

Privacy & the media. Traditional and emerging protections in an online world.

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1. Privacy rights

1.1 Are privacy rights statutory rights or are these case-law based?

In Finland, privacy rights are statutory rights protected by the Finnish Constitution (731/1999). Provisions on the violation of these rights are included in the Finnish Criminal Code (39/1889). In addition, more detailed provisions on the protection of personal data are laid down in different acts, the general act being the Personal Data Act (523/1999).

Under Section 10 of the Constitution, everyone's private life, honour and the sanctity of the home are guaranteed and the secrecy of correspondence, telephony and other confidential communications is inviolable.

The Criminal Code recognizes two main types of violations (and their aggravated forms) of rights that can be categorized as privacy rights: defamation, which means publishing false information about someone, and dissemination of information violating personal privacy, which relates to information that can be true but is nevertheless very private and not meant to become public (e.g. family life, health or sexuality related issues).

- **Dissemination of information violating personal privacy (24:8)**, which can lead to a fine:
 - A person unlawfully, through the use of mass media or otherwise by making available to many persons, disseminates information, an insinuation or image of the private life of another, so that the act is conducive to causing that person damage or suffering, or subjecting that person to contempt.
 - **Aggravated form (24:8a)**, sentence is a fine or imprisonment for at most two years: the act causes considerable or long-lasting suffering or particularly significant damage, and the act is aggravated also when assessed as a whole.
- **Defamation (24:9)**, which can also lead to a fine:
 - A person (i) spreads false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, **or** (ii) disparages another in any other manner.
 - **Aggravated form (24:10)**, sentence is a fine or imprisonment for at most two years: the act causes considerable or long-lasting suffering or particularly significant damage and the act is aggravated also when assessed as a whole.

1.2 What type of information would be covered by the concept of “privacy rights” in the legal system of your country?

The type of information spread is rather irrelevant; thus pictures, videos and other means, including insinuation, may violate these privacy rights. For the act to be sanctioned, it must be conducive to causing the person damage or suffering, or subjecting the person to contempt.

In general, the extent of privacy rights does not depend upon the fame of the person, or upon other elements relating to that person. However, the Criminal Code includes exemptions to both prohibited acts of dissemination of private information and defamation:

- The spreading of information, an insinuation or an image of private life of **a person in politics, business, public office or public position, or in a comparable position**, does not

constitute a violation under 24:8, if it may affect the evaluation of that person's activities for purposes of dealing with a matter with importance to society.

- Criticism that is directed at **a person's activities in politics, business, public office, public position, science, art or in comparable public activity** and that does not obviously overstep the limits of propriety, does not constitute defamation under 24:9.

There are also more general exemptions in 24:8 and 24:9 that cover information about **a matter with importance to society** if, considering the content, rights of other persons, and other circumstances, the expression does not obviously overstep the limits of propriety.

Under the Criminal Code, privacy rights are only applicable to physical persons. Legal persons are not protected by privacy rights. However, in relation to aggravated defamation, a corporate body can be held liable for violating the privacy rights' of a physical person, if the criminal act is motivated by race, colour, birth origin, national or ethnic origin, religion or conviction, sexual orientation, disability or other comparable reason.

Privacy rights may encompass also private information made available only to some chosen persons (authorized recipients). In general, the parties may decide whether or not to publish correspondence or information shared between them, as long as the act does not fulfil the criteria of defamation or dissemination of information violating personal privacy. For the dissemination of information violating personal privacy to occur, it has to be conducted through mass media or by otherwise making the information available to many persons. However, it must be remembered that punishable defamation may occur even between two parties.

- In 2011 the District Court of Joensuu held a person liable for defamation for sending private defamatory messages to her husband through Facebook. The person had to pay 15 day-fines (EUR 90), and EUR 500 in damages.

1.3 Is there a specific status for “fictional use” of information related to an individual? And are disclaimers sufficient to allow such use?

The Criminal Code does not include other exemptions than the ones mentioned above. “Fictional use” may be permissible, if it does not fulfil the criteria of defamation; that is, the act is not conducive to causing damage or suffering to a person, or subjecting that person to contempt, or does not disparage another in any other manner.

2. Freedom of speech

2.1 Is there on the one hand a statutory/treaty based freedom or constitutional recognition of “Freedom of speech” or on the other hand is that freedom based on case-law?

Freedom of speech, or more specifically freedom of expression, is a fundamental and human right protected by the Finnish Constitution. More detailed provisions on the exercise of the freedom of expression are laid down by different acts (see the Act on the Exercise of Freedom of Expression in Mass Media below).

2.2 If it is a statutory/treaty/constitution based freedom is it based on domestic or supranational law?

The constitution based freedom of expression is based on the European Convention of Human Rights and the International Convention on Civil and Political Rights.

2.3 Describe the main characteristics of the “freedom of speech” as recognized in your jurisdiction.

The Constitution provides the freedom of expression for everyone (beneficiaries). Under Section 12, the freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an act. In other cases, derogation from this fundamental right must fulfil specific criteria to be justified.

In general, it can be stated that freedom of expression is enforceable in so far as privacy rights of others are not violated at the same time.

The exercise of freedom of expression in the media is regulated in more detail in the Act on the Exercise of Freedom of Expression in Mass Media (460/2003). The Act lays down e.g. certain duties for publishers and broadcasters, such as the obligation to designate a responsible editor for a periodical or a network publication or a program.

3. Hierarchy between Freedom of Speech on the one hand and privacy rights on the other.

3.1 Under the law applicable in your jurisdiction, is there a clear hierarchy between freedom of speech on the one hand and privacy rights on the other?

In Finland, there is no clear hierarchy between the constitutional rights of freedom of expression and the right to privacy. The assessment between the rights must be made separately in each case.

- A case in point is the Supreme Court decision KKO 2010:39, which was also considered by the European Court of Human Rights (**case Ruusunen v Finland**). The case concerned the dissemination of information violating the personal privacy of the former Prime Minister Matti Vanhanen by his girlfriend Susan Ruusunen, who wrote a book including private details of their relationship and published it whilst Vanhanen was still Prime Minister. The book included e.g. facts of the relationship, different lifestyles, and his family habits. Furthermore, the book included detailed accounts of their sexual relations.

In this case, the ECHR stated that, as a public figure, the ex-Prime-Minister was expected to tolerate a greater degree of public scrutiny which may have a negative impact upon his honour and reputation than a completely private person. The Court agreed with the Supreme Court as to those elements of the book that from the point of view of the general public's right to receive information about matters of public interest Ruusunen was entitled to publish. However, the ECHR did not find sufficiently strong grounds for overturning the Supreme Court's conclusions that the balance between freedom of expression of the author and the former Prime Minister's rights weighed in favour of the protection of privacy when it came to the detailed accounts of the couple's sex life.

3.2 What would be the most significant criteria allowing freedom of speech or privacy rights to prevail over the other (e.g. public interest argument)?

Public interest argument can be valid in Finland. The main two criteria to be considered in this respect are **the public position of the person** whose privacy rights have been violated and **the importance of the matter to society**. As can be seen from the case *Ruusunen v Finland*, private issues such as intimate accounts of sexual encounters will need a compelling public interest to justify publication in the absence of consent, and simply the subject being a public figure will not be enough of a justification. However, the assessment must be case-specific, and the courts must find a balance between the two rights as there is no clear hierarchy between them.

4. Remedies available in the Finnish jurisdiction to protect individuals against disclosure of information belonging to their privacy

4.1 Are there pre-emptive remedies to avoid disclosure of such information before disclosure occurs? Describe briefly the main remedies available.

In Finland, there are no pre-emptive remedies to avoid disclosure of private information.

4.2 Are “gagging orders” or “super injunctions” as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

The Finnish legal system does not recognize “gagging orders” or “super injunctions” as known in the UK.

4.3 Are there other post-disclosure remedies, such as for example damage claims, rectification claims, right of answer. Describe shortly.

Under the Act on the Exercise of Freedom of Expression in Mass Media, a private individual who has a justified reason to consider that a message contained in a periodical, network publication or comparable program is offensive has the right to have a reply published in the same publication. Private individuals, corporations and public authorities also have the right to have erroneous information on them or their operations corrected in the publication or program. If an offence such as dissemination of information violating private privacy or defamation has been committed in the context of such a publication or program, the court may also on request order that a notice of the judgment be published in the said publication. The order may be reinforced by a threat of a fine. For rectification claims relating to data protection, see below.

Damage claims are also available to persons whose privacy rights have been violated. Compensation claims are assessed according to the Finnish Tort Liability Act. In general, damages qualified for compensation are those of personal injury and damage to property. Where the injury is caused by a punishable act (such as dissemination of information violating personal privacy or defamation) or other weighty reasons exist, compensation for economic loss is also possible.

4.4 In the case of damages, how are they calculated?

The compensation may cover medical costs and other costs arising from personal injury, as well as loss of income and maintenance, pain and suffering. The Tort Liability Act provisions on personal injury apply also to damages for the anguish arising from offences such as dissemination of information violating personal privacy and defamation. The court may consider e.g. the nature of the offence, the publicity of the matter and the factual effects of the offence to the person's life whose rights have been violated. It is also possible to consider whether the person himself/herself has been active in spreading information on their own private life. The damages awarded in Finland have been relatively low in amount.

4.5 In case of disclosure of private information, who can be held liable for damages, especially online?

In general, the person who can be held liable for damages is the person disseminating or spreading private or false information. However, according to the Act on the Exercise of Freedom of Expression in Mass Media, publishers and broadcasters of periodicals, network publications and programs can also be held liable for damages for their operations, even if the injury has been caused by someone else.

The Act, which imposes duties to responsible editors to manage and supervise editorial work, also makes it possible to hold responsible editors liable for editorial misconduct where the editor fails in an essential manner in his/her duties and the failure is conducive to the occurrence of an offence arising from the contents of a message provided to the public. Editorial misconduct is punishable and can lead to a fine.

4.6 Are there special defences to a cause of action for information disclosed by the press/media?

Under the Act on the Exercise of Freedom of Expression in Mass Media, the originator of a message provided to the public, the publisher and the broadcaster are entitled to maintain the confidentiality of the source of the information in the message. In addition, the publisher and the broadcaster are entitled to maintain the confidentiality of the identity of the originator of the message. However, separate provisions apply to the duty to disclose confidential information in a pre-trial investigation or court proceedings.

4.7 Are the principles described in your answers above also applicable to the online world? Is there any specific case-law in your country relating to social media, and if so please summarise this?

Defamatory statements and dissemination of information violating personal privacy may give rise to criminal responsibility or liability for damages also in the online world and social media.

Under the Act on the Exercise of Freedom of Expression in Mass Media the court can also order the publisher, broadcaster or keeper of a transmitter, server or other comparable device to cease the

distribution of a published network message if it is evident on the basis of the contents of the message that providing it to the public is a criminal offence.

There have been some cases in Finland concerning defamatory statements published online, but thus far there are no Supreme Court precedents on defamation through social media (if blogs are not counted as social media; please see below).

- In 2012, a Finnish politician who had published a blog post associating Islam as a religion with paedophilia was held liable for breach of the sanctity of religion and ethnic agitation by the Supreme Court and sentenced to 50 day-fines. (KKO:2012:58, case Halla-aho)
- In 2007, a person who wrote a defamatory statement of the founder of the company Elcoteq (calling him a drunk and a lunatic) anonymously on an online forum was held liable by the Court of Appeal and had to pay EUR 2 000 in damages. (HelHO R06/688, case Piippo)

4.8 Are there specific remedies against disclosure of information that (could) damage an individual reputation (such as slander or libel)? Describe these remedies briefly.

The Criminal Code prohibition against defamation is applicable to information that could damage an individual's reputation. The remedies for this offence have already been discussed.

4.9 Forum and applicable law

The Finnish Criminal Code applies to offences against privacy rights committed in Finland, directed at Finland, or committed by a Finnish citizen. In the case of certain offences, such as aggravated defamation and aggravated dissemination of information violating personal privacy, Finnish law applies also to an offence committed outside of Finland that has been directed at a Finnish citizen or a foreigner permanently resident in Finland. An offence is deemed to have been committed both where the criminal act was committed and where the consequence contained in the statutory definition of the offence became apparent. The forum is a district court that is generally determined based either on the place where the act was committed or on where the accused person is domiciled or stays permanently.

There are no specific provisions on forum or applicable law concerning breaches taking place online.

4.10 From your experience, what reforms should be made to the legal system of your country to better protect individual privacy, if any?

The ECHR has given relatively many decisions on freedom of speech concerning Finland, especially compared to the other Nordic countries. This may be a result of the tendency of Finnish courts to apply the criminal law in cases of privacy rights violations more often than the neighbouring countries, and the Finnish Criminal Code is often applied mechanically in cases of freedom of expression. The ECHR has noted that, at least when dealing with the freedom of expression of reporters, criminal responsibility should not be the primary, every-day and only applied method applicable.

In 2014, the Criminal Code provisions were amended to help the courts achieve better compliance with the ECHR practices. From now on, the courts have to assess more carefully whether it is reasonable to interfere with the freedom of expression.

5. Interplay between data protection rules and privacy rights

5.1 Summarize how does data protection law in your jurisdiction protect privacy or other personal data being used in online media?

The key data protection provisions in Finland are included in the Personal Data Act, which applies to the processing of personal data. The same rules also apply in the online environment and online media.

- The Act imposes a duty of care to controllers, who shall process personal data lawfully and carefully, in compliance with good processing practice, and also otherwise so that the protection of the data subject's private life and the other basic privacy rights are not restricted without a basis provided by an act.
- The purpose of the processing of data must be defined before the collection of the data, and the personal data processed must be necessary for such purpose (necessity requirement).
- The controller shall see to that no erroneous, incomplete or obsolete data are processed (accuracy requirement).

The Act also imposes duties to controllers collecting personal data online to see to that the data subject can have information relating to the controller and the processing of the personal data. The data subject also has the right of access to the data on him/her in a personal data file.

The secrecy obligation of the controller and the restrictions on the disclosure of personal data under the Act may also restrict the controller's possibilities of processing personal data online.

5.2 Is there an effective a right of opposition to collection of data?

Under the Personal Data Act, a data subject has the right to prohibit the controller from processing personal data for purposes of direct advertising, distance selling, other direct marketing, market research, opinion polls, public registers or genealogical research. On a general level, this may be done by a notice directly to a specific controller or to certain authorities (such as the Population Register Centre) maintaining data files.

6. Right to be forgotten

6.1 Is there a statutory or case-law based "right to be forgotten" in your jurisdiction (whether under domestic or supranational law)? Describe it briefly.

In Finland there are no specific statutory provisions on a "right to be forgotten" as such. However, there is a statutory provision for the right of rectification, and that may, in my opinion, ultimately mean basically the same for the data subject as the "right to be forgotten". Under Section 29 of the Personal Data Act:

- The controller shall, on its own initiative or at the request of the data subject, without undue delay rectify, erase or supplement personal data contained in its personal data file and erroneous, unnecessary, incomplete or obsolete as regards the purpose of the processing. The controller shall also prevent the dissemination of such data if this could compromise the protection of the privacy of the data subject or his/her rights.
- If the controller refuses the request of a data subject of the rectification of an error, a written certificate to this effect shall be issued. The certificate shall also mention the reasons for the

refusal. In this event, the data subject may bring the matter to the attention of the Data Protection Ombudsman.

- The controller shall notify the rectification to the recipients to whom the data have been disclosed and to the source of the erroneous personal data. However, there is no duty of notification if this is impossible or unreasonably difficult.

6.2 Is there relevant case law in your jurisdiction regarding the right to be forgotten and/or are there other guidelines (whether under domestic or supranational legal procedure) for a successful claim under the “right to be forgotten”?

The relevant case law relates to the Personal Data Act and its provision on rectification described above. In Finland, the Data Protection Ombudsman has given decisions concerning rectification but the Supreme Court are yet to give any precedents on the right to be forgotten. The Office of the Data Protection Ombudsman also advises and gives instructions on how to deal with matters concerning the removal of unwanted personal data from search engine sites.

6.3 Did the view on the right to be forgotten change in your jurisdiction due to the European Court of Justice Case in Google Spain v. AEPD and González (C-131/12)? Is there any case law arising from this decision in your jurisdiction?

The Google case has not led to any amendments in legislation, and due to the lack of precedents on a national level there have been no major changes in the case law concerning this matter.