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THE RIGHT TO PRIVACY THROUGH THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

"Every man should know that his conversations, his correspondence, and his personal life are private"

Lyndon B. Johnson

I. Introduction

The civil and political rights are the most fundamental and the oldest human rights. They arise from the human anatomy and freedom and they are called first generation rights. (Danailov Frchkovski, 2005, p. 40-42)

One of the fundamental human rights that is part of the civil and political rights is the right to privacy. Namely, the right to privacy is a broad concept, which refers to the protection of the individual freedom and the relation between the individual and the society. Jernej Rovšek agrees with this and believes that it is nearly impossible to define all the aspects of the right to privacy, i.e. every state; every judicial system has its own definition for the scope and the content of this right (Rovšek, 2005, p.44)

Thereby, the privacy is considered to be necessary for the protection of the individual ability, for development of ideas and personal relations.

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Although often summarized as "right left by itself", it covers a wide range of rights, including the right of protection from endangering the family and home. It is widely recognized as a fundamental human right that is based on human dignity and other similar values, such as freedom of association and freedom of speech. Moreover, the right to protection of personal data, as a separate right that falls under the broader right of protection of privacy, is basically intended to protect citizens from the intrusion by the public authorities. At the same time, the right to privacy has been recognized by almost every national constitution and in most international human rights treaties, including the Universal Declaration of Human Rights of 1946, Article 10 of the International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights (European Convention) and, more recently, the European Union Charter of Human Rights (Report, 2012).

Furthermore, in the European Convention[1], as amended by Protocol No. 11 with Protocols 1, 4, 6 and 7, is laid down the basic idea-guide for the right to respect for private and family life.[2]

Also, the Treaty of Lisbon[3] recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union[4] and with it the Charter becomes legally binding. In doing so, the rights that we should all enjoy, among the others also encompass the protection of personal data[5] and the right to respect for private and family life.[6] In this

1 The European Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Macedonia was ratified on 10 April 1997 and entered into force in the same day.

2 The European Convention, art. 8:
„1. Everyone has the right to respect for his private and family life, home and correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or execution of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

3 The Treaty of Lisbon was signed on 13 December 2007 by the 27 member states. Entered into force on 1 December 2009, when all the countries of the European Union have ratified it in accordance with national procedures.

4 Published in the Official Journal of the European Union, 2010 / C 83/02 and signed and adopted in 2000 by the European Parliament, the European Commission and the Member States of the European Union. With the entry into force of the Lisbon Treaty in December 2009, the Charter has become directly applicable in the European Union and national courts.

5 The European Union Charter of Fundamental Rights, Article 8:
„1. Everyone has the right to protection of their personal data.

respect, the Treaty of Lisbon allows the European Union to accede to the European Convention. The Convention and the European Court of Human Rights (European Court), which supervises its implementation, represent the basis for the protection of human rights in Europe.

Namely, the respect for private life is established in 1950 with the adoption of the European Convention under the Council of Europe. Furthermore, the right to protection of personal data is introduced in the 80-ies of the XX century, as a result of technological development. However, this right is part of the privacy, i.e. autonomous field for the protection of human rights. Data protection principles aim to establish the conditions under which the processing of personal data[7] is legitimate and lawful. Data protection legislation obliges those responsible to respect and apply the values for the protection of this category of information and grant citizens the right to protection of personal information, should this right be misused. And finally, it provides supervision by independent bodies for the personal data protection. Despite that seemingly these two rights resemble one another, still they are different, i.e. the respect of the right to private life is wider than the right to protection of personal data, i.e. these two rights are mutually supplemental, i.e. absolved. [8]

The Constitution of the Republic of Macedonia from 1991 laid the foundations for providing a guarantee for security and secrecy of personal data and the protection from violations to the personal integrity of citizens. At the same time, every citizen is guaranteed respect and protection of privacy of his personal and family life, dignity and reputation. [9]

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2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by the law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules is subject to control by an independent body."

6 Charter of Fundamental Rights of the European Union, article 7:
„ Everyone has the right to respect for his own private and family life, home and communications."

7 Personal data protection principles are set out in Article 5 of the Law on protection of personal data, and they are the following: the principle of fair and lawful collection and processing; principle limitations according to purposes; principle of necessity; principle of credibility of personal data and their updating and the principle of time-limited storage of personal data.

8 The distinction between these two fundamental rights is available on the website: http://www.edps.europa.eu/EDPSWEB/edps/cache/off/EDPS/Dataprotection/Legislation

9 Constitution of the Republic of Macedonia with amendments to the Constitution I-XXX, Skopje, Publisher: JP Official Gazette of the Republic of Macedonia, 2005, Articles 18 and 25.

The most significant international documents that set standards in the field of personal data protection are: The European Convention, the Convention for the protection of individuals with regard to Automatic Processing of Personal Data of the Council of Europe No.108/81,[10] the Additional Protocol to the Convention regarding supervisory authorities and trans border data flows[11] and the Directive 95/46/EK of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data. [12] The same rules and values are embedded in our legislation, including the Law on Personal Data Protection (LPDP). [13]

At the same time, the meaning, importance and necessity of protection of personal data as an indivisible part of human rights protection are laid down in the text of the preamble to the Universal Declaration of Human Rights of the United Nations from 1946 and in the Guidelines for electronic processing of personal data adopted by the United Nations General Assembly Resolution 49/95 from 14 December 1990.

The emphasis of this right is intensified by the adoption of the LPDP in 2005 and the establishment of the Directorate for Personal Data Protection (Gunderman, 2010, p. 5). Notably, Article 1 of LPDP regulates the personal data protection as one of the fundamental rights and freedoms of physical persons, and in particular the right to privacy regarding the processing of personal data.

10 Official Gazette of the Republic of Macedonia, 2005, Articles 18 and 25.
Law on Ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data was adopted on 26 January 2005 and published in the Official Gazette of Macedonia no. 07/05, which ratified the Convention for the protection of individuals regarding the automatic processing of personal data of the Council of Europe no. 108/81 of 24 March 2006 and entered into force on July 1, 2006.

11 The Law on Ratification of the Additional Protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, regarding supervisory authorities and transborder data flows on 1 August 2008 ratified the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows, adopted by the Council of Europe in Strasbourg on 8 November 2001.

12 The Law Amending the Law on Personal Data Protection published in the Official Gazette of the Republic of Macedonia No.103/08 which entered into force in August 2008 strengthened the legal framework in the field of personal data protection, i.e. full harmonization of national legislation with Directive 95/46/EC of the European Parliament and the Council of the European Union.

13 Published in the Official Gazette of the Republic of Macedonia No. 7/05, 103/08, 124/10 and 135/11.

II. The right to respect for private and family life, home and correspondence – Article 8 of the European Convention

The Article 8 of the European Convention imposes on the states the obligation to respect a wide range of personal interests. These interests – "private and family life, home and correspondence" – cover a variety of issues, some of which are related to each other and some of them merge. In the implementation of the Article 8 of the European Convention, the European Court has flexible approach of the definition of the protected individual interest, and as a result, this article continues to expand its scope. The areas within the scope of the Article 8 of the European Convention now also include search and seizure, secret surveillance, immigration laws, paternity and identity rights, child and family law, assisted reproduction, suicide, prisoners' rights, inheritance, tenants' rights and environmental protection. Neither one of the four interests[14] (private life, family life, home and correspondence) referred to in the Article 8 paragraph 1 of the European Convention is not self-explanatory in its meaning. Typically, the European Court applies the Article 8 paragraph 1 of the European Convention to the individual facts of each case and avoids the creation of general understanding of what exactly is covered under each part.

Regarding the scope of the "*private life",*[15] there is no exhaustive definition, but it is a broad term and encompasses the following: a person's physical and psychological integrity, including medical treatment and psychiatric examinations and mental health; aspects of an individual's physical and social identity, including the seizure of documents needed to prove one's identity; an individual's first name and surname; the right to one's image and photographs of an individual, an individual's reputation; gender identity, including the right to legal recognition of postoperative transsexuals; sexual orientation; sexual life; the right to establish and develop relationships with other human beings and the outside world; social ties between settled migrants and the community in which they are living, regardless of the existence or otherwise of a "family life"; emotional relations between two persons of the

14 In most of the cases, for the European Court's decision making it is most important whether the complaint falls within the scope of the one of the protected interests – private life, whether there is a positive obligation for "respecting" that interest, whether it is in "accordance with the law", whether it was done to protect legitimate aims and whether it is "necessary in a democratic society".

15 The range of the four interests (private life, family life, home and correspondence) is taken from the e-book European Court of Human Rights, Practical Guide to the admissibility criteria, p. 61-66.

same sex; the right to personal development and personal autonomy, although this does not cover every public activity a person might seek to engage in with other human beings; the right to respect for the choice to become or not to become a parent (in the genetic sense); activities of a professional or business nature and restrictions to certain professions or to employment; files or data of a personal or public nature collected or stored by security services or other State authorities; information about a person's health and information on risks to one's health; ethnic identity and the right of members of a national minority to maintain their identity and to lead a private and family life in accordance with their traditions; information about personal religious and philosophical convictions; searches and seizures; stopping and searching of a person in a public place; surveillance of communications and telephone conversations; video surveillance of public places; severe environmental pollution potentially affecting individuals' well-being and preventing them from enjoying their homes, thus adversely affecting their private and family life, including offensive smells from a refuse tip near a prison that reached a prisoner's cell, regarded as the only "living space" available to him for several years, as well as matters concerning the burial of family members.

Regarding the scope of the "*family life*", the European Court will look for existence of de facto family ties. Again, while there is no exhaustive definition of the family life, from the Court's case-law it covers the following: right to become a parent - the right to respect for decision to become genetic parents. Accordingly, the right of a couple to make use of medically assisted procreation comes within the scope of Article 8 of the European Convention, as an expression of private and family life. The family life in regards to the children covers the natural ties between a mother and her child. A child born of a marital union is ipso jure part of that relationship, i.e. from the moment of the child's birth and by that very fact there exists between the child and the parents a bond amounting to family life. For a natural father and his child born outside marriage, relevant factors may include the cohabitation, the nature of the relationship between the parents and his interest in the child. In general, however, cohabitation is not a sine qua non of family life between parents and children. A lawful and genuine adoption may constitute "family life", even in the absence of cohabitation or any real ties between an adopted child and the adoptive parents. The European Court may recognize the existence of de facto "family life" between the parents and a child placed with them, having in consideration the time they have spent together, the quality of the relationship and the role played by the adult vis-à-vis the child. The ties between the child and the

close relatives may play a considerable role in the family life. Moreover, the family life does not end when a child is taken into care or the parents will divorce. In immigration cases, there will be no family life between the parents and adult children unless they can demonstrate additional elements of dependence other than the normal emotional ties. In regards to the *couples*, the term "family" in Article 8 of the European Convention does not refer solely to marriage-based relationships and may encompass other de facto "family ties" where the parties are living together outside marriage. Thereby, the fact that the marriage is not in accordance with the national law is not an obstacle to family life. In regards to the "other relationships", a family life can exist between siblings and aunts/uncles and nieces/nephews. Thereby, "family life" does not include only social, moral or cultural relations, but also interests of a material kind, as is shown by, among other things, maintenance obligations and the position occupied in the domestic legal systems of the majority of the contracting states by the institution of the reserved portion of an estate (reserve hereditaire).

The scope of the "*home*" concept protected by the Article 8 paragraph 1 of the European Convention will depend on the factual circumstances, especially the existence of sufficient and continuous links with a specific place. The "home" concept covers: occupation of a house belonging to another person if this is for significant periods on an annual basis, where the applicant does not need to be the owner of the home for the purposes of Article 8 of the European Convention. This concept is not limited to residences and so will include caravans and other nonpermanent places of residence (holiday homes, business premises in the absence of a clear distinction between a person's office and private residence or between private and business activities). In this respect, it is necessary to specify the examples of interference of the right to respect for one's home, which include: deliberate destruction of the home; refusal to allow displaced persons to return to their homes; searches and other entries by the police; spatial planning decisions and compulsory-purchase orders; ecological problems; telephone tapping; and failure to protect personal belongings forming part of the home.

Furthermore, the scope of the "*correspondence*" concept covers the right to respect one's communication, which aims to protect the confidentiality of private communications and as such has been interpreted as covering the following areas: letters between individuals, even where the sender or recipient is a prisoner, including packages seized by customs officials; telephone conversations; pager messages; older forms of electronic communication – telexes; electronic messages (e-mail) and information derived from the interception of personal Internet use; private radio, but not when it

is on a public wavelength and is thus accessible to others; correspondence intercepted in the course of business activities or from business premises; electronic data seized during a search of a law office. Thereby, the content of the correspondence is irrelevant to the question of interference. The positive obligations specific to the correspondence are the obligation to prevent disclosure into the public domain of private conversations and the obligation to help prisoners correspond in written by providing the necessary materials.

The language of the Article 8 paragraph 2 of the European Convention makes it clear that the state must refrain of arbitrary interference in the private and family life, the home and the correspondence. This obligation for not engaging in an "arbitrary action" is negative type of obligation, described by the European Court as "essential purpose" of the Article 8 of the European Convention. The European Court clarifies that there may be "in addition, positive obligations inherent to the "effective" respect for the family life [and for the other values of Article 8 paragraph 1 of the European Convention]. "The positive obligations inherent" to the Article 8 paragraph 1 of the European Convention also cover those that require the state to take actions for ensuring the rights or privileges of the individuals, as well as to protect the individuals from the actions of the other individuals that prevent the effective enjoyment of their rights. The European Court does not perceive the rights from the Article 8 paragraph 1 of the European Convention in wholly negative terms – as a right to "be left alone". Instead, it recognizes the role they have in exercising the freedom and additionally, stipulates that the states must ensure effective enjoyment of the so defined freedom. The private sphere that encompasses the interests recognized in the Article 8 paragraph 1 of the European Convention can be better seen as a personal, not as a secret sphere. Accordingly, if the private life should be respected (not the privacy with its largely narrow connotations for the secrecy of the information or the isolation), the state must not only refrain from disclosing or intercepting the activities of the citizen who without hesitation would keep away from the public. It must allow for, and even provide conditions for establishing open relationships between the individuals, which is actually the entire value of the freedom (O'Boyle, Warbrick, Harris, 2009, pp. 361-362).

III. Case studies from the case-law of the European Court of Human Rights for the right for private life[16]

The collection of information and data regarding the entrance in the private life of the individual can be illustrated most plastically in terms of the Article 8 of ECHR trough the case law of the European Court. Namely,

the case studies from the case law are:

Combating terrorism

In the case ***Klass and Others v. Germany***, 06.09.1978 it was found that:

"Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction." Nevertheless, the Court, being aware of the danger, inherent in secret surveillance measures, "of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate."

In this case, the Court found no violation of the Article 8 of the European Convention because in the law challenged by the applicants there are restrictions imposed on the rights of the applicants regarding the secrecy of email, post and telecommunications in the cases for protecting the national security and defending the state and for detection and prosecution of the perpetrators of crime.

Detained persons

In the recent years, the European Court has frequently ruled on cases for obstacles to detainees' correspondence. In a number of polish cases, ***Pisk-Piskowski v. Poland, Matwiejczuk v. Poland, Przyjemski v. Poland,*** the Court held that as long as the domestic authorities continued the practice of stamping "ocenzurowano" ("censored") on detainees' letters, the Court would have no alternative but to presume that those letters had been opened and their contents read, which means breach of the Article 8 of the European Convention.

In the judgment ***Biśta v. Poland***, 12.01.2010, the European Court, having into consideration the relevant developments in the domestic practice, found that now an effective remedy about the censorship of correspondence for the prisoner in Poland is the appeal to the European Court.

- **Hindrance of the correspondence**

In the case ***Golder v. the United Kingdom)***, 21.02.1975, the European

16 Below mentioned cases from the practice of the ECtHR are taken from the website: http://www.echr.coe.int/NR/rdonlyres/4FCF8133-AD91-4F7B-86F0 A448429BC2CC/0/FICHES_Protection_des_donn%C3%A9es_EN.pdf , Factsheet - Data Protection, July 2012 и http://hudoc.echr.coe.int.

Court has rejected the Government's argument that it was necessary to reject the transfer of a letter from a prisoner to his lawyer due to a possibility for initiating a civil lawsuit against a prison officer "for preventing a disorder". With the further legal reform in Great Britain, a distinction was made between the correspondence with legal advisors in relation to a court procedure (that may be protected as privileged) and other correspondence, including such as for future court procedures (that may be opened and read). But also with this solution, the European Court found that there is a violation of Article 8 of the European Convention, especially due to the high priority on protecting the right of the prisoner to communicate with its legal advisors.

- **Interception of correspondence**

In the case ***Silver and Others v. the United Kingdom),*** 25.03.1983, the European Court has found a violation of the Article 8 of the European Convention in regards to the letters intercepted (correspondence) and the usage of insulting language, as well as no violation of Article 8 of the European Convention in regards to the letters containing clear threats.

Restrictions on correspondence with the Court

In the case ***Campbell v. the United Kingdom,*** 25.03.1992, the European Court has found a violation of the Article 8 of the European Convention on account of the opening of the applicant's correspondence with his solicitor and with the European Commission on Human Rights. The European Court assessed that the "general interest" requires the consultations with the solicitors to be done in conditions "suitable for complete and uninhibited discussion". Besides that, all the letters to or from the legal advisor are privileged, which means that before the letter is opened the state must prove the existence of a "reasonable cause" why there is a suspicion that the particular letter contains illegal material. By for example opening the letter in the presence of the prisoner, there must be guarantees for him that this limited power for tracking and reading his correspondence would not be abused.

In the case ***Cotlet v. Romania***, 03.06.2003, the European Court found that the hindrance of the correspondence violates Article 8 of the European Convention on account of the delays in forwarding letters from the applicant, the opening of his correspondence and the prison authorities' "refusal to supply him with the necessary materials for his correspondence with the Court."

In the case ***Wisse v. France***, 20.12.2005, it was found that a system for intercepting conversations between the applicants and their relatives in the

visiting rooms at Ploemeur and Rennes Prisons was placed. The European Court found violation of Article 8 of the European Convention in regards to the recording of conversations in prison visiting rooms, because the French law did not indicate with sufficient clarity how the authorities were entitled to interfere in detainees' private lives, or the scope and manner of exercise of their discretion in that area.

Surveillance of communication – Telephone tapping

By the police

In the case ***Malone v. the United Kingdom***, 02.08.1984, the European Court found violation of the Article 8 of the European Convention, because the interception of the applicant's telephone conversations – in the context of his trial for handling stolen goods – and the "metering" of his calls (registration of the numbers dialed on a particular telephone) had not been in accordance with the law.

For the same reason, the European Court found a violation of Article 8 of the European Convention in the case ***Khan v. the United Kingdom,*** 12.05.2000 (surveillance of the applicant by means of a listening device in connection with his prosecution for drug-trafficking offences).

In the case ***A. v. France***, 23.11.1993, that refers to a recording by a private individual, with the assistance of a police superintendent in the context of a preliminary investigation, of a telephone conversation with the applicant, who, according to the individual concerned, had hired him to carry out a murder. The European Court found a violation of Article 8 of the European Convention since the recording had not been carried out according to a judicial procedure and had not been ordered by an investigating judge.

In the case ***P.G. and J.H. v. the United Kingdom,*** 25.09.2001, that refers to the recording of the applicants' voices at a police station, following their arrest on suspicion of being about to commit a robbery. The European Court found violation of Article 8 of the European Convention because at the time of the events there had been no statutory system to regulate the use of covert listening devices by the police on their own premises.

In the case ***Van Vondel v. the Netherlands***, 25.10.2007, the applicant was a police officer for the Kennemerland Regional Criminal Intelligence Service. Namely, on 26 January 1994, the Minister of Justice (*Minister van Justitie*) and the Minister of Internal Affairs (*Minister van Binnenlandse Zaken*) informed the Lower House of the Parliament (*Tweede Kamer der Staten-Generaal*) about the dissolution of the North-Holland/Utrecht Interregional Criminal Investigation Team (*Interregionaal Recherche Team*) due to the existence and the development of the controversial criminal investigation

methods in combating the organized crime. Thereby, a parliament commission was formed by a nine members of the Lower House of the Parliament in order to investigate the way of using the criminal investigation methods in combating the organized crime by the Kennemerland Regional Criminal Intelligence Service. Thereby, the applicant's telephone conversations with one of his informers had been recorded with devices provided by the National Police Internal Investigation Department *(rijksrecherche*), in the context of a parliamentary inquiry brought into criminal investigation methods in combating the organized crime in regards to North-Holland/Utrecht Interregional Criminal Investigation Team (*Interregionaal Recherche Team*).

In this case, a violation of Article 8 of the European Convention was found, where it was found that the applicant had been deprived of the minimum degree of protection to which he had been entitled under the rule of law in a democratic society (the European Court did not find it acceptable that the authorities had provided technical assistance which was not governed by rules providing guarantees against arbitrary acts).

In the case ***Kruslin v. France***, 24.04.1990, which refers to a telephone tapping ordered by an investigating judge in a murder case, the European Court found a violation of the Article 8 of the European Convention because the French law did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in this area.

- ***Bugging of a flat***

In the case ***Vetter v. France***, 31.05.2005, after discovering a body with gunshot wounds, the police, suspecting that the applicant had carried out the murder, installed listening devices in a flat to which he was a regular visitor. The European Court found a violation of Article 8 of the European Convention because the French law did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in relation to listening devices.

In the case ***P.G. and J.H. v. The United Kingdom***, 25.09.2001, the European Court also found a violation of Article 8 of the European Convention on account of the police's installation of a covert listening device at a flat used by one of the applicants, which was not in accordance with the law.

- ***Messaging systems***

In the case ***Taylor-Sabori v. The United Kingdom***, 22.10.2002, the use of pager messages: interception of messages sent to the applicant – who was charged with conspiracy to supply a controlled drug – using a "clone" of his pager. The European Court found violation of Article 8 of the European

Convention because there had been no statutory system to regulate the interception of pager messages transmitted via a private telecommunication system.

- ***Secret surveillance of database***

In the case ***Shimovolos v. Russia***, 21.06.2011, that refers to a registration of a human rights activist in a secret surveillance of security database and the tracking of his movement as well as related possibility for arrest. The European Court found a violation of Article 5 paragraph 1 and a violation of Article 8 of the European Convention because the database in which Mr Shimvolos' name had been registered had been created on the basis of a ministerial order, which had not been published and was not accessible to the public. Therefore, people could not know why individuals were registered in it, what was the scope of the information that were stored and for how long they were stored and used, as well as who had control over this database.

- ***Files and access to data***

In the case ***Rotaru v. Romania)***:

"Public information can fall within the scope of private life where it is systematically collected and stored in files held by the authorities. That is all the truer where such information concerns a person's distant past."

- ***Access to data (social services, national security)***

In the case ***Gaskin v. The United Kingdom***, 07.07.1989, it is found that on reaching the age of majority, the applicant, who as a child had been taken into care in the Liverpool City Council, wished to find out about his past in order to overcome his personal problems. He was refused access to his file on the ground that it contained confidential information. The European Court founded a violation of Article 8 of the European Convention, not because the system had confidential information but because the final decision of the denial of access to the applicant had not been made by an independent authority.

The case ***Segerstedt-Wiberg and Others v. Sweden***, 06.06.2006, refers to applicants that complained about the storage of certain information about them in Swedish Security Police files and the refusal to reveal the extent of the information stored. Namely, in this case a violation of Article 8 of the European convention was found, on account of the storage of the data, except in regards to the first applicant, since the storage of information concerning bomb threats against this applicant in 1990 was justified. The European Court found that there was no violation of the Article 8 of the

European Convention, because the interests of national security and the fight against terrorism prevailed over the interests of the applicants on access to information about them in the Security Police files. Also, the European Court found a violation of Article 13 of the European Convention, because in this particular case, the applicants did not have direct access to the right to an effective remedy (in the spirit of Article 13 of the European Convention) in order to secure the destruction of the files or the rectification of information kept in them. Thereby, the European Court found that these shortcomings are not in accordance with the requirements of effectiveness from the Article 13 of the European Convention and that it cannot be compensated with all the possibilities of the applicants for claiming compensation.

- ***Access to data kept by secret services***

In the case ***Rotaru v. Romania***, 04.05.2000, the applicant complained that it was impossible to refute what he claimed was untrue information in a file on him kept by the Romanian Intelligence Service (RIS). He had been sentenced to a year's imprisonment in 1948 for having expressed criticism of the communist regime. The European Court found a violation of the Article 8 of the European Convention because the holding and usage by the Romanian Intelligence Service (RIS) of information about the applicant's private life had not been "in accordance with the law".

The European Court found a violation of the Article 13 of the European Convention because it was impossible for the applicant to challenge the data storage or to refute the truth of the information in question.

In the case ***Haralambie v. Romania,*** 27.10.2009, the European Court found a violation of the Article 8 of the European Convention, on account of the obstacles to the applicant's insight and consultation of the personal file created on him by the secret service under the communist regime, because neither the justification about the quantity of files transferred by the Romanian Intelligence Service (RIS) into the National Council for the Study of the Archives of the former Secret Services of the Communist Regime (the Securitate) nor the shortcomings in the archive system can justify the delay of six years in granting his request.

- Files kept by the judicial authorities

The case ***Bouchacourt v. France, Gardel v. France and M.B. v. France,*** 17.12.2009 refers to reaffirming the fundamental role of protection of personal data in the process of their automatic processing, particularly where such data were used for police purposes, where the European Court concluded that in the applicants' case "their entry in the national sex of-

fenders' database" did not violated Article 8 of the European Convention.

In the case ***Dimitrov-Kazakov v. Bulgaria***, 10.02.2011, the applicant's name was entered in the police registers, with a reference to a rape, as an "offender", after being questioned about a rape, even though he had never been indicted for the offence. He was later subjected by the police to a number of checks related to rape complaints or disappearances of young girls and about the lack of right to effective remedy by which his right can be executed. The European Court found violation of Article 8 of the European Convention (the applicant's inclusion in the police file was not in accordance with the law). In this case, a violation of Article 13 in conjunction with Article 8 of the European Convention was also found.

The case ***Khelili v. Switzerland***, 18.10.2011, refers to a classification of a French woman as a "prostitute" in the computer database of the Geneva police for five years. In this case, a violation of the Article 8 of the European Convention was found in regards to a biological data, same as in the case ***S. and Marper v. the United Kingdom***, 04.12.2008 where the applicants state that their right to privacy from the Article 8 of the European Convention was violated because the Government continued to keep the applicants' fingerprints, cell samples and DNA profiles after the criminal proceedings against them had been terminated by an acquittal in one case and discontinued in the other case.

- ***Medical data***

The case ***Chave v. France***, 09.07.1991 refers to a file containing information about the applicant's compulsory placement in a psychiatric hospital, which according to the applicant should be declared unlawful, i.e. the information should be removed from the hospital's records, because it represents interference in the private life. Thereby, in this particular case, the applicant's request is inadmissible (ill-founded) because the personal files designed to safeguard health and the rights and freedoms of others were protected by appropriate confidentiality and access rules and they are accessible only to exhaustively listed categories of persons from outside the psychiatric institution.

The case ***Z v. Finland***, 25.02.1997 refers to a disclosure of medical information about the applicant, who was infected with HIV, in the context of proceedings concerning a sexual assault. The European Court has found violation of Article 8 the European Convention on account of the publication of the applicant's identity and medical condition in the Helsinki Court of Appeal's judgment.

The case ***M.S. v. Sweden***, 27.08.1997 refers to a forwarding of ap-

plicant's medical records from a public health institution to another public institution (social-security body), in the context of examination of previously submitted claim for compensation for the applicant's back injury. Thereby, the institution that has received the medical records (the social-security body) has legitimate purpose to verify the records received by the public health institution that contain information about an abortion performed on the applicant. The claim for compensation for the back injury that the applicant suffered in 1981 and all the medical records forwarded by the public health institution to the social-security body, including the information about the abortion performed in 1985 and the following treatment, contained information relevant to the occurrence of the problems with the applicant's back. The European Court founded that there is no violation of the Article 8 of the European Convention because the public health institution had relevant and sufficient reasons for forwarding the applicant's medical records, since the social-security body had been responsible for examining her claim for compensation for a back injury.

In an employment purposes

The case **Leander v. Sweden**, 28.03.1987 refers to a use of a secret police file in the recruitment for the carpenter position. Thereby, the applicant had been working as a temporary replacement at the Naval Museum in Karlskrona, placed next to a restricted military security zone. After a personnel control had been carried out on him, the commander-in-chief of the navy decided not to recruit him. The applicant had formerly been a member of the Communist Party and of a trade union. Thereby, in this case, it was founded that there is no violation of the article 8 of the European Convention, i.e. the safeguards contained in the Swedish personnel-control system satisfied the requirements of Article 8 of the European Convention. The Court concluded that the Swedish Government had been entitled to consider that the interests of national security prevailed over the applicant's individual interests in this case.

In the case ***Halford v. The United Kingdom***, the applicant , who has been the highest-ranking

female police officer in the United Kingdom, brought discrimination proceedings after being denied promotion to the rank of Deputy Chief Constable over a period of seven years. She alleged that her telephone calls had been intercepted with a view to obtaining information to use against her in the course of the proceedings. In this case, the European court found a violation of the Article 8 of the European Convention in regards to the measures of interception of calls made on the applicant's office telephones

because they were also referring to her private life, considering the guarantee of privacy that she had received. Although the European Court considers that the interception of activities of the individuals in a public place through the use of photographic equipment as such does not provide any basis to speak about interference in the private life of the individual, still, the recording, the storage of the recordings and their usage may represent interference in it. In addition, the European Court found no violation of the Article 8 of the European Convention in regards to the the calls made from her home, because the European Court did not found that there had been interference regarding those communications.

Furthermore, in the case ***Copland v. the United Kingdom***, 03.04.2007, that refers to the surveillance of the applicant's electronic mail in the workplace, which in this case is contrary to the Article 8 of the European Convention and is not in accordance with the law.

IV. Comparative analysis of the violation of the right to respect for private and family life, home and correspondence – Article 8 of the European Convention on Human Rights from 1959 to 2011

From the table above, it can be concluded that in the time period between 1959 and 2011, Italy was the state which had most cases (133) of violation of the right to respect for private and family life, home and correspondence – Article 8 of the European Convention. It is further followed by Russia with 94, Poland with 91, Turkey with 83 and the United Kingdom with 64 cases. In this context, it can be stated that the awareness of this right is quite high in these countries, which certainly result in its protection before the European Court. Also, in this period, Andorra, Armenia, Azerbaijan, Estonia, Iceland, Liechtenstein, Monaco, San Marino and Macedonia[17] were the states that did not have any cases before the European Court in regards to the violation of the right to respect for private and family life, home and correspondence, which is certainly an interesting fact considering the development of the human rights and the expansion of the violation of the right to privacy.

On 13.12.2012, the Grand Chamber of the European Court of Human Rights in the case of El-Masri against our country (appeal number 39630/09), reached a verdict which is final, i.e. decided unanimously that there is: a violation of Article 3 (prohibition, torture and inhuman and degrading treatment) of the European Convention on inhuman and degrading treatment which Mr. El-Masri was subjected to while held in a hotel in Skopje, regarding the method used to treat him at Skopje Airport, which constitute torture, and about his handing in captivity to the authorities of the United States, which was at risk of further treatment contrary to Article 3; because our country failed to conduct an

Table No 1. Overview of the violation of the right to respect for private and family life, home and correspondence – Article 8 of the European Convention on Human Rights

State	Number of judgments
1. Albania	1
2. Andorra	/
3. Armenia	/
4. Austria	14
5. Azerbaijan	/
6. Belgium	9
7. Bosnia and Herzegovina	1
8. Bulgaria	30
9. Croatia	14
10. Cyprus	7
11. Czech Republic	15
12. Denmark	2
13. Estonia	/
14. Finland	20
15. France	29
16. Georgia	3
17. Germany	18
18. Greece	8
19. Hungary	6
20. Iceland	/
21. Ireland	5
22. Italy	133
23. Latvia	17
24. Liechtenstein	/
25. Lithuania	12
26. Luxembourg	3
27. Malta	2
28. Moldavia	13
29. Monaco	/
30. Montenegro	1
31. Netherland	14
32. Norway	4
33. Poland	91
34. Portugal	5
35. Romania	45
36. Russia	94
37. San Marino	/
38. Serbia	10
39. Slovakia	15
40. Slovenia	5
41. Spain	8
42. Sweden	6
43. Switzerland	16
44. Macedonia	/
45. Turkey	83
46. Ukraine	25
47. United Kingdom	64

Source: European Court of Human Rights, Violation by Article and by State 1959-2011, 31.12.2011 (available at: http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf

V. Summary of the case-law of the European Court in the cases of protection of personal data

The continuous development of the information and communication technology has facilitated the data collection, storage and dissemination, which means that today there are multiple ways for state interference in the private life of the citizens. The consequence is the increased number of challenges of those state activities, including a data storage and use by the police in the criminal investigations, files created by the national security agencies and medical data that are becoming public during the court procedure. The protection of personal data is of fundamental importance for the enjoyment in the private and family life, and its disclosure to the public or to the third parties will constitute interference in the private life which can be easily justified than the protection itself.

According to the European Court, the public interest in the disclosure must prevail over the individual's right to privacy, taking into consideration the goal that should be achieved and the protective rights and limitations which accompany its usage. Also, the disclosure of individual's personal data, except for the purposes for which may be legitimately collected, may constitute interference with the right to respect for private and family life and therefore requires justification under Article 8 paragraph 2 of the European Convention.

Thereby, from the case-law it is clear that in some cases the importance of exercising the right under the Article 8 will be measured more difficult than the others. In most of the cases, for the European Court's decision making it is most important whether the complaint falls within the scope of the one of the protected interests – private life, whether there is a positive obligation for "respecting" that interest, whether it is in "accordance with

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effective investigation into the allegations of Mr. El-Masri that he had been the victim of harassment; violation of Article 5 (right to liberty and security) concerning his imprisonment in a hotel in Skopje for a period of 23 consecutive days and in respect of his detention in Afghanistan, and about the failure to implement effective investigation into his allegations that he was arbitrarily arrested; violation of Article 8 (right to private and family life) because the state is responsible for the interference with the right to respect for private and family life of Mr. El-Masri and considering the evidence, The Court found that this interference was unlawful and that it constitutes a violation of Article 8; violation of Article 13 (right an efficient legal remedy) More about this case on the website: http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx?i=003-4196816-4975518#{"itemid":["003-4196816-4975518"]}; European Court of Human Rights, 453 (2012) 13.12.2012, Press Release, issued by the Register of the Court.

the law", whether it was done to protect legitimate aims and whether it is "necessary in a democratic society" (O'Boyle, Warbrick, Harris, 2009, pp. 363, 408 and 413).

From the above mentioned, it turns out that the European Court, depending on the particular case during its work, balances the public and private interests, i.e. on a case-by-case basis, it assesses whether with the disclosure of the individual's private data there is a violation of his right to privacy and whether by this violation a certain legitimate purposes is achieved.

VI. Issues/Shortcomings of the implementation of the fundamental freedoms and human rights

According to the British Minister of Justice, Kenneth Clark, there is a large case halt before the European Court. Today, the number exceeds 150.000 with an average halt of five years, which is a reflection of a system with a disturbed balance of responsibilities (Utrinski vesnik, 03.04.2012). In this direction, the Court is required to act everywhere, and the member states do not deal with their burden. It means that the prolongation of the important, urgent cases will continue, such as the ones where the individual right to fair trial or the right to freedom of expression is prevented. Thereby, the problem culminates to the point that it causes a crisis of the Convention system, which is important for more than 800 million people (Utrinski vesnik, 03.04.2012). Thereby, the best way to resolve this problem is to ensure that the constituent elements of the system meet their obligations. Accordingly, if the member states reinforce the application of the Convention in their home countries, it will start to reduce the pressure on the Court.

Republic of Macedonia ratified the European Convention for the Protection of Human Rights, on 10 April 1997 and entered into force the same day. Because it is a source of law, the national courts are bound to apply, but in practice the courts in the Republic of Macedonia can rarely meet the immediate application of the European Convention for the Protection of Human Rights, which is of particular importance and is binding for the national courts. In this respect, this situation is set out in the Annual Report on the Work of the Government Agent and Analysis of the Cases and Proceedings before the European Court of Human Rights in 2011, stating that there is a need for a higher level of knowledge of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the practice of the European Court of lawyers in our country among judges, prosecutors and lawyers. This point to the need for continued education of legal personnel in the country in order to raise the level of awareness of rights and freedoms

protected by the Convention for the Protection of Human Rights and Fundamental Freedoms. In this regard, it is necessary to emphasize that in our law, the enforcement of the regulations for the protection of personal data by the judiciary is still an enigma, that is, there is insufficient knowledge of this subject matter.

Moreover, the Law on Personal Data Protection established a new concept in the Republic of Macedonia, which includes a right to privacy and the right to protection of personal data in our legal system, as essential values of every modern and technologically developed society. Namely, according to Dr. Karel Neuvirt, the Law on Personal Data Protection protects the privacy of citizens, but the law is only the first step toward this protection. Monitoring its implementation by the Directorate for Personal Data Protection allows the citizens to be aware of this right and to know how to exercise it (Neuvirt, 2007, p. 3). The Directorate for Personal Data Protection as an independent state authority is obliged to provide transparency and information of the citizens for the right to protection of personal data and full protection to this right of any misuse in the collection, processing and storage of personal data of citizens, as in the case of unauthorized modification, destruction and transfer of personal data.

Abstract

Today the right of privacy is an autonomous right which is firmly upheld by article 8 of the European Convention on Human Rights. Namely, this paper presents a detailed analysis of the right of privacy through the practice of the European Court of Human Rights and the compliance of the regulations for personal data protection in the Republic of Macedonia with the European rules and values. Namely, the modern technologies (Privacy Enhancing Technologies, PET) will enable in a creative way to prevent the invasion of the individual privacy and may greatly help to reduce the number of incidents involving infringement of the right of privacy and misuse of personal data. Since the implementation of privacy and personal data protection is a relatively new concept in our country, one can easily identify as one of the preconditions to joining the European Union and it is also one of the preconditions to building a democratic society.

Резиме

Во денешно време правото на приватност претставува автономно право коешто прецизно е утврдено со членот 8 од Европската конвенција за човековите права. Поради тоа, овој труд претставува детално анализирање на правото на приватност низ практиката на Европскиот суд за човековите права, како и степенот на усогласеност на прописите за заштита на личните податоци во Република Македонија со европските правила и вредности. Со модерните технологии (Privacy Enhancing Technologies, PET) ќе се овозможи на креативен начин да се заштити навлегувањето во приватноста на граѓанинот и може да придонесе да се редуцира бројот на инциденти кои вклучуваат нарушување на правото на приватност и злоупотреба на личните податоци. Во таа насока, практичната примена на правото на приватност и заштита на личните податоци како релативно нов концепт во нашата земја претставува еден од предусловите за пристапување кон Европската Унија, како и еден од предусловите на демократското општетство.

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