

Individual privacy vs



Definition of privacy

Jurists connect term " private life" with that area of ability to live of the person who concerns separate persons in concept, concerns only it and is not subject to the control from outside societies and the states. Secret of a private life data on the certain person not connected with its professional or public work (about its character make, health, a material condition, the marital status, a way of life etc.).

It is legislatively defined that data on citizens (the personal data), i. e. the data about the facts, events and circumstances of a life of the citizen, allowing to identify its person, are carried to the confidential information. Special norms are developed for protection of secret of a private life when for realization of the rights assistance of the third parties - professionals are necessary for the citizen. They define concepts of medical, notarial, lawyer and bank secret, secret of correspondence, telephone conversations and cable messages, secrets of adoption and many other professional secrets which disclosure can harm the citizen.

However, declaration of a priority of human rights a little that means without their reliable protection by legal and other means.

The European court under human rights instead of the term " inviolability" uses the term " respect" - " the right to respect personal and home life", " the right to respect of a private life", " the right to respect of home life", " the right to respect of dwelling", " respect of the correspondence" that even more expands possibilities of interpretation of this right. Inviolability

suggests to abstain from encroachments, the respect - assumes presence of special attention to this right.

Principle of respect personal and home life - recognized as the world community basic legalizing position based on the respectful relation, and is equal on acceptance of adequate or necessary positive measures for preservation and warranting of inviolability of ability to live of the physical person or a group of persons, united by the family mutual relations which purpose is preservation of moral and physical integrity of the person, recognitions and maintenance of its advantage and maintenance of the respectful relation.

The respect of a private life consists of: Inviolability of a private life (non-interference to the specified sphere someone); Positive or adequate measures (active actions), undertaken by the state in the name of its bodies, establishments for warranting of the respectful relation to ability to live of the person and a recognition of its advantage.

Private and Public

“ Private” is opposed to “ public”. Privacy is often spoken about in space categories - private space - where the person is given to itself, it is completely free, and it is value which can be considered out of a context of human rights. Private space is of vital importance for person’s development, education of individuality, self-development, a habit to freedom.

As anthropologists and psychologists write, the feeling of privacy, feeling of inviolability of the certain, "" sphere of a life is the biopsychic property

inherent in the human individual. It creates a certain safety zone which allows it to adapt for the surrounding human environment for the person and to be protected from that pressure which is born with itself by very mobile, very intensive modern life.

Preservation of a certain distance - to what the person aspires by the nature. If the distance between people is excessively reduced - the imposed density can pour out in aspiration to expand the private area by means of development of new amateur ways a protection of sphere personal and intimate. In that proportion in which the private life becomes public, this last sphere gets forms of private closeness that well illustrates neighborhood institute. The narrowness of neighbor's relations simulates closeness of certain quantity of families from wider social circle.

Law Regulation of the Privacy concept

The European Court interprets concept of a private life very widely, without exercising any constant definition of the granted right. There is no definition of a private life and in the Russian legislation. The Supreme Court of Canada has defined a private life as " narrow sphere of a personal autonomy in which the free choice" is carried out. Scientific lawyers, political scientists and sociologists also have not developed satisfactory unequivocal concepts. Some of them include in a private life " data on the certain person, not connected with its professional or public work and stating estimation to its character, shape, health, a material condition, the marital status, a way of life, the separate facts of the biography, and also its relations with relatives, the friends familiar, etc. It is sometimes defined it as " loneliness (possibility

of the person to remain alone with the thoughts), intimacy (possibility of the isolated existence in the social environment) and a distance (possibility to suspend communications with associates)".

The private life - extremely many-sided phenomenon that strongly complicates disposal of legal proceeding about infringement of the right to it, is including the European Court under human rights. The parliamentary Assembly of the Council of Europe has specified in the Declaration on mass media and human rights that inviolability of a private life is " the right to conduct the life under own discretion at the minimum extraneous intervention in it".

In the decision on business " Pretty against the United Kingdom" (vs. UK) the European Court has specified that:

" The term ' private life' is a broad term not susceptible to exhaustive definition. Other than ' privacy', the notion ' private life' is not confined to a secluded space free from interference by others. To a certain extent, it also encompasses the relationships of an individual with his social environment, the protection of personality rights and personal autonomy as well the possibility to personal development.

The European Court of Human Rights has given an overview of aspects falling under the scope of ' private life' as protected by article 8 ECHR in the case Pretty v UK:

" The concept of " private life" is a broad term not susceptible to exhaustive definition. Elements such as, for example, gender identification, name and

sexual orientation and sexual life fall within the personal sphere protected by Article 8. Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world."

The European Court carries to concept of a frequent life not only intimate sphere of a life of each person. He has specified in it in the decision on business " Niemietz against Germany" (vs. Germany):

" It is not necessary to limit it [private life] intimate circle in which everyone can live own private life, and to exclude completely an external world from this circle by that. The respect for private life should include also to some extent the right to establish and develop the relation with other people".

The right to respect of a private life extends on professional relations, sexual relations, gathering and storage of the personal data and an access order to them, questions of moral and physical inviolability. Under " intervention in a private life" the European Court understands, besides other, publication in newspapers of the materials which separate fragments mention a private life.

Social Interest

To concept " socially interest" it is not given while accurate frameworks, no less than to concept to " a private life". Interests of a society are the term notorious for the vagueness and absence of prospects of exact definition. Instead of attempt to find its conceptual borders we will specify only in a number of factors which accompany it. The main thing that defines public

interests is an inadmissibility of restriction of discussion of socially significant questions for the sake of someone's personal interests. In practice it means that the definition of public interest is much wider. Adhering to this principle, during litigations about defamation on which concepts of freedom of expression of opinion appeared, courts interpreted interests of a society rather widely.

“ I have nothing to hide” argument

The argument “ I have nothing to hide” is in common use in Great Britain. For example, there were millions of cameras installed in public places of big and small towns, that are watched by government television chain. Government’s slogan was “ If you have got nothing to hide, you have got nothing to fear”. Argument “ I have nothing to hide” in different ways is used in blogs, journal articles, forums and tv-interview. One of the bloggers in USA said about citizen profiles, created by government for national security, that he had nothing to hide and he is not against of government’s information gathering program. Moreover, he was for this attempts to find terrorists by listening their phone calls.

In a first view, argument “ I have nothing to hide” is easy to ***. Everybody has something, that he is hiding from others. Alexander Soljenizin said:” Every man is guilty in something or he has something to hide from others. All is in need to do is to watch for understanding that.”

To decide is that argument “ I have nothing to hide” important or not, it is necessary to start inspecting how do it’s devotees understood privacy conception. Almost every law or political course, that influence on privacy

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issues, has an understanding of privacy conception as a basis. Problem understanding is a big power in acceptance of legal decisions and linked problems solving.

Mostly all attempts to understand privacy conception applies to comprehend it's essence. It's essence is a totality of characteristics and indicators, that links different objects, that are classified and belongs to privacy protection section. But privacy concept is very many-sided. This cloud of different objects, without general elements, but that are similar to each other. For example, privacy can be infringed by publicizing somebody's secrets or by watching furtively for you, even when watcher would see nothing. First time harm will be in knowledge of other people of that's person secret, but in second time the harm was already in a fact of watching. It will be uncomfortable for that person in every way, did the watcher see something and tell others or did not. There are a lot of other ways to violate privacy, for example blackmailing or uncommon use of personal data. Privacy even can be infringed by the fact of existing government's huge record.

In many incidents privacy questions never will be in harmony between impinging interests, because courts and other some other law instances don't admit the fact of privacy violation. People don't admit fact of existing some problems, just because of unsettlement in one understanding of the privacy, without understanding lots of linked elements. Independently how that problem is linked with privacy problem it exists and can't be ignored.

Other problems

Problem of the “ I have nothing to hide” argument much more bigger than it seems and contain in limited review of privacy protection as a form of saving secrecy. Otherwise, consideration privacy like a multitude of linked questions demonstrates existing necessity of public information about wrongful doings – is one of the problems, created government national security programs.

Other problem with government’s information gathering of privacy data – is ninepins about way of that data use. Moreover, prohibition of the access to that information and it’s correction. Many government’s steps in national security provision suppose a creation of huge limited access data-storages. Even the fact of existence of that programs is a national secret and national security element. Processing of that information, that forbids participation of citizen and their knowledge about it’s execution also is a problem of government structures. This structure problem is involving ways of communication between state employee and citizens, creates a bigger problem of relations between citizens and chosen government.

Other concomitant problem is secondly usage of gathered data. Secondly usage of gathered data – is information processing, gathered for one objectives, for another objectives, without that person agreement. Moreover, problems of time of information storage, way of it’s use, it’s future use aren’t bespoke. Potential variants of use any part of information and without it’s control are unlimited. Without any restrictions on ways of information use, it is hard to estimate potential dangers from government’s control over privacy data.

The most dangerous thing for privacy is not one separate act of violation, but it is slow gathering of mostly little violations. This problem with privacy reminds examples of big damage to environment as a result of a big quantity small violations. And when society vigorously reacts on big environment problem, for example oil overflow, gradual pollution of environment creates bigger problems.