

Review of the right to privacy According to the European Court of Human Rights

Hassan Asgari

Master's course in criminal law and
criminology of Azad University of Takistan

Abstract

The right of "privacy", which is also referred to as the right to be alone, is one of the rights that humans depend on on the one hand due to their personal needs, and on the other hand, due to the necessity of collective life, they are obliged to give this right to others. Others recognize and respect it .Traditionally, the concept of privacy has been related to the rights that are related to the interests of individuals in relation to property, especially land. While today, the progress of science not only changes the concept but also causes The field of privacy has also been developed, in such a way that today the privacy of human beings is based on computer data, electronic mails, electronic conversations. And...speech To between comesPrivacy is related to various issues, including culture, the type of political regime ruling a society, and the like has it . Therefore, it is not easy to provide a definition of privacy. The passage of time is also in this The concept is effective. Perhaps, the issues that were not a part of privacy in the past are today inside the privacy and vice versa.In this article, we seek to examine this right in the framework of the European Court of Human Rights, especially that the protection of privacy in cyberspace is the most emphasized by the European Commission of Human Rights, most of the decisions issued in the field of privacy are related to this section, which is summarized and studied. We will review them case by case.

Keywords: right, privacy, European Court of Human Rights, votes and opinions

processing:

In the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and regional human rights treaties, the protection of privacy is emphasized. Almost all the countries of the world have paid attention to this right in an article of their constitution. At least these laws have taken into consideration the right to privacy and security of communication.

Many recently written constitutions have recognized individual rights to access and control their personal information. Of course, in many countries where privacy is not explicitly considered in their constitution, the courts rely on other normal laws to protect this right..It should not be overlooked that the absence of a specific definition does not mean that this concept is less important. In a sense, all human rights cases are aspects and dimensions of the right to privacy.

In its latest report, the International Privacy Protection Organization announced that countries' interference in people's private affairs has been on the rise. Based on this, Greece ranks first among countries in the world in terms of privacy, and Germany, which was at the top of this table in 2006, has fallen to the middle. America, Russia and China are at the bottom of this list. Violation of people's privacy by governments has increased significantly in 2007, and America is at the top of the list of countries that violate privacy. This is despite the fact that the main reason for this action is the fight against terrorism and increasing the national security factor in these countries.(Ansari, Baqir,Protection From privacy private,1384, 11)

Control of private conversations, internet communications such as e-mail and foreign communications are among the things that are strictly implemented by Western governments, especially the United States, on

the citizens of these countries. One of the most important values threatened by the passage of new privacy laws is the flow of information that is essential to democracy and the functioning of the press. Giving people the freedom to surround themselves with information means that we allow them to limit the access and use of that information by the public and the press. Rutenberg interprets the access of governments and private commercial institutions to the private information of citizens and the inability of citizens to access information about government officials and private company owners as a one-way mirror. What he means by a one-way mirror is a pseudo-mirror that is installed to monitor others..

The privacy of citizens is also under threat with various tools that the private sector uses today to expand its economic activities. In the workplace, companies are trying to exert more control over their employees through a variety of methods, including listening to phone conversations, checking information on the computers that employees use, and controlling the websites that employees visit. video surveillance in changing rooms and....(Jafari, Abbas, 1385, 45)

Articles 23 to 27 of the country's privacy protection bill state the privacy regulations in the workplace as follows; Managers and employers are not allowed to use electronic surveillance unless, based on conventional reasons, there is a strong suspicion of committing criminal activities in connection with the workplace. Therefore, according to Article 25 of this bill, the imaging equipment that is used for the purpose of electronic surveillance must be fully visible, and in the place where the surveillance takes place, signs must be used to draw attention to the employees and clients, the mentioned place It is electronically monitored. According to the following articles, the approval of electronic surveillance in government and public

institutions must be done by the highest relevant organizational authority, and the information stored in films, tapes, and the like must be destroyed within six months after the date of storage..(Rahmdel, Mansour,1384, 30)

According to Article 8 of the European Convention also Protection of human rights and fundamental freedoms approved In 1950, everyone has the right to have their privacy and family life, home and correspondence respected. No government official should encroach on the use of this right, except in accordance with the law and if this is for the interests of national security, community security, economic well-being of the country, prevention of disorder or crime, preservation of moral health or for the protection of rights and freedom. others are necessary in a democratic society. According to many Anglo-Saxon and French writers, the right to respect for private life is the right to privacy, the right to live as far away from the public eye as one wants..(Amir Arjamand, Ardeshir,1385, 19)

First topic: generalities

First speech: Definition of privacy

It seems in total It can be said that privacy is a limit of a person's life that is determined by law and custom and has no connection with the public in such a way that another's interference in it may hurt the person's feelings or humiliate him in the eyes of others as a human being. Paying attention to privacy as one of the most basic examples of citizenship rights originates from paying attention to human dignity and values based on all kinds of freedoms, and today it is one of the most central issues and one of the most important issues of human rights in the era. It has become new. Numerous issues and frequent violations of human rights have drawn the attention of experts to this issue, therefore, contrary to domestic laws, international documents, especially those

compiled after the Second World War, are specially emphasized. They had the right to this.(special, Mohammad Reza,2013, 33)

Among other things, in the introduction of the Charter, it is stated that one of the goals of the creation of the United Nations is to respect the dignity and dignity of human beings and human values. In Article 55, Paragraph C of the said document, it is emphasized on the observance of human rights in general and in order to achieve the mentioned goal. has beenAnother international document that specifically describes the dignity of man and protecting his personality as a duty for everyone and considers its violation to be a violation of the international system, is the Universal Declaration of Human Rights. Article 1 of this declaration is that all human beings considers them to be equal in terms of dignity and rights, and further in the third article, it emphasizes the right to life, freedom and personal security for all human beings.(Amir Arjamand, previous, 23)

In substance8 This declaration also stipulates: "Privacy, family, home and correspondence, honor and dignity of people should not be violated and disturbed." Everyone has the right to be protected against such harassment. "The Covenant of Civil and Political Rights of 1966 also recognizes the right to personal security for all people in paragraph one of article nine, and then in paragraph one of article 17, it considers private life and privacy to be legally protected. In paragraph three of article 19 of the aforementioned declaration, it is established that the exercise of the right to freedom of expression and freedom of expression contained in paragraph 2 of the same article requires certain rights and responsibilities, and therefore certain restrictions may be imposed according to the law on the manner of its application. In addition to these cases, this article considers

respect for the rights and dignity of others as well as maintaining public safety or public health and morals.

Also, the European Convention on Human Rights, which talks about freedom of information in Article 10, before that it talked about protection of privacy in Article 8, or in the same Article 10, it mentioned multiple exceptions, which include national security, public order, Crimes protect the health and hygiene of citizens and public morals.

Other international documents that deal with the importance of privacy include Article 14 of the United Nations Convention on the Rights of Migrant Workers and Article 16 of the United Nations Convention on the Protection of Children. It is formed among the members and has powers in this regard. It has enacted several resolutions in this regard, among which one can refer to the 1995 resolution of the Union Council regarding the protection of the individual in connection with the use of personal data.

This resolution, while emphasizing human dignity and the duty of member states to comply with it, stipulates in Article 1: "Member states must protect the fundamental rights and freedoms of individuals, especially the right to privacy in relation to personal data.. , the Convention of the Council of Europe on the right to privacy approved in 1980 have also generally emphasized the category of the right to privacy, and this is in addition to the domestic regulations of countries that have been established for the right to privacy.(Amir Arjamand, ibid., pp. 25-27)

The second speech: privacy from the point of view of the European Court of Human Rights

The European Court of Human Rights is the judicial pillar of the Council of Europe, which, as a supranational court, is responsible for ensuring compliance with the provisions of the European Convention on

Human Rights by the member states. The right to privacy also It is one of the human rights protected by the European Convention, which is reflected in Article 8 of the Convention. The arguments of the judges in the jurisprudence of the court in cases with this issue have given a unique set of development and explanation of the concept of privacy. From the point of view of the European Court, what makes the importance of this aspect of human rights very important is the role of privacy as the central core of each person's personality for peace and reaching maturity. Family legal issues and dealing with LGBT fears, safe space in cyber space, intellectual property of private photos and any privacy related issues It is one of the issues that are fully developed and considered by the judicial procedure of the court. Although in today's jurisprudence of the European Court of Human Rights, entering issues related to privacy The privacy of individuals in the criminal law is considered a violation of the commitment of member states, this is due to the evolution of European societies that do not tolerate such interference in their public conscience. Of course, it shouldn't be assumed that the court was completely seeking to support the individual in its opinions and was so engrossed in individualism that it ignored the interests of society. Regarding the right to privacy, the court is modern and does not bind itself to the constraints of traditions, from this point of view, the interpretation of the court of the family is in line with the social facts of today's Europe..((Carolyn Doyle and Bagaric, 202, 21

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The second topic: examples of privacy from the point of view of the European Court of Human Rights

First speech: Privacy in cyber space

The first paragraph: virtual space from the court's point of view

Cyber space is not only limited to internet activities and includes all social and communication relationships in which information technology is used, so it also requires its own rights. It has a lot on the real world. Cyber space has stored a lot of information about human needs and as a result of its disruption, it can harm the acquired rights of people.

Governments are obliged to transfer new technology to developing and less developed countries. The right to development in TRIPS obliges countries to promote the transfer of technology to less developed member countries so that they are able to create a stable and appropriate technological base. Human rights documents distinguish between individual and collective rights, and more They are towards individual rights, but in the cyber space, it tends to create global citizens and human clones and requires collective support. Universalism cannot be such a boundary between decisions. In addition to substantive rights, consideration should also be given to the revision of formal rights, or in other words, procedural rights in

the cyber space. The perishable and unstable nature of information in the cyberspace makes the time-consuming principles and formal formalities in the physical space ineffective in this space.

Another issue that should be paid attention to in this space is that the person who is a victim of human rights in the cyber space should refer to which competent authority? Here, we should make a distinction between domestic and international authorities and say that if a person refers to his national court that the country to which the court belongs is a member of an international convention in this regard, the limits of the court's jurisdiction will be defined according to that convention, and otherwise the country itself is competent to handle and since insecurity in the cyber space causes insecurity in all governments, therefore all countries will be competent to handle and citizenship and territory have no meaning anymore and countries can pursue cyber criminals by citing global jurisdiction to pay Article 22 of the Convention on Cybercrimes refers to this type of jurisdiction. People aggrieved by a government action usually go to a national court, where they are more likely to obtain a verdict..It is much easier to use this illegal tool in the cyber space because human rights violations in the cyber space can cause the victimization of not only its own nationals but also the nationals of all the countries connected to the Internet, and therefore the court can easily exercise its personal jurisdiction. verify Perhaps it can be boldly claimed that illegal means become meaningless in the cyber space since the courts of all countries connected to the cyber world can invoke real jurisdiction and consider themselves competent to proceed.(Ansari, Baqir, Privacy Rights, 2006, 11)

First paragraph: examples of privacy in cyber space

We know so farThat Man To Sentence Nature And nature Must has privacy private for self be And From it protection to do At front side People stand up Ratio To protection And compliance privacy private others action do.As mentioned, the violation privacy private At space virtual one From The most importantCurrent issues of societyinternationalIsThat It has many examplesExamples of privacy violations in cyber space from the point of view of the European Court of Human Rights, each of which is often issued in a case.

Second speech:Private housing

The meaning of housing is any place where a person resides and has the right to freely lie down, sleep, eat, study and generally continue his current life without any disturbance or aggression.The employment of the owner of the house to perform a certain job or work inside it will not prevent the implementation of the law. Also, the basement or the upper floor of the shop which is built for the residence of a person and his family will be an example of housing. Special conditions are open to all, not subject to housing. The practical benefit of separating private housing from public places is that entering public places, when they are open and ready for the public, does not require the observance of any formalities, but entering private places without formalities is not possible. Entry permission must be issued either explicitly or implicitly. to be

The European Court of Human Rights in its decisionUnder the title of "damage to personality" with the topic of "damage to private life" he supported the housing of individuals and stated as follows: "Entering or staying in another's house by resorting to fraudulent means, threats or acts of violence (coercion and overpowering) outside of cases which the law prescribes,is condemned. »

In the documents of the court, the right to housing is also mentioned, and in this regard,

the court violated the judgment in which the garden was not justified as part of the immediate and close adjuncts of a citizen's residence, and the defendant who was accused of trespassing on the privacy of another's residence. He was convicted and acquitted. (Gaskin v. the United Kingdom, 7 July 1989, Series A no. 160) To further explain the topic of discussion, referring to the decision of the Court on September 26, 1990 will not be without results, "According to this decision, the unenclosed area is not the concept of "home" in the criminal law. It is also useful to refer to another decision of the Court; Where he says that a car cannot be compared to a house Maneuvering or conducting fraudulent operations to mislead the victim of a crime is one of the actions that may be carried out by the criminal and may be a simple or complex action. Ruling No. 120 dated March 30, 1987, the court considered the use of a surrogate key to illegally enter a residence as a maneuver and punished it. In this regard, without a doubt, the most important element that can be effective in committing the crime of desecration of the home is a place It is that the legal occupier of the house (landlord-tenant) declares his lack of consent and entering or staying in his house is without permission and against his will. It is obvious that if the occupier gives "possession permission" to someone, there will be no crime of desecration. (Ansari, Baqir, Protection From privacy private, previous, 28)

In this regard, someone can definitely give permission to enter or stay and occupy if he is the owner of that right; Therefore, it should be said that the permission of the younger ones or those under care, such as the young girls of a secondary education college, cannot be considered permission for possession due to the lack of permission from the caretaker (principal)..

The third speech: family life:

One of the issues raised in recent years is privacy Regarding family life. So far, different definitions of privacy family Presented, most of them have serious problems. Today, arrogant governments have invaded people's privacy under the pretext of national interests and have considered any seizure permissible for themselves.. Actually Privacy About family life "That part of life a family in which he is free from prosecution and legal punishment, and any decision regarding it, information, entry and supervision is exclusively at his disposal, and it is not allowed for others to interfere in it or access it without his permission.

therefore The right to privacy and family life is one of the human rights supported by the European Convention. The arguments of the judges in the judicial procedure of the court in cases with this issue have given a unique set of development and clarification of the concept of privacy and family life. . From the point of view of the European Court, what makes the importance of this aspect of human rights very important is the role of privacy and family life as the central core of each person's personality for peace and growth.

The issues related to family legal relations and dealing with the fear of LGBT are among the issues that are fully developed and addressed by the judicial procedure of the court. Although in today's jurisprudence of the European Court of Human Rights, including matters related to the extremely private life of individuals in the criminal law is considered a violation of the obligation of member states, this is due to the evolution of European societies that tolerate such interference in their public conscience. they do not.

Of course, it shouldn't be assumed that the court was completely seeking to support the individual in its opinions and was so

engrossed in individualism that it ignored the interests of society. Regarding the right to privacy and family life, the court is a modern court and does not confine itself to the constraints of traditions. From this point of view, the interpretation of the court of the family is in line with the social facts of today's Europe..

Conclusion

Privacy is a concept whose definition depends on environmental conditions. In fact, privacy is a red line for the limits of society's presence in people's personal lives. Therefore, it can be said; Privacy is the desire of individuals to freely decide under what conditions and to what extent they reveal their situation and behavior to others. In general, everyone's privacy is respected. The right to privacy is well established in international law. Following the adoption of the Universal Declaration of Human Rights in 1948 and Article 12, which is directly related to the issue of personal privacy, similar provisions have been included in the International Covenant on Civil and Political Rights and the European Convention on Human Rights and other regional conventions and agreements. The Universal Declaration of Human Rights states in Article 3: Every person has the right to life, liberty and personal security, and Article 12 also states that there should not be arbitrary interference in anyone's private life, family affairs, residence or correspondence, or in the honor and reputation of anyone. be attacked Against such interventions, it is the right of every person to have the protection of the law.

But Since privacy is a dynamic domain, it naturally requires new and extensive rules and mechanisms for practical protection. This right as a concept in which a person's personality, dignity and physical integrity is

located, and in a way a person uses it to "be himself" and strengthen his true feelings, is of interest in democratic societies and the laws of countries try to while ensuring public security, community comfort and freedom of expression, moderate and limit the factors that violate people's privacy and personal.

The right to privacy is considered in Article 8 of the European Convention on Human Rights. This article supports the privacy of individuals: "1- Everyone has the right to have their privacy and family life, home and correspondence respected. 2- No government official should encroach on the use of this right, except in accordance with the law and in the event that this is for the interests of national security, community security, economic well-being of the country, prevention of disorder or criminality, maintaining moral health, or for the protection of rights. And the freedoms of others are necessary in a democratic society. According to the above article, the European Convention on Human Rights considers the privacy of individuals to be immune from encroachment by others and obliges governments to respect this right. The European Court of Human Rights, as one of the mechanisms or mechanisms by which the European Union's approvals are implemented, has considered the term privacy as a broad concept that includes the physical and mental integrity of individuals in several decisions. Especially in the field of information and secrets, it is one of the most important individual rights, because it is related to the dignity and personality of individuals.

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