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

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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 to which the information refers to.

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

Privacy rights are statutory based. Privacy rights are regulated in the Constitution¹ as well as statutes, such as the Civil Code², Labour Code³, or Personal Data Protection Act⁴. Privacy rights are also regulated by international treaties, which are valid and effective in the Slovak Republic. The most important one is the Convention for the Protection of Human Rights and Fundamental Freedoms.

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?

Privacy rights are intended to protect any piece of information which is part of the private sphere of a particular person. Under privacy rights, the protection is also granted to information expressed in the form of personal correspondence and other documents of personal nature, portraits, photographs, video and sound recordings.

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.

In general, statutory regulation does not differentiate between the various groups of persons and basically all natural persons have the statutory privacy rights. However, with respect to public figures (i.e. politicians, public officials, judges, candidates in elections, but also other people whose activities are part of the public domain), some special rules apply under case law, e.g. some information concerning the property of politicians and some public officials is not part of a private information and has to be disclosed.

In cases concerning the privacy rights of public figures, the courts are normally expected also take into account whether the information relate to their public activities or not (e.g. information concerning past activities, misconduct, offences, or previous membership of politicians in political parties or the former Communist Party or its secret service may be deemed not part of private information) and information relating to their public activities shall not considered to be protected by privacy rights.

¹ Articles 16 (1), 19, 21, 22 of Act No. 460/1992 Coll. Constitution of the Slovak Republic as amended

² Section 11 to 16 of Act No. 40/1964 Coll. Civil Code as amended

³ E.g. Section 13 of Act No. 311/2001 Coll. Labour Code as amended

⁴ Act No. 122/2013 Coll. on Protection of Personal Data and about amendment of other acts as amended

This is however contradicted by recent practice of Slovak courts, where in some politically sensitive cases these have tended to award very high amounts of damages (monetary compensation of harm) to public figures (sometimes even around EUR 100.000, which is very rare in the Slovak Republic even in the cases of infliction of death or body injury), if their name and reputation was allegedly damaged by statements published in press or media (see the part 4.4. hereof). Although these did not always necessarily include privacy rights, these decisions were considered to show tendency to protect public figures more than the other individuals and contrary to the concept, that a public figure must bear higher criticism concerning its public activities. A number of such cases are being challenged on the level of Constitutional Court or the European Court of Human Rights.

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

No, no privacy rights of legal persons are known in Slovak legal system, privacy rights are conferred only on natural persons.

Although legal persons may be conferred on some rights, such as a right to be protected against unlawful hampering of a good reputation, or a right to protection of trade secrets, but these rights are not considered to be privacy rights because they are not designated to protect the privacy sphere of a legal person.

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, privacy rights encompass even private information made available only to some chosen persons (authorized recipients).

Private sphere of a particular person is in general exclusively in the disposition of that particular person. The disclosure of private information by third party is justified when the consent with such disclosure is granted by the authorized person or the disclosure is permitted by law. The scope of the consent is decisive when determining what recipients are entitled or not entitled to do with the disclosed information.

Therefore, disclosure of some private information to particular recipients does not per se mean that such information is no longer part of the private sphere and does not fall within the scope of privacy rights. Such information may still only be used in accordance with the consent of the authorized person and the recipient may not disclose such information contrary to the granted 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?**

The Civil Code⁵ allows for portraits, photographs and video and audio recordings relating to a natural person or his expressions of a personal nature to be made and used in a reasonable manner for artistic purposes without the consent of a natural person provided any such use shall not infringe the legitimate interests of the authorized person.

Otherwise, there are no special provisions regulating the use of private information in the works of fiction and the consent of the affected person is required, if the private information is to be used for “fictional purposes”, including the use of a name, information on facts or actions relating to person, etc.

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 is statutory based. Except being set forth by the Constitution⁶ and statutes, freedom of speech is also regulated by international treaties, which are valid and effective in the Slovak Republic. The most important one is the Convention for the Protection of Human Rights and Fundamental Freedoms, which has priority over the regulation contained in the Constitution.

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

It is based on domestic as well as international law.

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

2.3.1. beneficiaries;

Beneficiaries of the freedom of speech are natural persons as well as legal persons. Freedom of speech is conferred on natural and legal persons without regard to their nationality, residence, or registered seat.

2.3.2. extent of the freedom of speech;

Freedom of speech includes right to express or to refrain from expressing the emotions, feelings, thoughts and opinions.

The limitation of freedom of speech is left for statutory regulation. The freedom of speech may be statutorily limited: (i) if such a measure is necessary; and (ii) through

⁵ Section 12 of Act No. 40/1964 Coll. Civil Code as amended

⁶ Article 26 of Act No. 460/1992 Coll. Constitution of the Slovak Republic as amended

such limitation the rights and freedoms of others (e.g. privacy rights), state security, public order, or public health and morals are protected.

2.3.3. exceptions;

The freedom of speech is typically not granted or is restricted in these situations:

- a. when interfering with privacy rights;
- b. when interfering with other rights and freedoms of other persons, e.g. right to the preservation of human dignity, personal honour, reputation and the protection of good name;
- c. when interfering with the presumption of innocence;
- d. special regulation concerning the elections, e.g. regulation governing the maximal broadcasting time for political advertising, the election moratorium;
- e. when interfering with the protection of classified matters and official secrets, etc.

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

Special regulation concerning some aspects of press (paper) and press agencies is set forth in the Press Act⁷. Online press is not expressly regulated in the Slovak Republic.

Special regulation of paper press and press agencies contained in the Press Act concerns mainly the protection and confidentiality of the source of information, right to the provision of information from public authorities, liability and obligations of the publisher, and rights of persons on correction, answer, and additional announcement with regard to the information published.

Special rules regulating some aspects of TV and radio broadcasting, including online TV and online radio broadcasting, are set forth in the Retransmission Act⁸. These rules regulate e.g. obligations concerning the broadcasting of commercials, the protection of minors, humanity and human dignity in TV and radio broadcasting, the protection and confidentiality of the source of information, right to the provision of information from public authorities, rights of persons on correction, powers of national regulatory authority in the area of TV and radio broadcasting⁹, etc.

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?

⁷ Act 167/2008 Coll. Press Act as amended

⁸ Act No. 308/2000 Coll. on broadcast and retransmission and amendment of the act no. 195/2000 Coll. on the telecommunication as amended

⁹ Council for Broadcasting and Retransmission

Both, the freedom of speech and privacy rights are constitutional principles, and are considered as basic rights and freedoms by the Constitution¹⁰. Freedom of speech and privacy rights have equal legal force and none of these principles has priority over the other.

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)?

In case of the conflict between these two principles, the application of one or both of these principles may be restricted. According to the Constitution, when restricting the application of basic rights and freedoms, attention must be paid to their essence and meaning. When evaluating the lawfulness of a particular restriction, the test of proportionality is usually applied by the Constitutional Court of the Slovak Republic, i.e. things such as legitimacy of the aim of restriction, effect of the restriction, necessity of restriction, alternative means etc. are taken into account.

Privacy rights therefore usually as such prevail over freedom of speech with regard to the information concerning the most intimate sphere of a person, as not protecting such information would mean that the privacy rights have lost their essence and meaning. Therefore, the very criterion of preserving the essence and meaning of privacy rights is sufficient to prevail over freedom of speech in the area of above-described private information.

On the other hand, there may be some interests, as, e.g. interest on the proper execution of democratic control over elected representatives, or interest in fight against corruption, that may justify the limitation of privacy rights of public figures, as these must generally bear higher degree of criticism or are obliged e.g. to publish some information on their incomes and property.

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 Civil Code¹¹ specifies remedies available once an infringement of privacy rights (e.g. unauthorized disclosure) occurred. Therefore, for a successful action, infringement of privacy rights should be proved. Remedies available are the same as described in 4.3. hereof.

However, it has to be added, that e.g. in case when some person unlawfully obtains private data and intends to publicly disclose them, the very fact of unlawfully obtaining the personal data represents infringement of privacy rights and in court's proceedings, among other remedies, also an order prohibiting public disclosure may be issued. In addition, before the initiation of the court's proceedings or before the

¹⁰ The Constitution of the Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic as amended

¹¹ Section 13 of Act No. 40/1964 Coll. Civil Code as amended

decision in subject matter becomes effective, the affected individual may also seek an injunction to provisionally regulate the relation of participants, or if it is feared the enforcement of the judicial decision could be jeopardized. In this way, the injured party may seek to provisionally, till the decision in subject matter is effective, order, that e.g. the infringer shall refrain from further disclosure of personal data.

4.2. Are “gagging orders”¹² or “super injunctions”¹³ as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

No, there are no such orders, but similar effects may be in some situations achieved through the remedy *to abstain from further violation of privacy rights*¹⁴. So e.g. in a situation where some entity unlawfully obtains private information, the affected person may seek the infringer to abstain from further violation of privacy rights and may seek e.g. the prohibition of further disclosure or public disclosure of information. Interim measure with similar content may also be sought.¹⁵

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

- a. According to the Civil Code¹⁶, these remedies are available once the violation, e.g. unlawful disclosure, of private information occurs:
 1. action to refrain from further violation of privacy rights, e.g. not to further disclose private information;
 2. rectification claim, i.e. claim to seek the removal of the consequences of such interferences;
 3. claim for reasonable compensation of harm, e.g. in the form of public apology;
 4. if the compensation under 3. does not appear sufficient as, in particular, the dignity or the esteem of the affected person in society was impaired to a considerable degree, the person also has the right to monetary compensation for the intangible harm incurred.
- b. In relation to the violation of privacy rights by the press, the following remedies are available under the Press Act¹⁷:
 1. right to correction, if the facts published have not been accurate;
 2. right to answer, if the published facts were not accurate and may do the harm to the dignity, civil honour or privacy of the aggrieved person;

¹²See for details: http://en.wikipedia.org/wiki/Gag_order#United_Kingdom

¹³ See for details: http://en.wikipedia.org/wiki/Injunction#UK_superinjunctions

¹⁴ See also paragraph 4.3 hereof

¹⁵ For interim measure see also paragraph 4.1 hereof

¹⁶ Section 13 of Act No. 40/1964 Coll. Civil Code as amended

¹⁷ Sections 7 to 9 of Act 167/2008 Coll. Press Act as amended

3. right to the additional announcement, i.e. when the press has informed about proceedings, the person may seek the information on the outcome of such proceedings to be published.
- c. In relation to the violation of privacy rights by a TV broadcaster, under the Broadcasting and Retransmission Act, the right to correction, if the broadcasted facts have not been accurate, may be available.
- d. The claims under a., b. and c. do not exclude claims to the compensation of damages¹⁸ (tangible loss as opposed to the intangible loss, i.e. harm) and the claim for surrendering of unjust enrichment¹⁹ provided the conditions for these claims have been fulfilled as well.

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

As mentioned in part 4.3. hereof, in case of breach of privacy rights, the injured party may seek (i) compensation of harm (intangible loss) and (ii) provided the statutory conditions for the arising of liability for damage are fulfilled, the injured party may seek the compensation of damages (tangible loss) as well.

The Civil Code sets forth that harm shall be compensated, e.g. by way of apology, and the monetary compensation of the harm suffered may be awarded only if other (non-monetary) compensation does not appear to be sufficient, in particular, when the dignity or the esteem of the injured person in society was impaired to a considerable degree.²⁰ Once the conditions for the award of the monetary compensation of harm are fulfilled, the amount of monetary compensation shall be determined by the court while taking into account the seriousness of the harm incurred and the circumstances under which the right was violated.

There is no special regulation as to the amount of the monetary compensation of harm that should be awarded when the violation of privacy rights occurs. As no statutory criteria as to the amount of monetary compensation exist, case law has developed some criteria which should be taken into account when stating the amount of monetary compensation, but even these criteria are far from being precise and provide limited guidance only for envisaging the amount of monetary compensation to be awarded. Some of these criteria are e.g. whether the interference was caused by media; whether the injured person is a public figure; whether inference was false accusation of a crime; what were the motives for the interference; etc.

The missing mechanism for calculation of the amount of the monetary compensation of harm and often poorly reasoned decisions of the courts have been often subject to much criticism, mainly in connection with the claims of public figures when public figures were awarded very high monetary compensation of harm in cases where except privacy rights the civil honour or name of public figures

¹⁸ Section 16 and 420 of Act No. 40/1964 Coll. Civil Code as amended

¹⁹ Section 16 and 420 of Act No. 40/1964 Coll. Civil Code as amended

²⁰ Section 13 (2) of Act No. 40/1964 Coll. Civil Code as amended

were affected as well. There were some opinions that this practice of excessive protection of rights of public figures and awarding of high amounts of monetary compensation to them is contrary to the case law of the European Court of Human Rights, as the approach of Slovak courts did not reflected the fact that public figures shall be less protected in matters relating to the exercise of their public function.

The compensation of damage (tangible loss) in general consists of the compensation of the actual damage and the loss of profit. The rules for calculation of damage are of general application and apply to the calculation of damage also in cases when other than privacy rights are violated. In case of compensation for the violation of privacy rights, monetary compensation of harm is generally the claim that is sought to compensate the harm and as in such cases the damage arises in general only very rarely we omit the specification of the calculation of damage herein.

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

The liability lies with the entity that infringes the privacy rights. This entity may be natural or legal person, or state.

Publisher as well as the TV company is responsible for its content and therefore these entities may be held liable if the infringement into privacy rights occurred via press or TV programme. The same applies to online TV.

Online press is not expressly regulated in this respect, the entity providing e.g. online news would be clearly liable if the infringer was that entity or its employees, but its liability in case of infringement by third (independent) party (e.g. person who blogs or write comments on website) would be questionable and case law is yet to evolve on that.

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

- a. For example these common defences may be used by press and media as well:
 - 1. consent of the injured person was granted;
 - 2. the information was disclosed in accordance with the statutory provisions that enable the disclosure of information without the previous consent of the injured person²¹;
 - 3. the disclosed information falls within the scope of freedom of speech, e.g. criticism of public figures;
 - 4. the disclosure of information occurred while press / media fulfilled their statutory obligation or obligation imposed by decision of court or other public authority;

²¹ Section 12 of Act No. 40/1964 Coll. Civil Code as amended

5. the information had been publicly disclosed in accordance with valid laws prior to the disclosure by respective media and therefore were part of public domain and not part of private sphere.
- b. The press is further not liable for the disclosed information, if such information:
 1. was provided by public authority or public officials and was published in the original wording and changes made to it did not change its original content;
 2. was published in the public interest upon request of public authority.

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

Press includes any newspaper, magazine, or other press which are published under the same name and in the same graphic layout at least twice in a calendar year. So, basically, any print media fall within the scope of the term press. However, the term does not include online press. Term press includes also the press agencies. Media includes radio and TV stations, including internet radio and online TV broadcast.

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

Yes, special protection is granted to the informants / sources of press and media.²² If the informant / source asks to remain confidential, press and media are obliged to keep his identity and materials provided by the informant / source confidential. The duty of confidentiality does not include situation when the statutory obligation to prevent the commitment of the crime is set forth.

The Slovak Republic has recently (October 2014) adopted the Whistle-blowing Act²³ that is intended to regulate the protection of the whistleblowers – the persons who announce criminal or other antisocial activity to respective authorities. The Whistle-blowing Act is intended to offer additional, special protection to a whistleblower with respect to their employment or civil service, e.g. the effectiveness of legal acts of the employer may be suspended in some cases when such legal act was made in connection with the announcement of a criminal or other antisocial activity, etc. As the Whistle-blowing Act is effective since January 1, 2015, its application cannot be analysed yet.

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?

²² Section 4 of Act 167/2008 Coll. Press Act as amended and Section 15c of Act No. 308/2000 Coll. on broadcast and retransmission and amendment of the act no. 195/2000 Coll. on the telecommunication as amended

²³ Act No. 307/2014 Coll. on certain measures relating to the notifications of antisocial activity and amendment of certain other acts

Yes, the principles described above are also applicable to online world, subject to the exceptions mentioned above. We are not aware of any specifically case-law relating specifically to protection of privacy rights in social media in the Slovak Republic.

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.

Right to the protection of civil honour, human dignity, person's name are recognized as separate rights, as are privacy rights.

The Civil Code puts these rights under one general category designated as Personal Rights.

As the Civil Code²⁴ regulates the types of remedies together for all Personal Rights, the remedies available when the privacy rights are infringed as described in part 4.3. a. hereof may be used as well in case of infringement of other Personal Rights.

4.9. Forum and applicable law

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

The rules for the determination of forum and applicable law are codified in Act No. 97/1963 Coll. on International Private and Procedural Law as amended.

Rules on forum and conflict of laws rules stipulated in international treaties entered into by the Slovak Republic and stipulated in the legislation of the Union²⁵ have priority over the rules set forth in Act No. 97/1963 Coll. on International Private and Procedural Law as amended.

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

No, Act No. 97/1963 Coll. on International Private and Procedural Law as amended does not set forth any special rules regulating breach of law caused online. There are as well no special forum and conflict of laws provisions regulating disputes arising out of the breach of privacy rights.

With respect to conflict of laws provisions, there are no special statutory rules applicable to the breach of privacy rights via internet. As regards forum in disputes arising out of the breach of privacy rights, the general provisions will apply and the Slovak courts will have jurisdiction over the dispute if the defendant has its residence or registered seat in the territory of the Slovak Republic.

²⁴ Section 13 of Act No. 40/1964 Coll. Civil Code as amended

²⁵ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) does not apply to the non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation (those obligations are explicitly excluded from the scope of application of the Rome II Regulation by Article 1 (2) (g) thereof).

As the obligations arising out of breach of privacy rights are explicitly excluded from the scope of application of the Rome II Regulation, conflict of laws provisions of Slovak law will probably be used in most instances.

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

In our opinion, probably the most needed reform is in the area of rules on calculation of monetary compensation of harm once the infringement of privacy rights occurs. As described in paragraph 4.4. hereof, there are no precise criteria as to the amount of such monetary compensation of harm. The regulation in this respect would definitely help to increase the predictability of decisions and could encourage the persons to claim their rights when violated. Further, the speed of proceedings needs to be accelerated, and a reform is in preparation in that regard.

5. Interplay between data protection rules and privacy rights

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

Personal Data Protection Act²⁶ protects the privacy rights of natural persons used in online media in two main respects:

- a. personal data may be processed only when a legal ground for Personal Data Processing is given. The legal ground is usually the consent of the person, but the law also enables to process personal data without the consent if the processing is e.g. for the purpose of informing the public by means of the mass media provided the processing of personal data for such purpose does not violate the data subject's right to protection of his personal rights and privacy;
- b. once an entity is entitled to process personal data based on a valid legal ground prescribed by law, the entity must still abide by further rules, e.g. prescribing security measures that have to be adopted when processing personal data.

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

Yes, the person has these rights in connection with the collection and processing of its personal data:

- a. the person has right to seek information from the entity that processes data, such as whether and what data are processed, how these data were obtained, etc.;
- b. the person has right to withdraw the consent for personal data processing before its expiration or demand the liquidation of processed personal data under some circumstances; and
- c. if the personal data are processed for the purpose stated in para. 5.1. a. without the consent of authorized person, the person may oppose such processing by

²⁶ Act No. 122/2013 Coll. on Protection of Personal Data and about amendment of other acts as amended

stating the legitimate reasons or by submitting evidence of infringement of its rights and legitimate interests (e.g. privacy rights) that are or can be violated by the processing of personal data in a particular case. Such objected personal data shall be blocked and erased as soon as possible.

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.

Yes, right to be forgotten is statutory based in the Slovak Republic²⁷. Natural persons, whose personal data are processed, may seek the controller to delete the processed personal data when, e.g. (i) controller breached his duties; (ii) the data processed are incomplete, incorrect, or not up-to-date; (iii) the purpose for personal data processing ceased to exist. The controller is as well obligated to block the personal data of particular person, if that person withdrew its consent with data processing before the end of period for which the consent was originally granted. Further rights are based on EU law and recent ECJ case law.

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 case law on the right to be forgotten complies with the statutory regulation described in para. 6.1. hereof. Under these circumstances, the right to be forgotten may be successfully claimed. Office for Personal Data Protection of the Slovak Republic and Slovak courts have jurisdiction to decide claims described above.

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?

So far there has been no case law in connection with the right to be forgotten as defined in Google Spain v. AEPD and González (C-131/12) case. However the case is being taken into account in the local regulatory environment and by the Office for Personal Data Protection of the Slovak Republic.

²⁷ E.g. Section 17 and 28 of Act No. 122/2013 Coll. on Protection of Personal Data and about amendment of other acts as amended

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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