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***Research paper***

# Public Interest and Privacy: the Right to Privacy in the Coverage of Events by the Mass Media

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**Abstract**

The article deals with the problems related to the balance between private and public interests when covering events by the mass media. One of the most important social tasks is coordinating various interests, reaching a compromise, and ensuring social harmony and partnership. The purpose of the present study consists in analyzing the right to privacy when covering events by the mass media and identifying specifics of private and public interests. The research is based on the observation method that allowed obtaining a specific factual material. Monitoring was carried out according to the developed plan involving the allocation of specific monitoring objects and stages. The study offers the authors' definitions of private and public interests, highlights the main features of public interest, as well as identifies the distinctive features of private and public interests. On the basis of the conducted analysis it is proposed to introduce the Concept of privacy (the right to be left alone), excluding cases where the right to privacy can be violated and where the information related to the privacy of a person can be disseminated without the consent of the person. This proposal is practical in nature and will allow the mass media to specificate the notion of the right to privacy.

***Keywords***: *Balance; Common good; Private interest; Public interest; Right to privacy; State.*

## 1. Introduction

Interests have always been and continue to be one of the leading factors in human activity. It is interests that influence both the creation and functioning of state and public institutions [1]. Public claims of the most socially active segments of society are manifested exactly through the interests. Consolidation of socially significant interests in the law that correspond to the objective interests of society is crucial for achieving social peace in the state, since the protection of interests by means of legal norms that do not correspond to the objective interests of the whole society, leads to a violation of their balance [2]. Consequently, one of the most important tasks of society is coordinating different interests, reaching a compromise, ensuring social harmony and partnership. Present study examines the problem related to the balance between public and private interests when covering events by the mass media, because the right to private space is necessary to protect the human dignity, freedom and autonomy, as well as recognition of the personality value. The condition of personal autonomy consists in the enforcement of the right to privacy "as the ability to control the circumstances of one's own life, the possibility of choice and responsibility for it" [3].

In modern science, various aspects of the essence and the provision of public and private interests attract the close attention of scientists. Thus, Scott L. Cummings [4] devoted his work to a comprehensive analysis of the law concerning public interests in the United States and beyond. Nuraisyah Chua Abdullah [5] researched public interest litigation in alternative dispute resolution. Clare Sullivan and Eric Burger [6] addressed the issues of privacy in the public interest at fighting against cyber threats. Philip M. Napoli [7] in his work made an attempt to define the basic outlines of how the concept of public interests was formed in the field of social networks. Philip O'regan and Sheila Killian [8] considered the problem of the relationship between public interest and public risk management. Marcus Turele [9] wrote about freedom of information and observance of public interests. The problems of the balance between private and public interests were considered by many other scientists. However, the issues of legal risks of the mass media when covering private life of citizens are insufficiently reflected in the studies, so this topic requires an integrated analysis.

## 2. Methods

This work is based on the principle of systematic analysis of issues concerning privacy and public interests in the context of coverage these issues by the mass media.

The present research is based on the observation method that allowed obtaining a specific factual material. Monitoring was carried out according to the developed plan involving the allocation of specific monitoring objects and stages.

The following observation stages can be distinguished:

- defining goals and objectives (what is the monitoring reason and purpose);
- selecting object, subject and situation (what to monitor);
- choosing the observation method, the least affecting the object under study and the most providing the collection of the necessary information (how to monitor);
- choosing methods of registration of the observed object;
- processing and interpreting the information received.

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A methodological basis for the system approach applied in the study is a comprehensive analysis of the problems of dissemination by the mass media of information about citizens' private life.
The systematic nature of the methods is associated with the fact that the conducted research is closely linked with practice, the methods take on a form of tools, which allow cognizing the actual processes and phenomena that define the limits of implementation and restriction of property rights.
The systemic approach in the framework of the present study is supplemented by a functional method, the application of which is due to the need to determine the implementation of various kinds of interactions in the unified system of public power and in the system of private-public interactions.
Importance in the course of the study was given to the scientific validity, consistency, and logical analysis of the problems under consideration. The method of legal analysis was used in the study as well. When considering the legal norms, other specific scientific research methods were applied, which allowed revealing certain regularities and tendencies in development of a balance between private and public interests when covering events by the mass media.

## 3. Results

The issue of the relationship between private and public in the context of law justifiably arouses the interest of both scientists and society for a long time [8]. This is an issue about correlation between interests of the individual and society, as well as priority of private and public interests.
The relationship between private and public in law is the issue of freedom and responsibility of the individual in private relations, taking into account the external influences of public authorities empowered to ensure stability and orderliness of civil law relations in society.
The legalization of the concept of "public interest" in civil law has a long history. Scientists have repeatedly expressed the opinion that the statutory concept of "state and public interests" used in the legislation is inaccurate [10]. Some researchers rightly pointed out that the use of the concept of "public interests" is more justified, since the state does not have its own interest. State interest is characterized by belonging to some social actors (personality, group of persons, and society) [11]. The activities of the state and its bodies express particular interests that become "state interests" only after being reflected in state activity. Indicators of public interest as a legal category are shown in Figure 1.

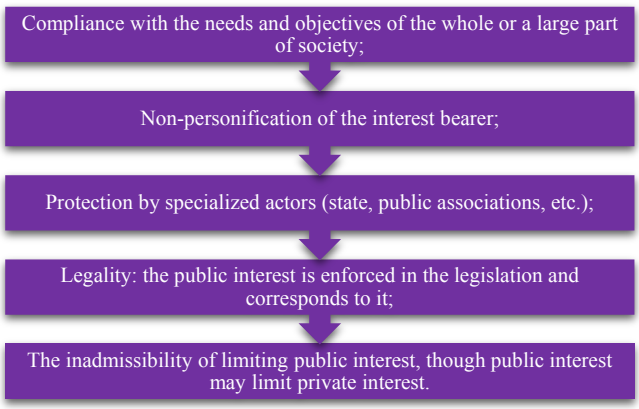



**Fig. 1:** Attributes of public interest

The main criteria for establishing confines in meeting the interests of a particular person are the interests of other persons, including public interests. Consequently, going beyond these confines and contradicting the legally protected interests of other persons should be considered as illegal interest.
The problem of combining private and public interests requires a solution, which consists in the need to determine the optimal version of the confines or frameworks of private law priorities and the inadmissibility of the opposition of public and private interests to each other [12]. There can be no opposition between these interests, because public law was intended to protect the interests of the individual by protecting society at large. When these interests collide, the priority of the public interest can take place only if the interests of the individual are ensured, which is achieved by the legislative establishment of maximum guarantees for citizens excluding the possibility of abusing their rights. The approach to the law of public interest within the scope of the rule of law and the relative passivity of the parties in the process reveals a feature of public interest as a legal category – it is the legitimacy: the right of public interest is enshrined in the law and corresponds to it [13].
Consider common features of private and public interests, which are presented in Figure 2.

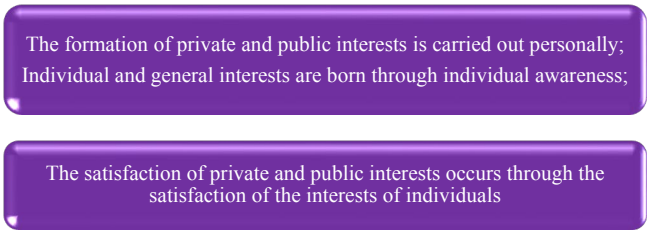



**Fig. 2:** Features of private and public interests

Based on the above, the notion of "private (law-governed) interest" may contain interests of subjects of law, which are not based on overall attention due to their insignificance, or rather, due to the lack of significance for all members of society, and its individual public institutions. Private interest is based on the recognition of the freedom of individual actors to perform certain actions, to express an attitude to a particular subject, process, or phenomenon. At that, if the behavior in any situation is hardwired in the instructions having form of legal norms, then at the same time, the opportunity is given to define character of an act autonomously by own will. The legal meaning of such interest of individual subjects is expressed, in addition to the recognition of the legal efficacy of such decisions with respect to a private interest, also in ensuring them by the state in the form of assured protection of legitimate private interests. In this case, the creative potential of the right is expressed in relation to the interests of the personality and society [6].
In this regard, the question arises whether the public interest is dominant, because it strengthens the legal status of individuals. Considering the reverse effect of law on the interests, it is also logical to assume that private interests are in line with the public interests, which have already received a legal confirmation [4]. Finally, protecting the interests of individuals, the right protects the interests of the entire society, which consists of these individuals.
Thus, it is possible to draw a conclusion about the correlation between public and private interests: the balance of interest is based on parity, because the private interest cannot be realized outside the public order, while the public interest loses its meaning, if it is not directly or indirectly aimed at ensuring the implementation of the private interest.
In addition to the general features one can highlight features distinguishing public interest from private interest, which are presented in Figure 3:

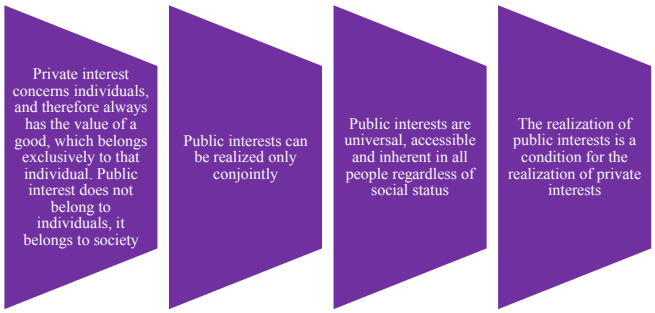



**Fig. 3:** Distinctive features of private and public interests

When distinguishing between private and public interests, it should be noted that private interest serves the purpose of satisfying the needs of the individual, while public interest serves the purpose of ensuring the existence of society at large [14]. In other words, private interest is an interest protected by law, and inherent to citizens and legal entities, whereas public interest is the interest of the whole society, is recognized by the state and secured by the law. In this regard, it is necessary to note the following points.

First, the boundary between the spheres of private and public interest is moving and determined by the legislator. The definition of this boundary, along with the formation of interests through legal regulation, is the issue of a combination (ensuring balance) of public and private interests.

Secondly, both private and public interests are heterogeneous. Consequently, there may be contradictions not only between private and public interests, but also between individual interests.

Thirdly, in view of the need to establish the confines of satisfaction of both private and public interests, the rules establishing such confines in favor of public interests and private interests, respectively, may be contained in various branches of law.

## 4. Discussion

The issue of the dominance of public or private interests is debatable, especially given that the public interest as an interest of society aims at ensuring the satisfaction of private interests [15]. The European Court of Human Rights has repeatedly drawn attention to the fact that the balance between private and public interest is expressed in the legal protection of a person from arbitrary interference by the state. Thus, in order to ensure the necessary organization of arising public legal relations, it is necessary to maintain a balance between private and public interests.

In this study we consider the violation of the rights of citizens to privacy when covering events by the mass media. Interest in a particular event or situation is usually caused by the mass media reports about particular citizens, their problems and facts of private life. Interviews, journalistic investigations, secular or criminal chronicles are inevitably based on personification. However, there are often cases where the heroes of the journalistic story file a lawsuit against the mass media and journalists, demanding compensation for the dissemination of information about their privacy without their consent [7].

The concept of "private life" is not limited to intimate details. This concept is interpreted very widely: it is an area of human activity, which refers to an individual, concerns only him and is not subject to control by society and the state, if it is not illegitimate. That is, any information relating to a particular person, his relations in family, at home and at work can be regarded as information about private life [16].

Such information includes personal data about a person (for example, his surname, name, patronymic, date of birth, address of residence, national and religious affiliation, philosophical beliefs, etc.), his image, information about the origin, personal and family life, state of health, etc.

According to the legislation of Western European countries, the collection, storage, use and dissemination of information about the private life of a citizen without his consent is not allowed. This is the essence of the concept of privacy ("the right to be left alone"): the right to privacy means the ability of an individual to control information about himself, as well as to prevent the disclosure of personal information [2017]. The concept of privacy formed in the United States has had a great influence on the formation of the modern system of human rights and freedoms. On December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Article 12 of the Declaration stated that no one should be subjected to arbitrary interference with his personal and family life, arbitrary attacks on the inviolability of the home, the secret of his correspondence or on his honor and reputation; everyone should have the right to the protection of the law against such interference and attacks. In 1950, a similar provision was made in article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which read: "Everyone has the right to respect for his of her private and family life, home and correspondence". With these documents, the right to inviolability of private life was recognized as inalienable right of each person [5].

This rule is fully applicable to the mass media: the dissemination of information about any person in the mass media requires the consent of that person. At that, consent may be given in writing or by any other means, such as a video camera [18]. However, it is not always possible to obtain the consent of the hero of the journalistic material on the dissemination of information about him.

Analyzing judicial practice and taking into account the opinions of leading experts [19] the conclusion can be made about exceptions from concept of privacy, because in some cases information about a person's private life may be disseminated without the consent of that person. This includes the following cases:

- the information is disseminated for the convenience of the state, social and other public interests (this includes cases where the hero of the plot is a «public figure»);
- the information has been made publicly available earlier;
- the information has been earlier disclosed by the person himself or at his will.

Information about person's private life may be disseminated by journalists without his consent if the right of the society to receive such information ("public interest") prevails over the right of a person to keep information about himself confidential [20]. To illustrate how this balance is determined practically and in what cases the dissemination of information about the private life of a citizen in the mass media is possible we give a few excerpts from court decisions.

The Grand Chamber of the European Court of Human Rights, in its judgment in the case of "Couderc and the Company "Hachette Filipacchi Associés" against France" of November 10, 2015 [21], in response to a question about what should be considered a "public interest", has noted: "Public interest refers to matters that concern the society to the extent that the society may legitimately have interest in them, that attract its attention, or that care it to a large extent... especially if they affect the welfare of citizens or the life of society. This also applies to matters that may give rise to significant controversy over an important social issue... or concern a problem in which the society has an interest."

At the same time, the Court stressed that "public interest" should be distinguished from ordinary curiosity: "Public interest cannot be reduced to the public's need for information about the personal lives of others or the reader's need for sensational news. Articles focused solely on the satisfaction of the curiosity of a particular readership regarding the details of personal life of a person, no matter how famous he may be, cannot be considered a contribution to a debate of general interest".

In the latter case, the right of the society to get information does not prevail over the right of the individual to privacy. Consequently, if the disclosure of certain details of private life is only due to the satisfaction of curiosity of a certain part of the audience, the dissemination of such information without the consent of the person will be considered illegal. When deciding on what interest – public or private – should receive more protection, in each particu-

lar case, the European Court of Human Rights in its judgment in the case of "The Princess of Hanover against Germany", stated: "The decisive factor in balancing the protection of privacy and freedom of expression is that the published articles or photos bring to the discussion that is of general interest".

Consider in more detail the concept of "public figure", and how to disseminate information about his private life. According to the resolution of the Parliamentary Assembly of the Council of Europe No. 1165, a public figure is a person, who holds a public position and (or) uses public resources; in a broad sense, these are persons, who play a certain role in public life in the fields of politics, economy, art, social sphere, sports, and other fields.

It should also be noted that the category of "public persons" itself is not homogeneous. The European Court of Human Rights has formulated an approach according to which the private life of politicians has the greatest openness for society; civil servants have lesser openness; "stars" of sports and show business, well-known businessmen, as well as "relatively public" figures (persons occupying a certain social status, but not performing any publicly significant functions) have even lesser extent of openness [22]. This is due to the fact that it is the coverage of the private life of politicians and civil servants that can most contribute to the public debate, while the stories about the life of the "stars" are more often aimed at satisfying curiosity rather than maintaining the discussion on socially significant issues. In this regard their private life is protected from journalists to a greater extent [9].

Courts need to distinguish among reporting concerning facts (even very controversial) that can have positive impact on public debate about, for example, the performance of functions by officials and public figures, as distinct from details of a private life of a person, who is not engaged in any public activity. While in the former case the mass media have a public duty to inform citizens about issues of public interest, in the latter case they do not perform such a role.

## 5. Conclusion

The conducted analysis allows drawing the following conclusions:

1. The balance between public and private interests is based on parity, because the private interest cannot be realized outside the public law and order, while the public interest loses its meaning if it is not directly or indirectly aimed at ensuring the realization of private interest. When distinguishing between private and public interests, it should be noted that private interest serves the purpose of satisfying the needs of the individual, while public interest serves the purpose of ensuring the existence of society at large. Private interest is an interest protected by law, and inherent to citizens and legal entities, whereas public interest is the interest of the whole society, is recognized by the state and secured by the law.

2. Indicators of public interest as a legal category are: compliance with the needs and objectives of the whole or a large part of society; non-personification of the interest bearer: it can be a citizen, a group of citizens, society in general, or the state; protection by specialized actors (state, public associations, etc.); legality: the public interest is enforced in the legislation and corresponds to it; the inadmissibility of limiting public interest, though public interest may limit private interest.

3. The common feature of private and public interests is, firstly, the fact that their formation is carried out on the personal basis. Interests that make up both individual and common good are born through individual awareness. Secondly, their satisfaction occurs through the satisfaction of the interests of individuals.

4. Distinctive features of private and public interests are the following.

- Private interest concerns individuals, and therefore always has the value of the benefit belonging exclusively to that individual. The public interest belongs not to individuals, but to their ideal unity or to society at large.
- Public interests can be realized only conjointly. Often these are needs that cannot be objectively satisfied on an individual basis.
- Public interests are of the nature common to humanity, accessible and inherent to all people, regardless of social status. Private interests are more individualized, they bear the imprint of personal preferences, tastes, habits, etc.
- Realization of public interests is a condition for realization of private interests.

5. It is necessary to consolidate into the Concept of privacy (right to be left alone) exceptional cases, where the right to privacy can be violated and the information about private life of a person can be disseminated without the consent of that person:

a) in the best interests of the state, public and other interests of the society;

b) in cases where the hero of the plot is a public figure;

c) in cases where the information has been made publicly available earlier or was disclosed by the person himself or at his will.

In the following studies it is necessary to pay special attention to the fact that between private and public interests there are various internal interrelations which characterize them from different perspectives and show not only and not so much their contrariety, but the common essence, since these phenomena are elements of both private-law and public-law regulation.

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