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THE PROTECTION OF PUBLIC ACTORS' RIGHT TO PRIVACY IN THE CONTEXT OF THE HUNGARIAN JUDICIAL PRACTICE[*]

A közéleti szereplők személyiségi jogainak az oltalma a hazai bírói gyakorlat tükrében

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There are a number of issues of legal interpretation related to the right to privacy of public actors. In the present study, after a dogmatic and taxonomic review, we examine the trends in Hungarian judicial practice and the latest challenges to the right to privacy of public actors, from which we seek to draw forward-looking conclusions.

Keywords: *public actors, public figure, right to privacy, personality rights, freedom of expression*

A közéleti szereplők magánélethez való jogához számos jogértelmezési kérdés kapcsolódik. Jelen tanulmányban a dogmatikai és rendszertani áttekintés után megvizsgáljuk a hazai bírói gyakorlat tendenciáit és a közéleti szerplők magánélethez való jogának legújabb kihívásait, amelyekből előremutató következtetések levonására törekszünk.

Kulcsszavak: *közéleti szereplő, közszereplő, magánélethez való jog, személyiségi jogok, véleménynyilvánítás szabadsága*

Introduction – Proposition

The protection of public actors' right to privacy has an extremely important constitutional and civil law dimension. Regarding the constitutional point of view the work of the European Court of Human Rights can be highlighted as it has been

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addressing the conflict between the freedom of expression and certain public actors right to privacy. This task is also fundamental in ensuring the delicate balance between public and private affairs. The ECtHR's relevant case law has a significant impact on the development of the Hungarian law as the principles and criteria developed by the Strasbourg case law are also reflected in the practice of the Hungarian Constitutional Court's practice and in civil court's case-law. The Strasbourg forum has established a reasoning system that allows a stronger restriction of the personal rights of those who are public actors than those who has never taken on such role. However, this restriction can only be made in compliance with the requirement of proportionality of necessity to endorse public debate.

Frequent *"scenes"* for initiating public debate were the various forums in the press and media, which initially exclusively meant written press products, and then, because of technological advancement, radio and television also emerged as primary channels. And in today's digitalized reality, various online interfaces have become forums of public debate, such as social media sites, which, as a modern-day *"agora"* provide a space for exchanging opinions and sharing news. In response to these new technological and social impacts, Act LIII of 2018 on the Protection of Privacy was born, a law declaring essential rules on the right to privacy of public actors. It states that the private and family life as well as the home of public figures shall enjoy the same protection as attributed to persons who are not qualified as public figures. [Act LIII of 2018 7. § (2)]. Under this regulation, no information about public actors' private or family life can be disclosed without their consent, so in this case the "additional tolerance obligation" of legal entities taking on public roles does not apply. This rule seems to go against the consistent practice of the European Court of Human Rights, the domestic Constitutional Court of Hungary and civil courts, which, in case it serves the public interest and ensures the contestability of public affairs, considers the disclosure of private information regarding public actors to be permissible.[1] In the light of the current domestic legislation, the question is to what extent these principles can prevail, in other words to what extent the information regarding the private life of legal entities taking a public role can be the subject of free disclosure. In accordance with the act on the protection of privacy, to the same extent as non-public figures. Thus, by analogy, we can conclude, as a general rule, any intrusion into the private lives of public actors can be deemed illegal. From our point of view, this regulation can be considered worrisome in several places. On one hand, the act on the protection of privacy has essentially abolished public actors' "additional tolerance obligation", which was one of the most important elements in the development of a democratic publicity after the political transition. In the socialist state system, there could be no open criticism of the activities of persons exercising public power. By this time an idea had *"infiltrated"* the Hungarian legal standpoint, and approach aiming the elimination of the un-criticizability of legal entities taking part in public life and exercising public power; this idea at the same time meant the expansion of freedom of expression

[1] Incidentally, this approach also prevails in the legal interpretation of the Constitutional Court.

and the root of democratic public discourse. However, it is important to note, that the criticism of public actors was not unrestricted, the very core of the personality, protected by human dignity could not be damaged in relation legal entities in public roles either. Regarding public figures' "additional tolerance obligation" also a great source valuable findings and frequently cited by civil courts is the *decision 36/1994. (VI. 24) of the Constitutional Court.* According to which "*it is a constitutional requirement that the sphere of expression, constitutionally protected by the right to the freedom of expression, and thus unpunishable, is to be broader in relation to persons and institutions exercising public authority and politicians acting in public than as regards other persons."*[2] Under current law, this type of obligation does not apply in the case of statements concerning the right to privacy of public actors. According to the legislation currently in force, this type of obligation does not apply in the case of statements concerning public actors' right to privacy.

It can be difficult to distinguish and therefore also concerning to decide whether a disclosure relates to private life and when it is outside of it. The question, therefore, arises as to what extent the current domestic regulations allow space for communications that belong to the privacy but also has an impact on public affairs. A good example of this is the publication of an investigative article discussing the enrichment of a politician's family and friends from public funds. But it is also worth mentioning the case of a press release, which examines a politician's private behaviour, such as in a relationship, and concludes that it is contrary to the values the person represents as a politician. Does the publication of such articles fall within the scope of freedom of expression, or does it constitute an unjustified invasion of a public actor's private life?[3]

Along these bases, in the current study shall present conceptual issues related to the public actors' right to privacy, followed by trends in judication, from which we seek to draw forward-looking conclusions to resolve the conflict between the public actors' right to privacy and the freedom of expression.

1. Guidelines or conceptual issues

Upon examining the legal meaning of the right to privacy and the term public actors, it is easy to conclude that neither the definition of the right to privacy nor the circle of public actors can be determined by a single, straightforward definition. As we see it, this method would not be prudent either, as the protection of privacy can best serve its purpose in a broad way and narrowing the range of public actors would not allow the inclusion of another group into this circle.

Regarding the right to privacy, apart from a detailed dogmatic and historical analysis, it can be stated that the first interpretation and scientific formulation of

[2] Decision of Constitutional Court no. 36/1994. (VI. 24).

[3] BARZÓ Tímea: A Közéleti Szereplők és a Magánélethez Fűződő Jog, Public Figures And The Right To Privacy. *MultiScience – XXXII. microCAD International Multidisciplinary Scientific Conference* University of Miskolc, 5–6 September, 2018. ISBN 978-963-358-162-9. 10.

this right came from the Anglo-Saxon legal system, and since its foundations there has been virtually unlimited literature on the right to privacy.[4] In the American and English legal systems, the fundamental right to freedom of self-determination provides the breeding ground for the right to privacy, while in the continental legal system, the protection of the private sphere is derived from the general right to privacy. According to our understanding the right to privacy as a right based on human dignity and the right to individual self-determination, intends to provide one's *"right to be left alone"* to stay away from others (both physically and psychologically). This right must be present vertically, the relationship between the state and its citizen, and horizontally, the relationship between individuals. The former is framed and guaranteed by international human rights instruments and constitutional rules, while the horizontal direction is assured by civil law and judication.

As for public actors, case-law already plays an important role in defining this category, given that current legislation[5] in force does not determine the term exactly, and in our opinion, it would not be appropriate. Taking the stylistic aspects into consideration, it is important to note that the conceptual approaches under the previous Civil Code, like the legislation at the time, used the terminology *"public figure"* (közszereplő), while the current regulation has introduced the term *"public*

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4 See for example: Samuel WARREN – Luis BRANDEIS: The right to privacy. *Harvard Law Review* Vol. 4, No. 5 (Dec. 15, 1890), 193–220, Ferdinand D. SCHOEMAN: Privacy: *Philosophical Dimensions of Privacy: Anthology*. Cambridge University Press, Cambridge, 1984. FÉZER Tamás: A privátszféra polgári jogi védelmének alapkérdései. *Debreceni Jogi Műhely* 2014/1–2., 4. Dorothy J. GLANCY: The invention of the right to privacy. *Arizona Law Review* 1979/1., 28. Paul M. SCWARTZ – Karl NIKOLAUS PEIFER: Prosser's Privacy and the German right of personality: Are Four privacy torts better than one unitary concept? *California Law Review* 2010/6., 1937.
SZABÓ Máté Dániel: *Kísérlet a privacy fogalmának meghatározására a magyar jogrendszer fogalmaival.* http://epa.oszk.hu/01900/01963/00013/pdf/infotars2005_05_02_044-054.pdf, 2021. június 2., 45.
MENYHÁRD Attila: A magánélethez való jog elméleti alapjai. *In Medias Res* 2014/2., 55. http://www.eltereader.hu/media/2018/04/Gorog_Menyhard_Koltay_Szemelyiseg__READER.pdf, 2019. május 2.

5 But in the legal regulations there can be found multiple definitions concerning public figures. One of them is *Act No. III of 2003 On the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the Historical Archives of the Hungarian State Security*, known commonly as the "agent law". The law views the exercise of public power as the main element in the notion of public figures. Based on *Act III of 2003*, public servant is any person, who exercises public power or was designated for a position entailing the exercise of public power and who forms or formed the political public opinion pursuant to his task. *Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing* views the concept from a different standpoint. Both the agent law and the aforementioned law combating money laundering and terrorism are branch legislations. Obviously, they do not formulate universal definitions, these are only valid in the field the regulate.

actor" (közéleti szereplő).[6] The two terms are often synonymous in both the legal literature and court case law, as there is no difference in content between the two. *Károly Törő*, as a Supreme Court judge, considered the legal position of public actors' category endangered already in 1990. He believed that some did not respect any boundaries or have consciences, either verbally, in writing, or in press releases without violating other's reputation or dignity.[7]

Concerning the conceptual definition of public actors, *Ferenc Petrik's* wording is worth to mention, in his work published in 1992, he stated that public contribution is an act that influences the life of narrower or wider society, as well as the development of local or national relations. In his views, there is a societal need to monitor the activities of legal entities involved in public life, therefore public participation is inseparable from the public.[8]

Levente Tattay's has similar views with Petrik. He suggests that *"public actors are natural and legal persons who, through their activities or public actions, influence the life of society in a narrower or broader sense, the development of local or national relations, and those involved in public affairs".*[9] According to this, *"the key component"* of being a public actor is whether a person can influence the life of a section of society or whether he or she is involved in certain public issues. His view goes along with the decision of Pécs Regional Court of Appeal, which states *"the question of whether a person is a public figure is not the person's social or official position, status, or wider recognition for any reason, but the legal should be judged on the basis of the specific life situation relevant to the assessment".*[10] This wording, like Tattay's position, also reflects a functional approach and states that the courts must decide on a case-by-case basis whether a person is a public actor, basically the fact of being a public actor should be the starting point in the adjudication of each case.

A similar point of view also reflects in the decision of the Constitutional Court, in which it has clarified the criteria of classifying as a public actor. According to this, *"the fact of discussing public issues, to the extent of a specific debate, is the aspect that typically determines the personal quality of those involved. The role of public figure is therefore linked to the fact of public involvement in the discussion of public issues, which must always be assessed in the specific situation."*[11]

Based on this, our view is similar to the Constitutional Court's explanation, it is not the personal quality of being a public actor, but the fact of taking part in public affairs that decides whether a legal entity is taking on a part of a public figure re-

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[6] For the current civil law regulations, see Section 2: 44 of Act V of 2013 on the Civil Code.

[7] TATTAY Levente: A közszereplők magánjogi személyiségvédelme. *Magyar Jog* 2006/4., 228.

[8] PETRIK Ferenc: *A személyiség jogi védelme*. Közgazdasági és Jogi Könyvkiadó, Budapest,1992, 136.

[9] TATTAY Levente: i. m. 230.

[10] BDT2018. 3835.

[11] Decision of Constitutional Court no. 145/2018. (V. 7.), 41.

garding a certain case. So, taking this into consideration should be the cornerstone for judging if a person qualifies as a public actor.

After clarifying some of the fundamentals of the right to privacy and public actors, we shall examine how domestic judicial practice interprets the issues of public actors' right to privacy.

2. Public actors "private life" in the context of Hungarian judicial practice

The first to be mentioned is a decision of the Metropolitan Court of Budapest from 2010[12], which established the right to personal image and the right privacy in connection with an illustrated newspaper article. The plaintiff in the personal right violation suit is a well-known businessman, who spends most of his professional life abroad, while the defendant is the magazine publisher, whose magazine published the personal right violating article. The article dealt with the plaintiff's love affair with a well-known television presenter, in addition a photograph depicting the plaintiff in a recognizable manner was published. Another important circumstance to be assessed was the fact that the plaintiff was approached by a reporter for a magazine run by the defendant to comment on his new relationship, however, he consistently refrained from making a statement. Nevertheless, on 5th August 2010 the defendant's magazine published a large-scale article and title page photo, dealing with the plaintiff's relationship with the presenter. Regarding this the plaintiff assessed that he had never given his consent to the publication of his image, so the defendant infringed his rights. He also argued that certain parts of his private life had been disclosed to the public, he therefore brought an action to the court. The defendant never disputed the fact that they did not ask for the plaintiff's consent to publish his image but reasoned that no negative comment had been made about him, and as a close acquaintance of a public figure, the plaintiff must tolerate the tabloids attention to some extent. The defendant took the view that the publication of the article did not cause the plaintiff any substantive damage, so his claim for non-pecuniary damages was unfounded and he sought its dismissal. Concerning the right to personal image, based on the established facts by the court, clearly the photographs displayed in the case depicted the plaintiff, he was clearly identifiable on them, and indubitably he is the person who currently has a private relationship with the identified public actor. The mere fact that the plaintiff has a private relationship with a public figure does not make him a public figure, as the press was aware of when he was described as a "civilian" man, also his first name appeared in the article. Regarding the violation of the right to privacy, the court assessed the plaintiff statement that he did not wish to disclose his private relationship to the public, did not give his consent, and even explicitly refused to appear in public when approached through a mediator. As stated by the court, once the plaintiff was recognizable and identifiable from the photographs, and his identity was confirmed by other data to acquaintances, it was clear that the plaintiff could be recognized

[12] Metropolitan Court P.25776/2010/5.

through the article, as the other, non- public person in the relationship. As claimed the reasoning of the judgment, it is clear from the judicial practice that individuals can reasonably request their private and emotional relationship not to be revealed to the public, even if the other subject of the relationship is a known personality. According to the plaintiff's acknowledged statement, the defendant was aware of his stand, yet the article was published. The speculation regarding the plaintiff's emotional connections and the assessment of its intensity clearly infringes his right to privacy, so the court also found the violation in this regard.

This 2010 judicial decision, in line with the case law of the ECtHR, makes it clear that merely the satisfaction of the curiosity of a tabloid-hungry public cannot serve as a valid reason to expose the emotional relationship of a non-public entity. In our view, the legal reasoning of this judgment can be clearly paralleled with the case-law of the ECtHR.[13]

Another newspaper article about a public figure's relationship was the subject of 2013 decision[14], which states that the newspaper publisher violated the plaintiffs', a former reality show contester and partner's right to privacy, image and personal secret by publishing articles in tabloids about them. The article in the case, not only disclosed information about the applicant's relationship, but photographs were taken in secret at his apartment, which were also published. The defendant's daily newspaper issued an article on the first and second applicant on 23rd September 2013. The piece reported that the plaintiffs were driving a car to second applicant's apartment, unloaded the car, and then both entered the gate of the house. The article discussed the following details of the plaintiffs' private life: "the couple arrived in a car at the building complex of the girl's apartment…then they disappeared behind the door packed with luggage", "they went into...a house after grocery shopping", "the second applicant was photographed as he returns to an apartment with his hospital doctor on Saturday", "…the picture shows the second plaintiff… in front of the house, he's been living for weeks, his doctor get out of the car, then the couple, clearly coming from a shopping trip, unloads the car trunk", " where could second plaintiff and his psychiatrist were on Saturday together." Regarding these statements and published photographs, it was stated in the reasoning that a uniform case-law has been formed regarding the scope of the protection of public figures personal rights, according to it public figures should be entitled to have their privacy respected by media. They can only be reported by the

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[13] See for example: *Grebneva and Alisimchik v Russia*, Application no. 8918/05, 22 November 2016; *Milisavljevic v Serbia*, Application no. 50123/06, 4 April 2017; *Genner v Austria* application no. 55495/08, 12 January 2016; *Borozic and Vujin v Serbia* application no. 38435/05, 26 June 2009; *Savva Terentyev v Russia* application no. 10692/09, 28 August 2018; *Standard Verlags GmbH v Austria (No. 3)* application no. 34702/07, (available on HUDOC), at [37]; Krone *Verlag GmbH v Austria* application no. 27306/07, (available on HUDOC); and *Kurier Zeitungsverlagd und Druckerei GmbH v Austria (No. 2)* (Application no. 1593/06) (available on HUDOC).

[14] Court of Győr P.20.919/2013/10.

media if those details become apparent during a public performance or with the consent of the subject. Accordingly, the public figure also has the right to keep the details of his private life secret and in the case of abusive statements regarding it, they have the right to good reputation. Respectively, also intended as a legal protection, public figures can only be photographed without when acting as a public actor. Concerning the respect of privacy, the reasoning states that it means the right of individuals not to be undeservedly disturbed by others during their private events, to live this part of their lives without the attention of others. The life circumstances in the article does not qualify as a public event for any of the plaintiffs, so none of them was a public figure in the situation depicted. The plaintiff's meeting was an entirely private event, the factual depiction infringes the individuals' right to not to be disturbed in their private life by unauthorized people, a conduct which clearly entailed and infringement of the right to privacy.

The acting judicial forum drew a similar conclusion in 2015[15], when it concluded that an online newspaper had published an article in 2013 stating "There was also a short break between the couple (Individual 1 and the Plaintiff) when the plaintiff took part in a dancing show's first season." Allegedly, "Individual 1" became jealous of the plaintiff's dance partner but was soon reconciled. "Their statements violated the plaintiff's right to privacy." Furthermore, statements were made the article alleging that the applicant did not care for his children, that resulted in the violation the right to good reputation, and that the photographs attached to the newspaper article also infringed the right to personal image. According to the courts stand, the violation of the right to privacy can only be established if the same statement, does not infringe another person's personal rights. The court has made valuable deductions in connection with the assessment of the right to right to privacy and other personal rights. Based on this "if the activity's fact pattern that violates private life also suitable to damage good reputation, then the plaintiff's right to good reputation is violated; if there is a legitimate interest in keeping the facts confidential, then the right to personal secret is violated; in case the violation is carried out by taking pictures, then, in the absence of additional facts, the right to personal image is violated. In the absence of additional facts, the assessment of the same circumstances both as an infringement of the right to privacy and personal image would constitute double assessment." This conclusion is in line with the premise we have proposed at the beginning of this chapter, it states that the right to privacy ha a subsidiary role to other personality rights, it can be established in the presence of additional facts, which in the current case means the disclosure of information regarding one's privacy.

In this case the court found the right to privacy infringement established, as statements were made which clearly constituted unjustified intrusion into the private sector regarding the public actors in question, as they related to a private, intimate life situation in which public figures were protected. In addition, several

[15] Court of Győr P.20.286/2015/5.

disclosures of information violated the right to good reputation and personal secret, so the infringement of right to privacy was found established alongside with these.

In 2017[16], a well-known couple, both are public actors, wanted to get married in a small village. The fact came to light and large number of press members appeared on the scene, thus taking away the intimacy and causing inconvenience to both the soon-to-be married couple and to locals. The records were published in several articles, for which the court found not only the violation of the right to personal image but also the violation of the right to privacy. Concerning public actors right to privacy, the court found that photographs could only be taken of them without their consent during public performances.

The reasoning also indicated that the plaintiff's wedding was an event of public interest, yet they took part in it as a private individuals not as public figures, so reporting and taking pictures must have had the plaintiff's consent, even if they had previously disclosed certain parts of their private lives to the public. In connection with the violation of the right to personal image claim, pointing out Civil Code 2:48 § (1) and (2), it was stated that the plaintiffs had not consented to taking and publishing their pictures on the defendant's magazine's cover. The court makes no mention of the additional factual element which made it possible to establish not only the violation of the right to personal image but the violation of the right to privacy.

Important forward-looking statement are linked to the Curia's 2018 decision[17], it resolved the conflict between freedom of expression and the protection of public figures' right to privacy. The newspaper article dealt with the financial activities of the Secretary General Erzsébet-camp's, which main profile is camping for disadvantaged children. It also reported the fact that this person rented a luxury villa near the camp, from where he commuted to work daily. The online publication, which is the subject of the lawsuit, is titled "110,000 a day: the boss of children's camps goes to work from a luxury villa" a photo and video recording depicting the plaintiff leaving the holiday home by his car is attached to it. The plaintiff in his motion asked for the determination of the violation of his personal rights regarding the protection of good reputation, of home, of private and family life. The defendant sought for the dismissal arguing that the recordings published in the article served the free debate of public affairs or did not violate the requirement of proportionality of necessity either.

In its decision, the Curia found that the right to protection of the home and privacy of the concerned person had not been violated by the newspaper article. Based on the reasoning of the highest judicial forum, the foundation of the right to the protection of privacy, home, as named personal rights, is to provide opportunity to hide from the public and the ability to decide about the disclosure of information about him, and to avert arbitrary, undue intrusion to one's privacy. This legal protection naturally extends to the home, which includes the scene of family and pri-

[16] PJD.2017.3.

[17] Curia Pfv.21.716/2018/5.

vate life or retirement, but this protection does not mean that the disclosure of information about the home is in any case an arbitrary intrusion into the rights of the individual.

The newspaper article in the lawsuit discussed the financial situation of a senior official of a state organization dealing with the camping of disadvantaged children and thus using public funds, essentially raising the public question of why and from what the general secretary of a public foundation can rent a luxury holiday home to go to work for several weeks to the children's camp for more than 100,000 Ft. Based on this, in the final judgement the court correctly recognized that the fundamental legal deliberation had to be made along the line of the freedom of expression of public opinion and the right to the protection of privacy, family life and home.

The Curia in its fundamental law valuation agreed with the circumstances assessed by the courts and with the final judgement's conclusion. The district court correctly assessed that the plaintiff, as the general secretary of a public foundation used public funds, as a public actor had a greater obligation to tolerate the expression of public opinion. The Curia also referred to the fact that the defense did not focus on the status of the plaintiff but on the possibility of public debate, so his obligation to tolerate more, even being lesser-known personality, was significantly influenced by the issue to what extent it is justified to restrict one's personal rights. For the sake of disputability and verifiability of the statements regarding the nature if the property and the drawn conclusions, as well as the investigative work's documentation justified the publication of the pictures and video recordings. In addition to the photos from the villa's advertisement, it was not considered unnecessary to take and publish up-to-date images and videos for authentic information. In the view of the Curia, therefore, in the present case, it was not justified to override the right to challenge public matters on the grounds of the indicated personal rights. For our part, we agree with this position, because the Erzsébet-camps have a very important social purpose, which is manifested in holiday opportunities for disadvantaged children. It was in the light of these exact circumstances, as we see, that the disclosure of personal information in the specific article, which was essentially linked to the use of public funds, could be justified, thus contributing to the development of democratic discourse. If public funds spending could not be reported, as it effects private information, in our view, it would constitute a disproportionate restriction on the freedom of expression.

A 2019 civil law decision is also worth mentioning, which decided on the question whether a picture of a non-public participant can be published as an illustration of a matter of public interest. The plaintiff asked the court to find that the photograph included in the online magazine published by the defendant violated his right to personal image. He asked for the defendant to be ordered to stop the infringement and to be barred from further use of the photograph. As compensation, he requested the defendant to be ordered to publish a statement. The plaintiff claimed that he had not consented to the use of the image, or it did not constitute as a crowd picture or a recording of a public event, nor did he personally constitute a public actor. The defendant sought the dismissal of the motion primarily on the ground

that the applicant could not be identified on the picture as he covered his face. The defendant also stressed that the right to privacy and the right to freedom of expression conflict with the applicant's right to the protection of personal image, so that the court should consider which, should have priority. According to the defendant, freedom of expression is the priority, as the article in the case dealt with a public a matter, since the plaintiff could be linked to a company, which was the winner of a public procurement tenders issued by the Ministry. The plaintiff's partner is a Deputy State Secretary of the issuing Ministry. The defendant also referred to the fact that the contract was for expert advice, so the question arises as to what service required the applicant's special expertise. A photograph of the plaintiff and his partner was attached to support the authenticity of the article. The court of first instance found that the applicant was recognizable in the photograph and referred to the case law of the ECtHR[18], namely the von Hannover and Verlagsgruppe News Gmbh cases[19], which included the right to personal image in the scope of the protection of the right to privacy. Thus, if a newspaper article deals with a public matter, the ban on the publication of photographs can only be enforced to a minimum. The court also stated in its reasoning that the discussion of the plaintiff's private relationship could not be considered unlawful because it could raise the question in the present case whether the emotional connection in question could have influenced the outcome of the contract. We can agree with the court's argument, in our view, the primacy of freedom of expression was correctly established in the case, for this reason no unlawful intrusion to privacy took place.

In the decision, already referring to Act LIII of 2018, the Metropolitan Court of Appeal found that the online newspaper published by the defendant violated the plaintiffs' right to privacy by disclosing the fact of their relationship. Although the applicants' relationship was already known to a relatively wide range of persons, the disclosure of that personal data was not linked to the free debate on public affairs or contributed in any way to the public discourse. The court also assessed as culpability that no reason of public interest could have supported the disclosing of the relationship.

The court also found that the right to privacy had been violated because the information on the relationship constituted personal data under Section 3 (2) Act CXII of 2011 on the right to informational self-determination and on the freedom of information, which the plaintiffs did not intend to share with the public. According to the statement of the facts, the court found defendant had implemented unlawful conduct under Section 8 (2) Act on the Protection of Privacy. The disclosure of personal data was not related to the free debate on public affairs, nor did it contribute in any way to public discourse. In this respect, the appellate court agreed

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[18] BH2017.86.

[19] Von Hannover v Germany, no. 59320/00., 24 June 2004, Von Hannover v Germany (no. 2.), no. 40660/08, 60641/08, 7 February 2012, Von Hannover v Germany (no. 3), no. 8772/10, 19 September 2013, Verlagsgruppe News Gmbh v. Austria (Application no. 60818/10).

with the finding of district court. This decision follows the jurisprudence that has been consistently applied so far, as it examined the possible public interest nature of the decision relating to the private life of a public actor, which could not be established in the present case.

3. Closing arguments

The judicial practice regarding public figures' right to privacy can be considered extremely important, as civil courts typically have to assess in connection with the fundamental right of freedom of expression. On one side there are the personality rights of public figures, while on the other side of the pan there is the freedom of expression, which is the cornerstone of the democratic discourse. The two are, of course, compared and considered on a case-by-case basis, but the acting forums consider domestic case law and the principles laid down by the ECtHR. As we have already claimed in the chapter it is questionable whether and to what extent the act on the protection of privacy allows the implementation of sophisticated judicial principles and freedom of expression, as the law declares the primacy of the right to privacy.

Based on the Hungarian judicial practice, it can be concluded that intrusion into the right to privacy can be considered illegal in cases when a given news or photograph does not promote public discourse, essentially, citing the Curia's 1938 statement, the sole purpose of the publication is to satisfy the gossip-hungry masses.[20]

Legal cases that promote the discussion of public affairs, possibly related to the exercise of public power, the use of public funds and at the same time constitute an invasion of privacy, can be considered a "more difficult to decide group", thus requiring careful consideration, bearing in mind the need for proportionality. The practice of the ECtHR in these cases typically prioritizes the primacy of freedom of opinion in the public interest and enforces the duty of public actors' "obligation of additional tolerance". In Hungary, under the regulations of the Act on the protection of privacy public actors' right to protection of privacy has the priority. Thus, an important question is how courts will strike a delicate balance between the two jurisdictions. A restrictive interpretation of when, for example, the right to personal image, the right to dignity and good reputation can lead to a violation of the right to privacy may provide a solution in this regard.

However, issues related to the right to privacy of this group are also of supreme importance from a civil law point of view, as civil courts must judge these legal issues very often, thus resolving the conflict with the fundamental right of the freedom of expression.

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