competing, public authorities shall find a balance. One right or freedom shall not be protected by interfering with another, e.g., monitoring an individual voicing his or her freedom of religion might be restricted because of his or her right to private life and maintaining information about religious beliefs as private and inaccessible.

Hence, the interference must pursue a succinct legitimate aim. The purpose shall correspond with a list of reasons enabling infringement upon the right to privacy and private life.

Private life in a public society – surveillance

It is crucial to emphasize that private life is not limited to the close family, friends or even the inner circle that a person might choose to exclude from the

³⁹ *Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe Treaty Series 005, Council of Europe 1950, Art. 8 paragraph 2.

⁴⁰ *S.A.S. v. France*, app. no. 43835/11, § 114.

⁴¹ *Mozer v. the Republic of Moldova and Russia*, app. no. 11138/10, § 194.

⁴² S. Sekalala, L. Forman, R. Habibi, B.M. Meier, *Health and human rights are inextricably linked in the COVID-19 response*, „BMJ Global Health” 2020, p. 3.

public eye and outside perspective of a stranger or the State⁴³. All the analysis above shall shed a new light on the whole concept of private life – individuals do live their own individual lives that are separate to their public image, however, to a certain extent. A citizen must agree and be aware that some parts of his or her life that might be viewed as private, are actually public due to the sole coexistence with others and within a society. However, these aspects are also protected by the Convention, even if they appear to be a part of a public society. The dichotomy of the private life within a public society shall therefore be viewed in the following manner: 1) privacy and private life are protected by the Art. 8 of the Convention, and 2) social interactions or functioning within the State with other individuals might fall within a scope of the private life, however, the public setting of a democratic society allows the State to interfere and set limitations to that private life such as surveillance by CCTV⁴⁴ in regard with proportionality test and margin of appreciation.

As of 2023, the European Court of Human Rights has been criticised on the Internet for not providing enough protection under Art. 8⁴⁵. However, the Court states in certain cases that it is the State that has fallen short of upholding the rights to a private life by not fulfilling its positive obligation⁴⁶. The private life intertwines with a public society, making it more challenging to find a boundary of protection and respect. Therefore, the negative and positive obligations should be perceived as a guidance, a true handbook for the States in executing the right to a private life protected by Art. 8.

The expression *for the greater good* seems vital in understanding possible limitations to individual rights. The State must find a balance between maintaining peace in a democratic society and acting for the greater good – wellness of a society manifested in the interests of public safety, the protection of public order, health or morals, or the protection of the rights and freedoms of others. Therefore, in order to provide a safe life within a public society, the State might interfere with a private life. The above-mentioned example of monitoring the citizens via CCTV in a public setting that might also contain private life might be explained and excused once a reason such as protection of public order and health during the COVID-19 pandemic is used by the State.

Moreover, the modern society finds new issues that inhibit lawful execution of human rights. Due to the digitalization of the society and struggling with

⁴³ *Denisov v. Ukraine*, app. no. 76639/11, § 96.

⁴⁴ Ö.H. Çınar, *The current case law of the European Court of Human Rights on privacy: challenges in the digital age*, „The International Journal of Human Rights” 2021, Vol. 25, Issue 1, p. 42.

⁴⁵ J. Sjöberg, *European Convention of Human Rights and the Protection of Private Life, Freedom of Expression and Access to Information in a Digital Age*, „Arcada University of Applied Sciences” 2023, p. 195, https://www.theseus.fi/bitstream/handle/10024/792774/Sjoberg_Jakob.pdf?sequence=2&isAllowed=y (1.06.2023).

⁴⁶ *Ibidem*, p. 192.

achieving privacy online, individuals find another difficulty with finding their private lives protected on the Internet in the 21st century. Even online correspondence such as texts on the dating apps fall within the scope of a private life⁴⁷, however, public social media accounts or public servers and platforms hinder the ability to find a balance in the protection of a private life in an online public society of 2023. Not only does society exist within a frame of physical interactions, but also online presence such as comments under Facebook or Instagram posts of an individual, where his or her private life must also be protected⁴⁸.

Another vital example of an interference of a public society with a private life is a frequent problem with online classes held on various platforms such as Zoom or Microsoft Teams or livestreaming classes with students present on YouTube. When professors and teachers are being recorded talking during their lecture as well as interacting with their students, building mutual relationships and even shaping their teacher-like identity and authority, it must be viewed as video surveillance⁴⁹. Thus, the interference with private life is also identified due to proceeding from a wide understanding of the Court's practice⁵⁰.

Surveillance seems to be the exact opposite of the democratic society and might even have bigger connotations with authoritarian or totalitarian systems; however, the balance between the valuable reasons of the state and personal freedoms is the key of democracy. The limitation of freedom and rights of an individual shall be explicated by accordance with the law, necessary action in a democratic society and a legitimate aim or 1) suitability, 2) necessity, 3) reasonability – proportionality in a narrow sense. The principle of a private life falls within a protection under Art. 8, but the State is exempt from non-interfering, when all these presumptions are fulfilled because the State acts within its margin of appreciation. Eventually, the Court assesses whether the State balanced the competing rights⁵¹.

Conclusion

Private life is a crucial right guaranteed by the Art. 8 of the European Human Rights Convention. Not only does the Convention secure the right to private life, but it also explains possible ways to interfere with it without breach of Art. 8. Recording an individual via street cameras and obtaining CCTV footage with

⁴⁷ *M.P. v. Portugal*, app. no. 27516/14, § 34.

⁴⁸ *Beizeras and Levickas v. Lithuania*, app. no. 41288/15, § 117.

⁴⁹ *Mirković v. Montenegro*, app. no. 70838/13, § 44–45.

⁵⁰ L.Y. Fomina, *Protection of the right to respect for private life in the course of educational activities in the practice of the European Court of Human Rights*, „The National Academy of Sciences of the Republic of Kazakhstan” 2021, Vol. 2, p. 264.

⁵¹ J. Sjøberg, *European Convention...*, p. 161.

person's image whereas later processing stored data might compete with right to private life. However, for the interference to be admissible and possible, certain conditions must be met. In conclusion, surveillance measures imposed by the State in a democratic society might interfere with private life of an individual only when the State acts in a way that is prescribed by law, necessary in a democratic society, while pursuing a legitimate aim that falls into certain margin of appreciation. Otherwise, surveillance measures such as interfering with privacy via CCTV, monitoring one's neighborhood, accessing cameras of one's private image in supermarkets or even on public streets, is strictly forbidden and constitutes a breach of the Convention. In the digitalization age it might bring up difficulty, but it is the State's obligation to comply with set out rules and regulations on freedoms.

Safeguarding the democratic institutions is a priority in any interference with rights and freedoms resulting from the Articles of the Convention. Finding a balance between interests of the State and an individual is an incessant struggle, especially when it comes to modern technology devices that enable applying new measures. Private life is full of components such as a person's image, moral or physical integrity and appearance and every single one of them constitutes a personality that allows to differentiate an individual from his or her peers. Therefore, depriving a citizen of his or her basic and essential right to private life must be justified, as the Court shall strengthen a private life in a public society.

The usage of juxtaposing terminology such as "private" and "public" is crucial, deliberate, and intentional when discussing individual rights in a democratic society. Private life and public society shall be understood and learnt about together, not separately, as the boundaries between them tend to disappear when it comes to the protection of human rights.

Bibliography

- Çınar Ö.H., *The current case law of the European Court of Human Rights on privacy: challenges in the digital age*, „The International Journal of Human Rights” 2021, Vol. 25, Issue 1.
- Fomina L.Y., *Protection of the right to respect for private life in the course of educational activities in the practice of the European Court of Human Rights*, „The National Academy of Sciences of the Republic of Kazakhstan” 2021, Vol. 2.
- Gerards J., *General Principles of the European Convention on Human Rights*, Cambridge University Press 2023.
- Hamad D., *Issues of Surveillance in Bulgaria: Violation of Article 8 of the European Convention on Human Rights*, „Human Rights Brief” 2022, Vol. 25, Issue 2.
- Khan R.A., *Article 8 of the European Convention on Human Rights and UK Immigration Law*, University of Glasgow 2022, <https://theses.gla.ac.uk/83225/1/2022KhanRaiAPhD.pdf> (2.06.2023).

- Nowicki M.A., *Komentarz do Konwencji o ochronie praw człowieka i podstawowych wolności* [in:] *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warszawa 2021.
- Sekalala S., Forman L., Habibi R., Meier B.M., *Health and human rights are inextricably linked in the COVID-19 response*, „BMJ Global Health” 2020, p. 3.
- Sjøberg J., *European Convention of Human Rights and the Protection of Private Life, Freedom of Expression and Access to Information in a Digital Age*, „Arcada University of Applied Sciences” 2023, https://www.theseus.fi/bitstream/handle/10024/792774/Sjoberg_Jakob.pdf?sequence=2&isAllowed=y (1.06.2023).
- Stancescu-Cojocaru R., *Overview of the recent case-law of the European Court of Human Rights on the balance between the right to private life and the right to freedom of expression*, Berlin–Heidelberg 2023.
- Strzępek K.A., *Zakres ochrony Artykułu 8 Europejskiej Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności – uwagi ogólne na tle orzecznictwa Europejskiego Trybunału Praw Człowieka*, „Prawo i Wiąż” 2020, Vol. 33, No. 3.
- Trykhlík K., *The principle of proportionality in the jurisprudence of the European Court of Human Rights*, EU and comparative law issues and challenges series (ECLIC) 2020, Issue 4.
- Vinceti S.R., *COVID-19 compulsory vaccination and the European Court of Human Rights*, „Acta Bio Medica” 2021, Vol. 92, Supp. 6.

Summary

The democratic society strives for rules to maintain peace and well-being of the citizens. Rules may limit individuals but shall also give them freedom and safety. Human rights are an essential basis of the democracy; therefore, the European Human Rights Convention plays a pivotal role in ensuring these special and necessary rights and freedoms. Right to private life expressed in Art. 8 of the Convention secures a boundary between a public image and a private one, which, however, tends to be breached. The special bond between an individual and the State strives for balancing their separate interests. Even though the dichotomy of such a relationship perpetuates around public and private matters, a single person is still a separate being in the society build within a State. According to the European Court of Human Rights’ case-law, the State can interfere with a private life in a way that is prescribed by law, necessary in a democratic society, while pursuing a legitimate aim that falls into certain margin of appreciation. However, there is a lively discussion concerning secret surveillance and monitoring of the individuals by the public authorities via obtaining CCTV footage and recordings from street cameras. Data processed in this way falls within the scope of Art. 8 of the Convention and constitutes a private life element. The role of the State is to protect and give freedom to, not freedom from, whereas the role of an individual seems to be to adjust and respect the regulations for the better good. The usage of juxtaposing terminology such as “private” and “public” is crucial, deliberate, and intentional when discussing individual rights in a democratic society. Private life and public society shall be understood and learnt about together, not separately, as the boundaries between them tend to disappear when it comes to the protection of human rights.

Keywords: private life, privacy, human rights, freedom, European Human Rights Convention, European Court of Human Rights, case-law analysis, monitoring, secret surveillance, street cameras

ŻYCIE PRYWATNE W SPOŁECZEŃSTWIE PUBLICZNYM W ŚWIETLE ORZECZNICTWA EUROPEJSKIEGO TRYBUNAŁU PRAW CZŁOWIEKA: NADZÓR W PAŃSTWIE DEMOKRATYCZNYM

Streszczenie

Spółeczeństwo demokratyczne dąży do ustanowienia zasad, które zapewnią pokój i dobrobyt obywateli. Reguły mogą ograniczać jednostki, ale również dawać im wolność i bezpieczeństwo. Prawa człowieka są podstawą demokracji, dlatego Europejska Konwencja Praw Człowieka odgrywa kluczową rolę w zapewnieniu tych szczególnych i niezbędnych praw i wolności. Prawo do życia prywatnego wyrażone w art. 8 Konwencji stanowi granicę między wizerunkiem publicznym a prywatnym, która jednak bywa naruszana. Szczególna więź między jednostką a państwem ma na celu zrównoważenie ich odrębnych interesów. Mimo że dychotomia takiej relacji utrwała się ze względu na przenikanie się spraw publicznych i prywatnych, pojedyncza osoba nadal jest odrębną istotą w społeczeństwie budowanym w ramach państwa. Zgodnie z orzecznictwem Trybunału Praw Człowieka państwo może ingerować w życie prywatne w sposób przewidziany przez ustawę, konieczny w demokratycznym społeczeństwie, przy jednoczesnym dążeniu do uzasadnionego celu, który mieści się w pewnym marginesie swobody. Jednak wciąż toczy się żywa dyskusja na temat inwigilacji i nadzoru przez władze publiczne poprzez pozyskiwanie nagrań z monitoringu i kamer ulicznych. Przetwarzane w ten sposób dane mieszczą się w zakresie art. 8 Konwencji i stanowią element życia prywatnego. Rolą państwa jest ochraniać i dawać wolność oraz prawo do czegoś, a nie zabierać prawa, natomiast rolą jednostki wydaje się dostosowywanie do przepisów i respektowanie ich dla większego dobra. Skontrastowanie terminów *prywatne* i *publiczne* jest istotne, celowe i wymagane podczas omawiania praw jednostki w społeczeństwie demokratycznym. Życie prywatne i społeczeństwo publiczne powinny być poznawane razem, a nie oddzielnie, ponieważ granice między nimi mają tendencję do zacierania się przy ochronie praw człowieka.

Słowa kluczowe: życie prywatne, prywatność, prawa człowieka, wolność, Europejska Konwencja Praw Człowieka, Europejski Trybunał Praw Człowieka, analiza orzecznictwa, monitoring, inwigilacja, nadzór, kamery uliczne