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

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National Report of Greece

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1. Privacy rights

Under Privacy right, we understand the right not to have information about a person to be disclosed to other persons without consent of the person the which the information refers to.

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

Privacy rights in Greece are statutory. In fact article 9 of the Constitution dictates that *“a person’s private life is not to be violated”*. Furthermore article 57 of the Greek Civil Code provides for the protection of one’s personality which also includes the right to privacy and grants protection from the collection of one’s personal data.

1.2. What type of information (including pictures, sounds, etc.) would be covered by the concept of “privacy rights” in the legal system of your country?

Under Greek legislation the term “privacy right” is understood quite broadly. It would be interpreted in a way that would include any violation of one’s private life independently of the nature of the information that is being made public or used to violate one’s privacy rights.

1.2.1. Would the information included in that concept, or the extent of the privacy rights, depend upon the celebrity of the person, or upon other elements? Please describe briefly.

A violation of one’s privacy could be seen, under very specific circumstances, as not being illegal. This would be judged on a case by case basis depending on a comparison between the right to privacy and other protected and conflicting rights such as the freedom of expression, the freedom of press and the citizen’s right to information. The conflict between these rights would be resolved in favor of the violation of one’s privacy rights relating to one’s image, his private life or his honor, only if it can be sufficiently argued that this violation is justified in order to exercise another lawfully predicted right. This applies predominantly to persons that are known or are of interest to the public, are currently trending on the news or are characterized as figures of contemporary history. It should be noted however, that even in such cases a core of one’s private life/sphere exists, which may under no circumstances be violated. This core would be violated primarily in cases where the violation aims exclusively e.g. at satisfying a tabloid readership’s curiosity.

1.2.2. Would privacy rights also apply in relation to legal persons (vs. physical persons)?

Yes, privacy rights also apply in connection to legal entities, although the protected aspects of privacy are significantly less in number, as several aspects of one's right to protect his privacy are by definition only recognized to natural persons (e.g. life, the right to self-determination, freedom, family life, the image and the voice of a person etc.)

1.2.3. Would privacy rights encompass private information made available only to some chosen persons (authorized recipients). So, for instance, can disclosure to third parties, by one of the authorized recipients of the private information, be part of the privacy rights (e.g. disclosure of private correspondence, private phone calls, information shared on social media, etc.)

Yes, the right to privacy also covers the disclosure of information by an authorized recipient to third parties if the dissemination of the privately disclosed information takes place without the subject's consent.

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

No, there is no specific status for fictional use. In general, if the information used is sufficient in order for the public to be able to identify the subject and, provided that such information violates his right to privacy, then the infringer would be held liable. If on the contrary the information used does not allow for his identification, then the use is legitimate.

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 rather Freedom of Expression as is the correct translation) in Greece is founded in article 14, paragraph 1, of the Constitution which states that "*anyone may express or disseminate orally, in writing or via the press his reflections, abiding at the same time by the laws of the State*". Paragraph 2 continues by explicitly recognizing that "*Press is free. Censorship or any other preventive measures are forbidden*".

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

This is based both on domestic law, relevant provisions can be found even in the country's first Constitution and on the Convention for the Protection of Human Rights and Fundamental Freedoms.

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

2.3.1. beneficiaries;

Everyone is entitled to freedom of speech (expression), including Greek citizens, third country citizens but also people that are currently without citizenship and also legal entities.

2.3.2. extent of the freedom of speech;

Freedom of speech is only limited by the legal framework. That is, unless someone else's rights are violated, such as the right to privacy, no restrictions apply. In particular, the freedom of speech is limited by the protection of other values such as moral habits, public order and security, the protection of the natural and cultural environment and all the rights of third parties.

2.3.3. exceptions;

No exceptions.

2.3.4. specific status for press (including online press)?

As already mentioned, the Greek Constitution contains a special provision regarding the freedom of press and the associated freedom of information. The forbear of this provision made its appearance for the first time in the Constitution of 1823. Today's wording can be traced back to 1864.

This freedom can be analyzed in further subcategories:

- i) the freedom to publish, edit, print and circulate printed matter
- ii) the freedom to establish and operate a press business
- iii) the freedom to lawfully collect information, photographs or other data
- iv) the freedom to make publicly available news, comments, announcements or advertisements
- v) the freedom to choose and work as a reporter

Beneficiaries of the relevant provision are primarily private entities, whether they are for profit or not. This means that press, controlled by the Government or the State, do not enjoy the constitutional protection afforded to private entities. The subjects can be the



owners of any printed matter that is suitable for the dissemination of information. This also includes online press.

The restrictions that apply here are the same as those that apply for the freedom of speech by private individuals. It is worth mentioning that of particular importance in the limitation of the press' freedom of expression is the sanctuary of one's private life (right to privacy). This right is violated by the press, every time details of one's personal or family life are published. In turn this right is also subject to a limitation by the right to inform the public. This conflict will be solved by weighing on a case by case basis the conflicting rights. Here two general principles are used in order to determine if a violation is to be tolerated or not. First, the more a person exposes him/herself in the public life of his country then the smaller the core of one's private life/sphere gets and he is therefore obliged to accept the exposure of his life in the press. However, even if this is the case, there is still a core that is not to be violated. Secondly, people that are deemed to be figures of modern history are subject to a lower threshold of protection in regard to their private life, provided that the public's need for information requires this.

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

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?

Given that there is no clear hierarchy that would resolve the conflict between the freedom of speech and privacy rights, as already mentioned this would be the outcome of a weighing of the two rights on a case by case basis. As a general principle it should be noted, however, that one person's right to privacy is superior and should not be violated unless a clear need to inform the public on matters that are of interest, which would justify the violation, exists.

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)?

As already mentioned, freedom of speech would prevail over the right to privacy in two broadly defined cases. First, if the right to privacy was violated in order to disseminate to the public information which are of interest and concern a person that has willfully exposed him/herself to the public eye and secondly, people that are deemed to be figures of modern history are subject



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to a lower threshold of protection in regard to their private life, provided that the public's need for information requires this.

The right to privacy would in turn prevail if the dissemination of the information concerning one's private life took place just to satisfy the public's curiosity, i.e. through tabloids.

4. Remedies available in your 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.

The main remedy available to the person whose privacy rights have been violated is the filing of a lawsuit by which he will request that the defendant ceases the infringement and refrains from infringing his rights in the future. Although the wording of the law suggests that a prior infringement has to already have taken place in order for a subject to exercise his rights to privacy, case law (Larisa Court of Appeals 431/2000) exists where the courts have found that the same claim may be exercised preemptively, that is prior to the violation occurring, provided that it can be proven that imminent danger, that the violation will occur, exists. This is so, primarily in cases where a party seeks to prevent articles with negative content from being published.

4.2. Are “gagging orders”¹ or “super injunctions”² as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

They do not formally exist, but under Greek law a person may request from the Court an interim injunction in order to avoid an imminent infringement of his rights.

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

The two primary remedies that are available are damage claims and remuneration claims for moral damages. In the first case, the plaintiff will however have to be able to prove and quantify the damage suffered; otherwise the claim will be dismissed as unsubstantiated.

¹See for details : http://en.wikipedia.org/wiki/Gag_order#United_Kingdom

²See for details: http://en.wikipedia.org/wiki/Injunction#UK_superinjunctions

Further to the above, especially for violations of privacy rights by the press and online media there is also the right of answer and the right to rectify.

The right of answer is defined as the right granted to any person whose right to privacy is breached by an article or post in the press to present his views on the subject, by publishing a written response in the same medium.

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

In general, damages are difficult to calculate. The plaintiff will have to prove that his/her fortune was reduced or that future earnings were lost.

Moral damages are calculated at the Court's own discretion.

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

In any case, liable is the person disclosing the information. Parallel to him, the person who is responsible for the infringer may also be held liable, ie. the legal entity at which the person disclosing information is currently employed or the person who has instructed the infringer.

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

No

4.6.1. As part of your answer please explain what is range of news information organizations is covered by the definitions press/ media?

The term press, should be understood in such a way so as to include, newspapers and magazines as well as any other medium which by the means of typography, or other mechanical or chemical device may be reproduced and can be used for the dissemination or multiplication of manuscripts, images, illustrations with or without notes or of musical works. Although this is not explicitly mentioned in the Greek legislation the term press should also include any entity that provides internet-based, audiovisual services of informational nature in a practice similar to that followed by newspapers, leading to the dissemination of news on political, social, economical, cultural or sports topics, as well as articles, comments, interviews and discussions³.

³ John Karakostas, Media Law, p. 490, Athens, 2005, Ant. N Sakkoulas Publishers



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4.6.2. Is there a specific protection offered to informants/sources?

There is no direct protection afforded to informants. Instead journalists enjoy the right not to disclose their information sources and thus informants are indirectly protected.

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 summarize this?

Yes, the above principles apply to the online world as well, through the principle of analogy, given that no specific provisions, regulating the activities of online media exist. Although no specific case law exists, there is solid case law on the violation of privacy rights through posts or articles posted on websites. According to this case law a violation exists if the information is made publicly available in a way that exceeds any necessity in order to describe objectively the facts of the case at hand or if it is carried out with disdain (justified interest principle).

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 specific remedies that are available are a) the right of answer and the associated lawsuit for this right to be enforced b) the lawsuit for the cessation of the violation of the privacy rights and the preemptive lawsuit for the omission of the violation in the future and c) the lawsuits for the compensation for damages inflicted, moral damages and for claiming any profit the infringer enjoyed.

Slander and libel are also criminal offenses and the perpetrator is prosecuted.

4.9. Forum and applicable law

The forum is defined by the area in which the defendant has his domicile, or if it's a legal entity, where this is seated. Alternatively the courts of the place where the infringement took place (lex loci delicti commissi) or where the damage has occurred may be chosen. The applicable law is always Greek law for infringements that occurred in Greece.

4.9.1. Describe shortly what rules exist in your jurisdiction for the determination of the forum and the applicable law.

If the dispute has an international aspect, i.e. if one of the parties is a resident of another EU country, then Regulation 44/2001 *on jurisdiction and the recognition and enforcement of judgments on civil and commercial matters* is applicable.

As to the applicable law, Greek courts only apply the Greek procedural law and the substantive provisions of the foreign law that is indicated by the relevant international private law provisions of the Greek Civil Code. Article 26 of the Greek Civil Code provides that the *lex loci delicti* shall apply.

4.9.2. Are there specific rules for breaches caused online (when the information is accessible from different jurisdictions)?

No

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 way the system is currently affords to subjects an adequate level of protection. This is primarily because of the quite vague and therefore elastic definition that the Greek legislator has given to the term “right to privacy”. This was an intentional choice so that the right can be constantly redefined. It therefore, falls upon the judge to decide on a case by case basis whether a specific claim falls within the scope of the right to privacy⁴. This spherical approach allows for the constant redefinition of the scope of the afforded protection by current developments that shape modern lifestyle and habits.

In light of the above, the conclusion can be drawn that the system is functioning quite efficiently so that no reforms should be sought at this point.

5. Interplay between data protection rules and privacy rights

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

⁴ Sourlas ErmAK, introduction to articles 57-60 of the Greek Civil Code, XI72

The protection of one's personality, and therefore of one's right to privacy from personal data being used derives from article 9A of the Greek Constitution which dictates that *"everyone has the right to protect himself from the collection, processing and use, that takes place especially by electronic means, of his personal data, as the law stipulates"*. This provision acknowledges the so-called *"right to informational self-determination"*, i.e. the right of one person to decide how information concerning one's self are allocated and used.

The right of a person to protect his personal data as a manifestation of his personality is not considered as part of the core of the person's personal sphere but rather is a part of its periphery. As a result the illegal nature of the violation is to be acknowledged following the comparison of the conflicting rights on a case by case basis⁵. The main tool used in this process, is Law 3471/2006 for the protection of personal data in electronic communications, which defines the circumstances under which the processing of personal data of persons is acceptable.

For the online collection and processing of personal data to be acceptable under the Law, this will have to meet the following requirements (this answer is based on the assumption that the data subject has not consented to the collection of his data and has not willfully provided these as is the case with social media):

- i) The processing of the data has to concern data of public figures and these will have to be relevant to their public functions or to the management of public interests. Public figures are those that possess a position of public interest, manage public funds or even any persons that play some sort of a role in the public life, the political scene, in the country's economy, in the cultural or athletic scene, etc.
- ii) The processing has to take place, exclusively for journalism purposes
- iii) The processing has to be absolutely necessary in order for the right to information on public interest issues to be exercised. Furthermore it is a prerequisite that the subject's right to privacy is not violated in any way

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

In the case of the collection of personal data to which the data subject does not consent, the latter has the right to object in writing by requesting the correction, temporary non-use,

⁵ Konstantina Arkouli, *The protection of personal data in electronic communications*, p. 26, Nomiki Vivliothiki, 2010



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freezing, non-transmission or deletion of the data that concern him. The data processor is obliged to answer within 15 days informing the data subject of the actions which he undertook or the reasons for which he did not satisfy that request. The processor's answer must be notified also to the Data Protection Authority.

Furthermore, everyone has the right to submit a request to the Data Protection Authority, stating that he does not wish for his personal data to be used for promotional purposes of goods or services.

Finally, since the unlawful processing of one's personal data is also a violation of his personality rights, the data subject also enjoys the right to seek damages and remuneration for moral damages. Of course the data subject is entitled to request from the defendant that the latter ceases the infringement and refrains from infringing his rights in the future.

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.

The right to be forgotten is primarily case-law based although there have been very few cases (see Areios Pagos 1020/2004). In general any limitation to a subject's right to privacy should retreat so that the full protection of the personality is restored.

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".

No. There is neither relevant case law nor any other guidelines.

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?

No. The impacts of the CJEU's decision C-131/12 have yet to be felt in greek case-law.



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7. Are there other aspects to take into consideration in your jurisdiction in relation to freedom of speech, the privacy right and the right to be forgotten?

No.

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