TALLINN UNIVERSITY OF TECHNOLOGY
School of Business and Governance
Department of Law

Moona Pekkanen

THE RELATIONSHIP BETWEEN THE RIGHT TO PRIVACY AND PUBLIC FIGURE DOCTRINE

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Supervisor: Evhen Tsybulenko, Senior lecturer, Ph.D

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Moona Pekkanen  18.12.2021

Student code: 183937HAJB
Student e-mail address: pekkanenmoona@gmail.com

Supervisor: Evhen Tsybulenko, Senior lecturer, Ph.D:
The paper conforms to requirements in force

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……
(name, signature, date)

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ABSTRACT

We all have the right to privacy based on Article 8 ECHR, but we have the right to freedom of expression as well secured by Article 10 ECHR. When the other one is being protected, the other one is correspondingly restricted. The number of attempts to define privacy is large and growing, none of which has succeeded yet to become universally accepted. At the same time, the European Court of Human Rights has in its case law adapted the public figure doctrine, which is also expanding from its original meaning and purpose. The doctrine also has issues regarding its justification and how to competently define who is a public figure.

The thesis examines how the Finnish case law aligns with the privacy theories, aims to clarify the significance of the statuses of the parties and the connection between the lack of definition of privacy and the public figure doctrine.

The lack of common and especially agreed definition of privacy forces the Court to approach privacy cases one by one and to use considerably consideration in each case and the criteria created in the Von Hannover v. Germany No2 is in notable centre position. The Court tends to define only if the privacy interests in question are in the core area of privacy which after the status of the party, usually plaintiff´s status, gains significant weight in the ruling, followed by examination of the past conduct of his or hers.

Keywords: Public Figure Doctrine, Article 8 ECHR, Right to Privacy, Public Figure, Core Area of Privacy

INTRODUCTION

We know that we have the right to privacy secured by the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights, Article 8[1] and by Article 7 of the Charter of Fundamental Rights of the European Union.[2] We may demand someone to leave our diary containing our deepest and darkest secrets, alone, or tell someone not to enter our bedroom, ask someone to hold a towel up at beach so we may have coverage while changing, ask them not to open our fridge or we cover our phone when sending a text. When asked why we ask for these things, the most common answer is: "it is private".

The mass media, the rise of internet and social media have brought enormous amount of information to our reach from scientific articles to celebrity gossips. People also themselves create content to different platforms of social media, by sharing their personal lives, videos and photos of their days and events, their morning coffee, news of becoming a parent or their mood. It´s easily forgotten, that when something has been uploaded online or has been published in the media, it will be available forever.

The thesis´ topic was chosen, since the sharing information online and via social media is increasing and part of which is private information.[3] Thus, could be presumed, that number of privacy cases will also increase in the future and to prepare for this, clarifying the fundamental questions is needed.

Privacy is socially created need, according to Barrington Moore.[4] When we demand privacy to ourselves, do we all mean the same thing, isn´t certain. A Finn may consider having privacy very differently compared to an Italian. Also, our positions within society differ tremendously, which

[1] Council of Europe (CoE) the Convention for the Protection of Human Rights and Fundamental Freedoms, 4.11.1950, Rome.
[2] Charter of Fundamental Rights of the European Union, 2000/C 364/1
[3] Tilastokeskus (2018) *Suomalaisten internetin käyttö 2018 – viestintää, asiointia, tiedonhakua ja medioiden seuraamista* Retrieved from: https://www.stat.fi/til/sutivi/2018/sutivi_2018_2018-12-04_kat_001_fi.html , 1 December 2021
[4] Barrington M. Jr. (1984) *Privacy: Studies in Social and Cultural History*, New York, USA: Routledge

is observed in the Finnish Criminal Code, Chapter 24, Article 8,[5] but not in the above-mentioned articles. The position of the President is fundamentally different from a stay-at-home-mother. Therefore, the research problem is whether the differentiation of people based on their status or position in society is justified according to the law when considering the right to privacy and the right to enjoy its protection. The research aims to answer to questions of how to define "privacy" and when considering this privacy definition, does the status of a person play a significant part in the Court´s rulings in Finnish privacy case law. However, the aim isn´t to go in-depth to the privacy theories. The focus will be on their practicality and criticism targeted to them on their part. The hypothesis to be tested in this thesis is as follows: we lack a mutual agreement of defining privacy, which is strongly connected to the usage of the public figure doctrine.

Methods used to conduct the research are qualitative measures, since the research problem is theoretical. Primary sources are EU and national legislation and case law, relevant literature and researches. The preparatory works of the Finnish Criminal Code have been used to understand the difference between the outdated and the effective legislation on privacy. Other sources are documentaries, guidelines, and authoritative websites.

The thesis outlines the most well-known privacy theories formulated by different scholars; Edward Bloustein,[6] Judith Thomson[7] and many more. The weaknesses which the theories have been criticised for shall be regarded among others by Daniel Solove.[8] Following with the section of public figure doctrine including discussions considering its definition, relevance, and justification. Then we shall investigate the Finnish privacy case law and how the Court has evaluated the statuses of the parties. In the fourth chapter will be analysed and discussed the findings and possible future impacts of them. Lastly, the thesis presents the conclusion of the research and the reference list.

[5] Suomen Rikoslaki 19.12.1889/39
[6] Bloustein, E. J. (1964). Privacy as an Aspect Of Human Dignity: An Answer to Dean Prosser. *New York University Law Review*, 962-1007.
[7] Thomson, J. J. (1975). The Right to Privacy. *Philosophy & Public Affairs*, *4*(4), 295–314.
[8] Solove, D. J. (2002) Conceptualizing privacy. *California Law Review, 90*(4), 1087-1158

1. THE RIGHT TO PRIVACY

We all have right to privacy, which is regulated in the Finnish Constitution, in Article 10 Protection to Private Life[9] and the criminal code of Finland, Chapter 24, Section 8, Dissemination of information violating personal privacy.[10] By this Article 8, distribution of information, an insinuation or picture via mass media or otherwise making available to many persons, is legislated punishable by fine. The act must be conductive to causing the subject person damage, suffering or subject the person to contempt to be punishable. According to the Article, the act isn´t punishable, if the subject person is in politics, business, public office, public position or other comparable position and the act may effect on evaluating one´s activities in the position in question and dissemination is necessary for contributing to a debate of general interest of the public.[11] The scope of protection of private life has expanded since 1970s.[12]

Finland, as a member of European Union, the right to respect for private life and family life, is also secured by the Article 8 on the European Convention on Human Rights (ECHR).[13] Section one identifies the four interests of the Article; private life, family life, home, and correspondence. In section two conditions for interfering the right are laid out. At least one of the following must contribute to the case to justify the interference: the interests of national security, public safety or the economic wellbeing of the country, prevention of disorder or crime, protection of health or morals, protections of the rights and freedoms of others. In addition to these two before mentioned conditions, the limitations must be “in accordance with the law” or “prescribed by law” and “necessary in a democratic society”.[14] Often this means balancing the rights of the third party involved in the case. For example, the Right to Freedom of Expression, secured by the Article 10 of the ECHR.[15] Often these two rights of Article 8 and Article 10 are competing against one another, since there is no predefined hierarchy among them. The task is to find a balance between these two with respect for both rights. As an imaginary and simplified example: I´ve told you in confidence that I have cancer. You sell the information for a magazine, which publishes an article. I get upset and I file a lawsuit against you for selling my private information for publication. So that the Court can set a ruling, it must balance my right to privacy and your

[9] Suomen Perustuslaki 11.6.1999/731
[10] Suomen Rikoslaki 19.12.1889/39
[11] *Ibid.*
[12] Esityöt HE 184/1999
[13] CoE *supra nota 5*
[14] *Ibis.*
[15] *Ibis.*

right to freedom of expression. When privacy is being protected, we protect against disruptions to certain practices.[16] Privacy is used as a general term referring to the practices we wish to protect and to the protection against disruptions to these practices.[17]

1.1. Privacy as "Right to be Left Alone", "Limited Access to Self", "Secrecy" and "Control over Personal Information"

Privacy is often proposed to be "the right to be left alone" as proposed by Samuel Warren and Louis Brandeis in 1890s in the USA.[18] This definition can be considered too broad.[19] Physically you may be left alone, but someone may still listen to your phone calls from a distance. Most people would consider this a violation of their privacy. But if you hit someone with a rock, you certainly have not left him alone, which would mean that you have violated his privacy if we follow the definition "right to be left alone". Surely, we are violating some right of his, but is the right violated the right to privacy?[20]

Another suggestion to be the definition of privacy is "limited access to the self". Many legal theorists and scholars have agreed with this definition. Important is to notice, that this definition is closely related to the "right to be left alone" but could be said to be more sophisticated version of it. Under this conceptualization, is two main formulations; some consider limited access as a choice, others as a limited access as a state of existence.[21] David O´Brien argues on behalf of the latter after bringing attention for the distinction. He claims that "privacy may be understood as fundamentally denoting an existential condition of limited access to an individual´s life experiences and engagements"[22] continuing, that privacy may be accidental, compulsory, or involuntary even. Meaning, that privacy isn´t identical with control over access to oneself.[23] Two main issues with O´Brien´s view is according to Solove: lacks inclusion of an approach towards understanding the quiddity of private sphere and ignores individuals own possibilities of choosing to reveal or not to reveal aspects of oneself to others. Giving an example might clarify this the best: if we follow O´Brien´s conception, then saying that Matti who lives in the middle

[16] Solove, *supra nota* 6
[17] *Ibid.*
[18] Warren S. D. and Brandeis L. D. (1980), *the Right to Privacy*, Harvard Law Review, 193
[19] Solove, *supra nota* 6
[20] Thomson, *supra nota* 6
[21] Solove, *supra nota* 6
[22] O´Brien D. M. (1979) *Privacy, Law and Public Policy,* New York USA: Praeger, p.16
[23] *Ibid.* p. 15

of nowhere without human contact, has complete privacy. When better way to describe the state of Matti is isolation. Sociologist Barrington Moore Jr. has stated "the need for privacy is a socially created need. Without society there would be no need for privacy",[24] meaning that to have a need for privacy and not isolation, one needs a relationship with the society or another person. Cohen also states that „The ability to have, maintain and manage privacy depends heavily on the attributes of one´s social, material and informational environment".[25] To constitute a violation of privacy, the limited-access theory does not provide us information of the degree of access when the violation has taken place.[26] Solove propounds an idea, that limited-access theorists could present privacy as a continuum, the other end being the total access to the self and the other end of the continuum being no access to the self at all. Difficulty with this arises when the borders should be drawn. What degree of access is on the "allowed" side of the border and what degree of access is too much and crosses the border? Solove concludes that O´Brien´s conceptualization of privacy as limited access is still too broad and vague.[27]

Third suggestion for the definition of privacy is "secrecy". Secrecy conception is closely related to the limited-access, and it could be a subset of it, due to it being much narrower conception. Secrecy involves only the concealment of personal facts from others. US Judge Richard Posner defines privacy as an individual´s "right to conceal discreditable facts about oneself"[28] Posner argues that the value of protecting privacy for people, is protecting oneself from others using information in a harmful way against themselves. The issue if this conceptualization is followed, that once a piece of information has been exposed to the public, it losses its nature as "private". As Solove notifies, privacy is thus viewed as coextensive with the total secrecy.[29] Question about group privacy arises, which the secrecy-theory fails to recognize. Philosopher Judith DeCew inculcates, that secret information may not always be private and private information may not be secret,[30] for example operation plan of Karhu-group[31] is secret but not private and the earned income, investment income and amount of paid taxes, is private but not secret

[24] Moore *supra nota* 5
[25] Cohen, J. E. (2013). What Privacy is For. *Harvard Law Review,* 126(7), 1904-1933. p. 1927
[26] Solove, *supra nota* 6
[27] *Ibid.*
[28] Posner R.V. (1973) *Economic Analysis of Law* (5th ed.) New York, USA: Wolters Kluwer Law & Business
[29] Solove, *supra nota* 6
[30] DeCew J. W. (1997) *In Pursuit of Privacy: Law, Ethics, and the Rise of Technology,* New York USA, Cornell University Press, p. 48
[31] Special force of Finnish police

information in Finland.[32] Once again, privacy being defined as secrecy is found to be too narrow.[33]

"Control over personal information" is the most predominant theory for privacy, it can be viewed as a subset for the limited-access theory. Alan Westin has stated: "privacy is the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others".[34] Alan Miller has joined Westin with a similar theory on privacy.[35] This control theory focuses on information of a person, which is also the pitfall of the theory. It excludes the aspects of privacy, which are not informational. Appropriate example of an aspect which falls out are the rights considering one´s body, reproduction, or other decisional freedom from the realm of privacy. DeCew states, that privacy is irreducible to personal information.[36] She continues that one´s privacy may be invaded also by forcing someone to listen your yodeling so that one cannot work. Other question which misses an answer, is how to define control over information. Often "control" is defined as a form of ownership, making the conception totter in many cases. To conclude theory control over personal information, it can be either too narrow, too vague, or too broad.[37]

1.2. Privacy as Personhood

Fifth attempt to create a competent theory for privacy, is "personhood". This theory does not adequately define what "personhood" means, leaving the theory vague and broad.[38] This theory differs from the ones discussed earlier but is most often used in conjunction with them, explaining why privacy is important. Main difference is that personhood-theory focuses on the normative end of privacy, specifically the protection of the integrity of the personality.[39] There are attempts to define "personhood" which tend to fail, such as substituting personhood as "selfhood", others trying to define it as "a type of autonomy".[40] Philosopher Stanley Benn states,

[32] Laki verotustietojen julkisuudesta ja salassapidosta 30.12.1999/1346. Above mentioned are available for people in Finland in accordance with the law.
[33] Solove, *supra nota* 6
[34] Westin A. F, (1967) *Privacy and Freedom* Washington and Lee Law Review refrensed in Solove (Solove, D. J. (2002) Conceptualizing Privacy, California Law Review)
[35] Miller, A. R., (1972), The Assault on Privacy -Computers, Data Banks, and Dossiers: Signet
[36] DeCew *Supra nota* 10, p. 2
[37] O´Brien *supra nota* 9, p.13 and Solove, *supra nota* 6
[38] Solove, *supra nota* 6
[39] *Ibid.*
[40] *Ibid.*

that privacy is about respect for personhood, with personhood defined in terms of the individual´s capacity to choose who observes them.[41] Meaning that even watching someone, would restrict the range of choices of the person observed and so on restrict their freedom. Edward Bloustein speaks on behalf of view of privacy protecting individuality. Privacy as a concept protects against activity which demeans individuality, affronts personal dignity, or otherwise assaults human personality.[42] Ruth Gavison argues against Bloustein´s proposal by stating that offending dignity and personality does not always mean violating privacy.[43] She elaborates by giving an example: having to sell one´s body or beg on the street to survive are serious insults to one´s dignity, but these actions do not seem to involve loss of privacy.[44] Jeff Rubenfeld propounds criticism for the before mentioned theory of personhood as well.[45] He creates a conception of his own of personhood that focuses on pervasiveness and longevity as the defining factors. He defines right to privacy alternatively as "the fundamental freedom not to have one´s life too totally determined by a progressively more normalizing state".[46] Interestingly, he states that right to privacy should be protected only against the state from taking over, occupying our lives, or from exercising its power over the totality of our lives, "the anti-totalitarian right to privacy … prevents the state from imposing on individuals a defined identity".[47]

1.3. Privacy as Intimacy

The next theory considering privacy which we shall address, is the theory of "intimacy" as privacy. This theory understands privacy as a form of intimacy which is crucial for human relationships as well as individual self-creation.[48] "Intimate relationships simply could not exist if we did not continue to insist on privacy for them" claims political scientist Robert Gerstein.[49] The theory locates the value of privacy in the development of personal relationships and considers privacy to consists of some form of limited access or control. By focusing on this value, the intimacy-theory attempts to define the aspects of life which we should be able to

[41] Benn S. I. (1971) Privac, Freedom, and Respect for Persons. J. R. Pennock, J. W. Chapman (Ed.) *Nomos 13* (1-26). New York USA: Atherton Press. p. 26
[42] Bloustein, *supra nota* 6
[43] Gavison R. (1980). Privacy and the Limits of Law. *The Yale Law Journal,* 89 (3), 421-471.
[44] *Ibid.*
[45] Rubenfeld J. (1989) The Righ to Privacy. *Harvard Law Review,*102 (4), 737-807, p. 737
[46] *Ibid.*p. 784
[47] *Ibid.* p. 794
[48] Solove, *supra nota* 6
[49] Gerstein R. S. (1978) Intimacy and Privacy. *Ethics,* 89 (1), 76-81. p 76

restrict access to or respectively what kind of information we should be able to control or keep to ourselves in secret. Inness recognizes the need to define "intimacy" and gathers two ways to do so. First option is to look at behavior, second is to look at motivations. She rejects the first option since intimacy "is not static across time or culture" and "intimacy stems from something prior to behavior".[50] Thus, Inness prefers the latter option, since according to her, intimate matters or actions draw "their value and meaning from the agent´s love, care, or liking", which also defines the scope of intimacy.[51] Let´s differentiate "intimacy" and "intimate information". James Rachels defines intimate information as information, what an individual wants to reveal only to a few other people.[52] Philosopher Jeff Reiman presents critique to this definition, noting that it "overlooks the fact, that what constitutes intimacy is not merely the sharing of otherwise withheld information, but *the context of caring* which makes the sharing of personal information significant" (emphasis added)[53] The descriptive example Reiman gives is the following: Matti sees a psychologist and shares personal information with him but hesitates or isn´t willing to share the same information with his lover or best friend. This barely means, that Matti has intimate relationship with his psychologist.[54] What this example is missing, "is the particular kind of caring that makes a relationship not just personal but intimate".[55] On the other hand, focusing solely on interpersonal relationships and the special feelings engendered by them, makes this theory too narrow. DeCew states, that information considering our financials, is private, yet the relationship with the bank does not include interpersonal-like emotions like trust, love, and intimacy.[56] Continuing from this, can be concluded that privacy´s value doesn´t lie exclusively in the development of intimate human relationships and this theory omits the dimensions of life which are devoted to the self alone, for example Matti´s relation with the church. To conclude, intimacy-theories can either be too broad if they fail to properly define "intimacy" and especially the scope of it or too narrow since they omit everything that does not include loving and caring relationships.[57]

[50] Inness J. (1992) *Privacy, Intimacy, and Isolation,*(1st ed.) USA: Oxford University Press. p. 76
[51] *Ibid.* p. 78
[52] Rachels, J., (1975) Why Privacy is Important. *Philosophy and Public Affairs,* 4(4),323-333
[53] Reiman, J. H. (1976) Privacy, Intimacy, and Personhood. *Philosophy & Public Affairs,* 6 (1), 26-44.
[54] *Ibid.* p. 33
[55] *Ibid.*
[56] DeCew, *supra nota* 10, p. 58
[57] Solove, *supra nota* 6

1.4. Privacy as Cluster of Rights

The last theory considering privacy we shall discuss, is presented by Judith Thomson. Thomson approaches theorizing and defining privacy from a practical point of view.[58] She considers the right to privacy to be a cluster of rights instead of being one clearly separable right, like right to life in Article 2 ECRH.[59] According to her, privacy is not a distinct cluster of rights, but it itself intersects with the cluster of rights which the right over the person consists in and with the cluster of rights which owning property consists of.[60] A group of un-grand rights, such as I have a right that someone shall not dye my hair green while I sleep, or right that certain parts of my body shall not be looked at, I may cover my face or hair if I want to. Such rights are grouped together under one heading, the right over the person.[61] An example given in the article is demonstrative: if Matti is being tortured, because the torturer wants to learn how to make a cake, then the right not to be harmed is violated, not the right to privacy. But if Matti is being tortured because the torturer wants to know how Matti makes his famous cake, then on top of the right not to be harmed or hurt, the right to privacy is being violated. The right not to be tortured to get personal information belongs to these before mentioned clusters of rights, right over person and property rights -clusters.[62] The main idea in Thomson´s theory, is that my body is mine and I have the same rights with respect to it that I have with respect to my other possessions.[63] James Rachels presents critique to Thomson´s theory.[64] First, Rachels wants to make a distinction between the interests we have when someone looks at our car compared to a situation where someone is looking at our bodies since for most of us physical intimacy is a part of very special sort of personal relationship.[65] As an example, Rachels also notes that exposing our knee may not count as physical intimacy but exposing a breast does. Must be noted, as Rachels does, that the details are to some extent a matter of social convention, imagine a Victorian woman for whom an exposed knee would be a sign of intimacy when compared to today´s woman who may walk around in shorts without a second thought. In Thomson´s article she discusses of an example, where she considers that right to privacy has not been violated. In the example, someone has heard “very personal gossip” about you, without violating any rights of yours and they tell for a

[58] Thomson, *supra nota* 6
[59] CoE *supra nota 5*
[60] Thomson, *supra nota* 6
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid.*
[64] Rachels, *supra nota* 13
[65] *Ibid.*

third person about the gossip.[66] But the question which arises, is that do we think that no privacy has been violated when one tells gossip forward even if the one has heard it without violating any right of the subject of the gossip? Rachels thinks this is debatable and gives the following example to support his critique: Matti has recently divorced due to becoming imponent shortly after his wedding. Matti has shared his troubles with his closest friend but wants the information to stay between them to avoid humiliation and it's Matti´s business only. But a gossip has obtained the information by innocently overhearing the conversation between Matti and his friend without his own fault. Now the gossip is spreading the information around.[67] Rachels considers that the gossip is violating Matti´s right to privacy by spreading it. Thomson´s theory fails in this case, since the right violated, is not also a property right or a right over the person.[68]

[66] Thomson, *supra nota* 6
[67] Rachels, *supra nota* 13
[68] *Ibid.*

2. PUBLIC FIGURE DOCTRINE

The origins of the public figure doctrine can be traced to Lingens v Austria -case in 1986 in the European Court of Human Rights. In Lingens v Austria, the doctrine was a part of a move to protect the press from elected officials from drowning them with defamation law.[69] Ever since the Lingens, the Court of Strasbourg has recognised reputation and privacy both to be protected by the Article 8 ECHR. Before going deeper to public figure doctrine, we need to note that to find a violation of right to privacy, the key test to find interference is the test of reasonable expectation of privacy. In situations, where two Convention rights are competing against one another, the goal is to find a fare balance between them. This obliges identification and correct assessment of all the relevant factors, including the status of the applicant, accordingly with the public figure doctrine, where applicable.[70]
The European Court of Human Rights states the following:

> "a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures"[71]

Considering the doctrine itself, it has multiple issues. The most apparent one, is the difficulty to determine who is a public figure and what are the terms to fulfil for someone to fall into this category. Secondly, it seems that within the public figure category, is subcategories. And lastly instead of certainty, there seems to be confusion when the "public figure" status is relevant.[72]

2.1. Defining Public Figure

The term "public figure" should be clearly defined to determine, who´s entitled to protection of one´s privacy and who does not enjoy the protection. Originally, the public figure concept was

[69] Lingens v. Austria, 9815/82, ECHR 1986
[70] Doherty, M. (2007), Politicians as a species of "Public Figure" and the Righ to Privacy. *Humanitas Journal of Eurropean Studies*. 1(1). p.35-56
[71] Von Hannover v Germany (No.2), 40660/08, 6064/08, ECHR 2012
[72] Hughens, K. (2019), The Public Figure Doctrine and the Right Privacy. *Cambridge Law Journal.* 78(1). p. 70-99

limited only to persons who exercised official functions,[73] such as politicians. After this the "public figure" status has begun to include far more than just elected officials, doctrine has extended to celebrities such as actors and musicians[74], businessmen[75], journalists and lawyers,[76] well-known academics,[77] including other persons, who have a "position in society"[78], have "entered the public scene",[79] or are " well known to the public"[80] causing the doctrine to become difficult to predict.[81]

Interesting is the Strasbourg Court´s stance towards the children and spouses of public figure´s. Although the courts have held that they are not necessarily public figures themselves, in other cases, it has been suggested that those who have romantic relationships with public figures, such as powerful businessmen or politicians, may not be purely private persons anymore.[82]

2.2. Relevance of Status

The third issue addressed, is the question of when the status may come into play.[83] Conceptually, this may happen in a human rights framework in two stages, of which the Strasbourg case law seems to suggest only the latter; determining the *scope* of the right to privacy and determining the *weight* accorded to the two competing rights, for example Article 8 ECHR right to privacy and Article 10 ECHR freedom of expression. The Strasbourg Court has stated the following: "public figures are entitled to the enjoyment of the guarantees set out in Article 8 of the Convention on the same basis as every other person". But the Court also asserts that it is only in certain circumstances that a public figure can rely on a legitimate expectation of protection of and respect for his or her private life[84] and that the "status as an ordinary person enlarges the zone of interaction which may fall within the scope of private life".[85] These statements invoke an image, that the status has effect on the breath of the right and thus status bites to determine the parameter of those rights. On the other hand, status may be relevant to the weight accorded to the

[73] Von Hannover v. Germany, 59320/00, ECHR 2005
[74] Axel Springer v. Germany, 39954/08, ECHR 2012
[75] Verlagsgruppe News gmbh v. Austria (No.2), 10520/02, ECHR 2007
[76] Zybertowicz v. Poland, 59138/10, ECHR 2017
[77] Hasan Yazici v. Turkey, 40877/07, ECHR 2014
[78] Verlagsgruppe News gmbh v. Austria (No.2), 10520/02, ECHR 2007
[79] Flinkkilä and Others v Finland, 25576/04, ECHR 2010
[80] Von Hannover v Germany (No.2), 40660/08, 6064/08, ECHR 2012
[81] Hughens *supra nota* 16
[82] Flinkkilä and Others v Finland, 25576/04, ECHR 2010
[83] Hughens *supra nota* 16
[84] Craxi v. Italy (No.2), 34896/97, ECHR 2003
[85] Ageyevy v. Russia, 7075/10, ECHR 2013

rights of Articles 8 and 10 ECHR. Generally, the two should be balanced using the criteria from the Strasbourg Court´s case Von Hannover (No.2) v Germany:

1. Does the publication constitute a contribution to a debate of general interest?
2. Notoriety criterion (How well known the person concerned is and subject of the publication)
3. Prior conduct of the person concerned
4. Content, form, and consequences of the publication
5. Circumstances in which the photos were taken[86]

If we examine these criteria one by one, we can constitute that the status of the person comes into play in many occasions.[87] Contributing to a debate of general interest of the public, the publication could cover for example the question of whether the Finnish president has taken the Covid-19 vaccine or not. Notoriety criterion is straight forward a question of one´s conspicuousness as well as the prior conduct relates strongly to the person´s status. Following the balancing criteria, the public figure status is allowed to effect on the curtailing and/or weakening the weight issued to Article 8 ECHR whereas concurrently increasing the weight issued to Article 10 ECHR.[88] A pertinent example regarding the weight-relevance, is the Couderc and Hachette Filipacchi Associés v France -case from the European Court of Human Rights.[89] The proceedings related to newspaper coverage considering the secret son of Albert 2nd, Prince of Monaco. First, the Court considered the contribution of the publication to the debate of general interest in the light of his public figure status, conduct and his role as a Prince, since it would have been impossible to separate these. Court found this appropriate to consider when evaluating the significance of Article 10 ECHR. This is very similar ground than contemplating the prince´s "notoriety", "the consequences of the classification as a public figure".[90] At this point the Court stated the following: "the role or function of the person concerned … constitute another important criterion to be taken into consideration" and "the extent to which an individual has a public profile or is well-known influences the protection that may be afforded to his or her private life" as the "public is entitled to be informed about certain aspects of the private life of

[86] Von Hannover v Germany (No.2), 40660/08, 6064/08, ECHR 2012
[87] Hughens *supra nota* 16
[88] *Ibid.*
[89] Couderc and Hachette Filipacchi Assciés v. France, 40454/07, ECHR 2015
[90] *Ibid.*

public figures".[91] This led the Court to direct the following: "a fundamental distinction needs to be made between reporting *details* of a private life of an individual and reporting *facts* capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions" (emphasis added). If the aim of having notoriety criterion is to give weight to Article 10 ECHR on the expense of Article 8 ECHR, it repeats analysis already executed at the consideration of contributing into a debate of general interest, then we need to know the normative argument for limiting the right to privacy.[92] Hughes concludes that if the rationale is that less weight is to be accorded to right to privacy due to the public figure status means "newsworthiness" of information then it is not a matter for Article 8 ECHR but for Article 10 ECHR instead, which is covered by "debate of general interest". On the other note, if the reasoning for putting less weight on Article 8 is in the applicant´s prior conduct, making the interference to one´s privacy less intrusive, then it is covered by "prior conduct" conduct already directly. There is no clear rationale for determining that public figure status in the form of "notoriety" means less weight accorded to person´s privacy compared to an ordinary private person´s privacy.[93] Although, the court has also suggested in Couderc in paragraph 89 that the rules are different for the public figures and Article 10 ECHR has to "cede" only in cases where the information is private and there is no public interest in spreading,[94] causing remarkable shift in favour of Article 10 ECHR.

2.3. Justifying Public Figure Doctrine

Another interesting question, which arises from public figure doctrine, is how the doctrine can be justified? Hughes outlines five different approaches: Public figures

1. do not have right to privacy
2. are entitled to human rights, but the scope of their right to privacy is more limited as more of their interests are simply not private
3. have right to privacy, but their right should be accorded less weight than the right of a private individual
4. have a right to privacy but they have waived aspects of that right

[91] *Ibid.*
[92] Hughens, *supra nota* 16
[93] *Ibid.*
[94] Couderc and Hachette Filipacchi Assciés v. France, 40454/07, ECHR 2015

5. have a right to privacy but freedom of expression is particularly weighty in such cases[95]

If public figures weren´t entitled to right to privacy, it would mean deprivation of a human right from them, which is against Article 1 ECHR.[96] To use this justification, should the definition of "public figure" be significantly narrowed down and clarified. In this approach, a person would either be a right-holder or not, which is striking proposal considering that we are discussing of a human right. Also, in the core values protected by Article 8 is nothing to suggest that they would not apply to public figures.[97]

Limited right to privacy needs rationale why the right is more limited when the right-holder is a public figure compared to a situation where the right-holder is a private figure. To limit a right, we should be able to define what is to be limited. Often when attempting to define "privacy" it is placed in opposition with "public". Do the actions of private individuals make them public figures or do the public figure -status make their otherwise private actions, public?[98] Hughes stated: "The designation of public figures interests as "not private" is thus a subjective normative determination, which is premised upon the perceived public interest in disclosure rather than anything inherent in privacy itself".[99]

Reducing the weight accorded to the right a rationale is needed for why a public figure´s right is less worthy of protection compared to a right of a private figure.[100] Which areas of the privacy should be given up to? Once again, the lack of definition of privacy is faced.

Presenting an argument that whilst everyone has the right to privacy, public figures have waived aspects of that right due to their past conduct or role.[101] The idea is that the person´s status narrows down the scope of the right, since public figures benefit from publicity. Less privacy is quid pro quo, person accepts losing some aspects of the right to privacy to receive personal gain.[102] Becoming a public figure is a choice of the person. Conduct argument usually arises, when the person has in the past allowed some personal information to be published by the press.

[95] Hughens, *supra nota* 16
[96] CoE, *supra nota* 5
[97] Doherty, *supra nota* 16
[98] Hughens, *supra nota* 16
[99] *Ibid.*
[100] *Ibid.*
[101] *Ibid.*
[102] *Ibid.*

Hughes questions if a right can be waived this way and if it´s possible then this should only justify the inclusion of public figure status in the threshold test or alternatively reduction of the weight accorded to the right if the key factor is the status of the person.[103] If the key factor is the conduct of the person, then reduction of the weight or narrowing the scope of the right should focus on the conduct, instead of the person´s status as a public figure.[104] A concurring opinion is presented by Thomson on waiving a right. She argues that a right-holder may waive their right and in multiple different ways.[105] An example shall be the best way to demonstrate; Matti has a flower which shall not be torn. But he may waive the right not to have the flower torn by

1. inviting someone
2. forcing
3. leaving the flower without supervision, doesn´t mind what happens to it
4. leaving it so that it is likely to be torn or the tearer should go through some trouble to avoid tearing it
5. leaving it so that the flower will with high certainty be torn and it is not reasonable to expect it not to be torn.[106]

This example given, is strongly related to Thomson´s cluster-theory on privacy, which was discussed earlier, hence the flower.

The last justification for usage of public figure doctrine we shall discuss, is the emphasis of the freedom of expression, Article 10 ECHR. Freedom of expression is connected to several higher-order values. The pursuit of truth is one of the principal arguments against limiting the freedom of expression. In the context of public figures, the search for truth is implicit in proclamations that the public has a "right to know"[107] as well as more specified role model arguments and claims of hypocrisy.[108] These all assume that the public has an interest in knowing the truth considering the public figure. If truth justification was followed, then freedom of expression would cede only in the cases where there is no public interest at all and truth rationale applies equally to public and private individuals, making no difference between them.[109] Another higher-order value is democracy.[110] Voters have interest in knowing what the elected officials are up to

[103] *Ibid.*
[104] *Ibid.*
[105] Thomson, *supra nota* 6
[106] *Ibid.*
[107] Couderc and Hachette Filipacchi Assciés v. France, 40454/07, ECHR 2015
[108] Hughens, *supra nota* 16
[109] *Ibid.*
[110] *Ibid.*

and it is a vital part of democracy. Especially, when information might have effect on their public office. It is likely that there is disagreement as to when conduct or other private information is relevant to their public office, for example if we consider sexual orientation as irrelevant considering suitability for office, it is undemocratic to deprive the information from a voter who may disagree with us.[111] The problem arising, is that democracy justification only extends to elected officials. Another issue is that democratic interests are already covered, when considering the contribution to debate of general interests. The third value is self-fulfillment, which is much broader account, extending beyond elected officials.[112] Paul Wragg presents the most sophisticated version of this argument.[113] He claims, that "everyday speech" plays essential role in the personal development of the audience, including forming opinions. The access to "everyday speech" information, which includes information about celebrities, is crucial. Wragg´s analysis focuses on providing support adding weight to freedom of expression in general, rather than creating distinction between public and private figures.

[111] Schauer, F. (2000) Can Public Figures have Private Lives?. *Social Philosophy and Policy,* 17(2), 293-309.
[112] Hughens, *supra nota* 16
[113] *Ibid.*

3. PRACTICAL APPROACH TO DEFINING PRIVACY AND PUBLIC FIGURE DOCTRINE

Next, shall be discussed different court rulings considering the right to privacy from Finland. In these the Court has had to weight the status of the plaintiff and the criteria set out by the Strasbourg Court in Von Hannover v. Germany No2. The cases have been selected due to their variability and different solutions considering the status of the plaintiff. In 2000 the Criminal Code of Finland was reformed. According to the preparatory work of the new law, the reasoning which led to enacting old criminal law can still be used when interpreting the new law, [114] keeping the old case law relevant.[115] The strengthening of the Human Rights must be considered.[116]

3.1. Private Figure Plaintiff

In case KKO:2018:51 A had posted on Facebook page called „on Behalf of the Victims of Paedophilia" a photo of B and linked a news article from nationally recognized news page and text „Apparently B has already been released? "aiming to create discussion.[117] B had been sentenced four months before the post for aggravated sexual assault of a minor for 2 years and 2 months of imprisonment. In the news linked by A, B was mentioned by name, and it addressed the prison sentence. The photo, in which B was recognisable, was from B´s personal Facebook page where B had uploaded the photo himself and was available for everyone. At the time of the legal proceedings of the assault case, it was publicly present in the national media. The news covered the name and age of B and the place and timing of the assault.

The District Court sentenced A for distributing information insulting the private life of B.[118] The Court of Appeal held the sentence given by the District Court.[119]

[114] Esityöt HE 184/1999, old preparatory work Esityöt HE 84/1974
[115] (KKO:2006:20) The Court stated in the ruling that the law which came into force in 1.10.2000, was not to change the content of the old law.
[116] Sankari, H. (2010) Rikosasian asianosaisten yksityiselämän suoja. P. Tiilikka, J. Siro (Ed.), *Kirjoituksia viestintäoikeudesta* (41-57). Helsinki, Hakapaino Oy.
[117] Original name of the group in Finnish: „Pedofilian uhrien puolesta"
[118] Pohjois-Karjalan Käräjäoikeus KO 15/115666, 2015
[119] Hovioikeus HO 16/106438, 2016

In Supreme Court the defendant claimed that the information presented in his post, were not part of B´s private life. The criminal sentence was public information and the information had lost its private nature at the time when media had written about the B´s crime. The photo was originated from B´s own public Facebook page. What A had done, was link two available pieces of information together. He considered that his actions hadn´t caused B damages, suffering or contempt and the post had concerned a societal conversation not exceeding the limit of acceptability.

The Supreme Court stated that even though committing a crime is not a private matter of the actor, the right to privacy belongs to him too. B was a private person, who enjoyed the protection of private life without limitations. Even when most of the information shared by A had already been public and available it does not per se remove the nature of private information or grant limitless right to use that in any context. The post was not about topical crime reportage and A hadn´t participated in a debate of general interest. B hadn´t given his approval for using the picture. Court noted that combining the photo, the news, and A´s sentence, caused in fact contempt towards B. The Supreme Court held the same ruling standing as the previous Courts.[120]

The referendary Jutila presented a dissenting opinion.[121] She stated that A had published B´s identity online, but most likely only limited number of people were interested in that specific page. B had neither claimed, that the A´s publication would have made him more known person. The content of the piece of news was factual and tonewise neutral and had been easily available online. The photo A had used, was ordinary and did not expose anything delicate in nature of B´s identity or person. A hadn´t unveiled anything which wouldn´t have been easily available for public already. In her report, she assumed that the Supreme Court would state that publishing the photo was unnecessary considering the aim of the post to create discussion and morally questionable, meaning that to some extent it has exceeded the boundary of acceptability. On the other hand, neither of the pieces of information were new and both were publicly available.[122] The referandary Jutila expected the Supreme Court to reverse the ruling, dismiss the charge and free A from his sentence.

[120] Korkein Oikeus KKO:2018:51, 2018
[121] Korkein Oikeus KKO:2018:51, 2018
[122] Suomen Perustuslaki 11.6.1999/731 and Laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa 30.3.2007/370

In another similar case KKO:2005:136 the Supreme Court ruled in favour of the defendant for the following reasons: the plaintiff C had committed a crime and his name had been published in a magazine. The topical article could have been published without the name of C, he wasn´t a societal influencer and there was no doubt that naming him in the article had caused him suffering. On the other hand, C´s crime was aggravated, and he should have known that his name may come into publicity. The tone of the article had been appropriate and it only included the name of C.[123]

3.2. Public Figure Plaintiff

The leading district prosecutor´s wife W was suspected to have committed tax fraud.[124] J wrote an article about it to Helsingin Sanomat -newspaper 16.10.1997. In the article "The leading prosecutor´s wife suspected to commit excise tax fraud"[125] was explained the suspected fraud and proceedings including the executed home search in wife´s and prosecutor´s home. The name of the prosecutor P wasn´t mentioned, but other details were exposed; position in public office, place of residence, place of business and acting as a prosecutor in financial crimes.

The defendant J denied. He considered that P was not identifiable, and the article was written accordingly with the guidelines for journalists.[126]

The District Court dismissed the charge, The Court of Appeal held J guilty.

The Supreme Court noticed that the article is factually correct, and it has clarified that P isn´t the suspect. The information shared about W and P weren´t detailed enough for anyone to recognise them without foreknowledge or investigation. P has used significant independent quorum in his position as a prosecutor, for example deciding whether to press charges on tax frauds. Information of the W´s serious suspicion in similar field has given reason to pay attention to P´s activity. The question of P´s possibility to act unbiased has been justifiable. P has himself retreated from prosecuting tax fraud cases. This is to be understood, that P has himself also

[123] Korkein Oikeus KKO:2005:136, 2005
[124] Korkein Oikeus KKO:2006:20, 2006
[125] Translated from Finnish ("Johtavan syyttäjän vaimoa epäillään valmisteveropetoksesta")
[126] Council for Mass Media (2014) *Guidelines for Journalists and an Annex.* Retrieved from https://www.jsn.fi/en/guidelines_for_journalists/ , 1 December 2021

caused questioning of his impartiality in such cases. The Court concludes that P has been as a district prosecutor been in public office and the suspicion of W has had significance when evaluating his activity. Much of the attention the news gained, was due to P´s position, making this position crucial part of the content. The Supreme Court overruled the Court of Appeal and dismissed the charge.

The Finnish Supreme Court KKO:2010:39 sentenced 16.6.2010 the defendants for dissemination of information violating personal privacy.[127] The case handled a book written by the ex-partner EX, together with the publisher, of the current Prime Minister of Finland PM. In the book, called the Prime Minister´s Bride[128] central topic was the ended relationship between PM and EX and handled information and insinuations of PM´s family-life, leisure behaviour, private and confidential communication, sex life among other intimate events, partly in detail. The tone of the writings is not insulting or inappropriately critical. The Court notes, that the parts which PM had highlighted in the book belonged without doubt to PM´s private life and the information has caused PM damages, suffering and contempt. Defendants appealed, that media had before the publishing the book talked about PM´s private life. From the report presented on the matter, can be concluded that media has with PM´s approval handled PM´s family- and homelife, leisure habits and hobbies, PM´s housing, pets, family, attitude towards alcohol, movie preferences and so on. PM has himself talked about these topics in his blog, book "It is just Matti"[129] and in several interviews. The relationship has also been present in media before the book. Based on this, defendants pleaded that PM had given his approval for publishing the book. What information has not been public as the Court noted, is the information and insinuations considering PM´s children, his sex life, and other intimate events, which were handled in the book. EX pleaded, that based on her right to freedom of expression, she could talk about her life and relationships. PM had not given his approval for the book, which would have been needed since his private life was part of the book. The Court has in its rulings stated, that exploiting another person´s private life against one´s will for the purposes of sensational media does not fall within the right to freedom of expression.

[127] Korkein Oikeus KKO:2010:39, 2010
[128] Originally in Finnish "Pääministerin morsian"
[129] Originaly in Finnish "Se on ihan Matti"

Defendants emphasised, that politicians often tend to discuss their personal life in public to create positive public image and to advance their careers in politics.[130] The Strasbourg Court has separated the cases in which revealing matters considering personal life contributes to important and public discussion from revealing information which is meant only to satisfy curiosity of the audience.[131]

The Court states that as a Prime Minister he uses significant political power, meaning that his scope of protection of privacy, is narrower but not non-existent. The scope of protection is larger when the information is closer to the core of the privacy.

The information presented of the origin of the relationship and fast development created public conversation about PM´s honesty, since his story about the origin differs from the one presented in the book and about his discretion. The parts of the book, which imputed PM, according to the Court, did not associate with PM´s societal functions or evaluating his eligibility of other significant public discussion.[132]

3.3. Status at Grey Area

In Finnish yellow press media "Ilta-Sanomat" 3.2.2000 was published an article about an alleged relationship of an ex-spouse of a TV-reporter EX and presidential election candidate´s campaign employee CE. According to the article, EX had moved away from the TV-reporter TR and found a new partner CE. The names of the president candidate PC, and CE, her position as campaign office´s communications manager, party affiliation and that she was a married mother was mentioned in the article. As illustration was pictures of CE and TR. As defendants were the journalist who wrote the article, another reporter and the editor-in-chief.[133]

Prosecutor and CE stated that CE was not a public figure, and the article had neither connection with her employment as PE´s communication manager, nor was societally significant. She considered herself to be an employee in the campaign without a political role. The article did not

[130] Yleisradio (2021) *Politiikka-Suomi, jakso 4; Kohut ja selkkaukset* (Documentary). Finland.
[131] Karhuvaara and Others v. Finland, 5378/00, ECHR 2004
[132]EX-partner of the Prime Minister appealed to the European Court of Human Rights for violation of her right to Freedom of Expression, Article 10 ECHR. The Strasbourg Court unanimously held that there had been no violation of Article 10 of the Convention. Ruusunen v. Finland, 73579/10, ECHR 2014
[133] Korkein Oikeus KKO:2005:82

create an understanding that the relationship between EX and CE would have been political partnership, instead it was claimed to be romantic relationship. CE had admitted that they had had a relationship in the past, which had ended before the publication of the article. Meetings mentioned in the article were discussions about politics and the campaign. She considered the article to be about her private life, not political use of power and it was published due to the public interest on the former partner of EX.

The defendants claimed, that in her position as communication manager and when appearing in political circles and TV, CE was comparable to a public figure and involved in presidential elections, making the article relevant for publishing. CE represented the party and had utilized her partnership to EX when planning and working in PC´s campaign office. The close relationship had been open and visible for outsiders. The article gained more significance since the PC´s campaign themes included respecting traditional family and Christian values and he presented himself in public as a family-man and as a father to create contrast to the other candidate. The position of EX in business and TR was known and their marriage and divorce were public.

The Court stated that CE had acted in a significant position politically, which had involved publicity and interest in her person as a member of the inner circle of the campaign. Another question according to the Court was that was the position of CE such quality, that matters of her private life could be published without her permission. The Court continued: CE had not been known as a politician before her part in the campaign nor pursued such position. CE was not an officer, considering the political factors behind CE´s recruitment and nature of her campaign activities, it was concluded that she couldn´t have been expected to commit and represent PC´s values and her scope of privacy had not changed to same way limited as the politician´s she assisted. The article was published to reveal romantic relationship. Considering EX and TR the Court stated that the limitation enables only writing about that person, not people around that individual, family etc.[134] Even if the relationship would have been widely known based on people´s observations or gossiping, it doesn´t give the press right to distribute information widely. CE had not given her acceptance for publishing the article. The Court rules, that by publishing the article, CE´s privacy had been violated.

[134] Esityöt HE 184/1999

The concurring opinion was presented by judge Lehtimaja.[135] He questions the status of CE, had she practiced politics in her position, did the article pertain to this and did the article contribute to a societally significant debate. Lehtimaja remarks, that the recruitment of CE did gain publicity and political interest due to having different political background than the PC. In public was speculated whether the aim was to appeal to CE´s party´s voters, since her party wasn´t the same as PC´s. The PC´s memoir confirms according to Lehtimaja, the political connections of CE to be tactically significant. He also states that usage of political power may not always require personal power quorum, but is also influencing in the background, concluding that CE has had political power. She must have understood that due to the public interest in presidential elections, her character would gain interest from the public. Defendants paid attention to the themes of the campaign and the emphasis the family and religion -values had and all the parties were known in public, creating general interest on the relationship. Lehtimaja discovers that the personal lives of people acting in politics may gain relevance when political appearances and values marketed in those are in question. CE had herself stated that the article´s aim was to decrease the credibility of the campaign and effect on the outcome. PC also calls the article a "dirty trick" meant to hurt the campaign in his memoir. Lehtimaja concludes, that the article has had political significance in discourse around the elections and relates to CE´s political activity. Lastly Lehtimaja considers it to be plausible, that the aim of the article has not merely been to satisfy the curiosity of readership, but also participate on public discourse. Lehtimaja would have dismissed the charges.

Another grey area case KKO:2011:72 concerned a writer W of whom a magazine called 7 days[136] had published two articles, the first in 27.2.2003 about her past relationship. Journalist J1 had written an article in which the former partner EX of W had been interviewed. Topics included W´s and EX´s sex life, joint future, arguments, and a list of W´s assumed former partners. As illustration was used pictures EX and W. The second article, written by J2, published in 1.4.2004 by the same magazine suggested, that EX was the father of W´s daughter D and repeated same information as in the article published in 2003. The defendants, journalist J1 and J2, editor-in-chief EC and the publishing company PC were charged for violating W´s right to privacy.[137]

[135] Korkein Oikeus KKO:2005:82
[136] Karhuvaara and Others v. Finland, 5378/00, ECHR 2004, original name of the magazine in Finnish "7 päivää"
[137] Korkein Oikeus KKO:2011:72

The District Court came to conclusion, that the grounds for the charge and reclamation had remained unsolved and dismissed them. The Court of Appeal stated that W was not a public figure, and the scope of protection is large, thus ruled in favour of the plaintiff.

In the Supreme Court, the defendants appealed to W´s position in public, her taking advantage of publicity, making it justified to publish the articles. According to the defendants, W had made herself and her private life a commercial trademark and hence has knowingly given her acceptance for writing about her private and family life. They considered her to be a "A-class" celebrity in Finland. To support their claim, defendants presented several articles published between 1994-2008. The relationship had been in four other articles before the article published by the magazine. W had neither demanded correction nor presented other claims for those other magazines. Also, the list of former partners of W, was public as well before the articles in charge. W had given for another paper X an interview immediately after the publication of article 1 covering the same topics, in which she had denied the pregnancy and the relationship with EX, including his possible fatherhood of the unborn child. Defendants concluded that W has herself brought herself and her private life into public continuously and thus cannot demand that press wouldn´t write negative things. W´s acceptance isn´t needed when facts can be verified otherwise.[138]

The plaintiff agreed that even though she has been for long time and plenty under public eye but denies giving up on the protection of her privacy and actively telling details considering her private life to public. She describes herself to be extremely abstain towards media. She states, that since 1993 she has not herself brought her relationships or comparable topics to public. Instead, she states that she has utilized publicity to advance her career as an artist and a writer. The interview given for paper X was for denying the relationship and pregnancy rumours since she wanted to untangle the fatherhood before going public. She wanted the periodical to publish a correction spontaneously, which did not happen, but periodical published one written by W. She concluded that the articles had caused her and her son, who had been mentioned in the first article, suffering, and negatively affected on her career as an artist.

The Supreme Court states, that W has been under public eye continuously for years though the number of articles suggests variability in the amount of publicity. Based on articles from the 90s,

[138] Korkein Oikeus KKO:2011:72

W had precisely discussed about her private life and relationships, but not with EX. Before the articles in question, W had not talked about her private life for four years. After the publication, W has again started to give interviews considering her private life, mostly related to her activities as an artist and writer, but not about her relationships. The fatherhood of EX had not been told to public by W before the articles. As W stated, she had utilized publicity for her career by giving interviews for example. She has viewed publicity positively and partly due to her own activities; she has become a public figure. As the presented report stated, W has pursued to limit the publicity, by refusing comments regarding her relationships and in some cases demanding corrections from press. The Court concludes that despite of W´s status as public figure, she has intended to protect some fields of her privacy. The themes handled belong to core area of privacy and are such to cause damage, suffering or contempt.

To be punishable, the act must be unauthorized, thus must be evaluated is the public figure status relevant, has W accepted the publication and have the information lost its private nature due to same or similar information being published in media. According to the Court, W cannot be considered to be a public figure meant in the Criminal Code Chapter 24, 8§[139] just based on being well-known among the public. The information published does not contribute to a debate of general interest of the public. It is clarified that W has not given her acceptance for publications. European Court of Human Rights has concluded in its case law that information may lose its private nature if it gotten to public knowledge.[140] Separation is to be made considering the way the information has gotten to public knowledge; has the person herself brought the information to publicity or not.

The Supreme Court concludes the following: publicity of W has been long term and extensive although variable at times. W has openly used publicity as an artist and writer. She has over the years brought matters from her private life to publicity, even from the core area. She must have understood that these topics will be handled in the media. On the other hand, W has at times demanded corrections from publishers, showing will to limit access to her privacy. Defendants should not have assumed based on the long-time publicity that writing about the core area of W´s private life is justified without her acceptance or that she would have given quiet acceptance. The relationship between W and EX had been written about in four other articles before the

[139] Suomen Rikoslaki 19.12.1889/39
[140] MZN Limited v. United Kingdom, 39401/04, p. 147 ECHR 2011

articles in question and W had not intervened with those.[141] Due to this, the Court does not find need to protect W´s privacy by limiting repetition of public information in press. The court rules in favour of the defendants, dismissing the charges.[142]

The dissenting opinion was presented by judge Tulokas in which he states that the impression he gets from the plaintiff, is the attempt to manage publicity rather than clear and consistent aspiration to shut out details about private life and persona from publicity. He joins to the ruling with the majority.[143]

[141] Reinboth and Others v. Finland, 30865/08, ECHR 2011 expressed that since the information had already been published well prior, there was no need to prevent the publishing the same information again
[142] Korkein Oikeus KKO:2011:72
[143] Korkein Oikeus KKO:2011:72

4. ANALYSIS OF THE FINDINGS

The Court uses notable discretion when faced with the duty to find balance between competing rights. In cases concerned with the right to privacy, the competing right is often the freedom of expression. Finding a violation of the right to privacy to be punishable under law after weighing all the relevant factors means limiting the rights of the defendant, often freedom of expression, to some extent.

The theories attempting to define privacy when compared to case law, do not seem to succeed as such. When a privacy-case has proceeded to Court, the right to privacy has been violated in the plaintiff´s opinion, but the topic may not lose its private nature. As discussed, all the theories have their pitfalls and imperfections. A few theories which may have reason to be emphasised: the control over personal information and Thomson´s cluster theory.[144] If Thomson´s theory on privacy is followed, the simple and pure privacy-case law wouldn´t exist. And as seen, simple privacy-cases do exist. The theory is practical and approaches the issue from a different direction than the rest, but as such, is not usable.

When discussing the "control over personal information" theory,[145] it´s needed to note that managing publicity is an ongoing interaction, as seen in the cases of the Prime Minister and Writer. At Court, the plaintiff additionally to receiving possible compensation for damages suffered, often wants to prevent the defendant or others from repeating the act in the future, stop them from publishing articles of their relationship for example. By having a ruling in favour of the plaintiff and having their privacy protected, some form of control is regained even though the possible damages caused by sharing the information have already occurred. A message is sent, that similar acts in nature are unacceptable and violate the right to privacy. As the dissenting opinion in the Writer´s case stated, he considered that the aim of the plaintiff was to manage the publicity, attempt to gain control over what is written about her.[146] The nature of that information as private doesn´t disappear if shared according to control theory, whereas according to secrecy theory, when the secret has been shared, it cannot be restored, and status as private information is lost. The consequences, the message sent and the regained ability to forbid distributing information, of the favourable ruling for plaintiff might be the reasons why they want to sue. But

[144] Thomson, *supra nota* 6
[145] Westin, *supra nota* 11
[146] Korkein Oikeus KKO:2011:72

this does not define privacy, it rather shows the aims of the plaintiff and highlights the attempt of the people to manage the way other members of the society view and treat them.

Instead of attempting to define privacy, in the cases discussed, the Supreme Court often considered that the information at hand, is at the "core area" of privacy, such as family, identity, relationships etc. They didn´t elaborate how they reached the conclusion of locating something to the core or correspondingly, what is the criteria for something to be further from the core area. The interests closer to the core, deserve greater protection whereas interests closer to periphery receive less protection, making the right a line. It is not clear, if "core area" blends to periphery, or is there a solid and clear border between. Based on this, trying to define the scope of the privacy enjoying the protection would be incomplete. Question for the future of privacy cases in Finland, is that do only those cases, which include the "core area" of privacy being violated, end up going to court? Thus, the Court doesn´t face a situation where must be asked, "what is privacy?" and they excogitate to balancing with the status of the violated. In other words: does the Court ever have to state that this act does not violate one´s right to privacy and start defining privacy via case law? Since the lack of definition for privacy is evident, Court needs other tools to rule the case, which is the public figure doctrine.

The public figure doctrine is not simply black and white. The Finnish Criminal code has left room for Court´s consideration. The Finnish case law presents status as a line. People, who receive the lowest level of protection of protection, exercise official functions for example the Prime Minister. Other persons who are neither public figures nor private individuals, whom are on the other extremity of the line, are somewhere between these extremities, in the grey area. Following this, a larger number of people is affected and fall withing the influence of the public figure doctrine. The prosecutor had his privacy restricted only in topics related to his office, meaning that his privacy is better protected than the Prime Minister´s. The Court has in many occasions given weight to previous conduct of the defendant in accordance with the Von Hannover No2 criteria.[147] In the "Prime Minister´s Bride" case, the defendants noted several times, that PM had himself brought many of the topics into publicity over the years, trying to justify their actions.[148] But PM had been known to abstain from sharing information considering his private life. Based on the quotations from articles and books, it was evident, that he was a politician who strongly supervised his public image. The defendants argued the same in the

[147] Von Hannover v Germany (No.2), 40660/08, 6064/08, ECHR 2012
[148] Korkein Oikeus KKO:2010:39

Writer´s case, but successfully.[149] This points to direction, that once a public figure brings something to publicity themselves, the right to privacy for that matter is waived, or even sold since the sharing of that information has been done with an ulterior motive of getting positive or neutral publicity.[150] It seems, that if the status is in the grey area, the past conduct of the person gains notably more weight than in situations when the status is clear, making the evaluation of it important for Court.

If attention shall be given to dissenting opinions, they seem to give more weight to the freedom of expression and approach the issue from the topic´s side, not the status of the person. For example, in KKO:2018:51, committing a crime is not a private matter of the guilty and the referendary would have ruled in favour of the defendant as did the Court in case KKO:2005:136. In the dissenting opinion of the ruling KKO:2005:82, the campaign employee would have become a public figure due to her relationships and reasons she had been recruited. If these would have been the rulings, the meaning of public figure would have expanded rapidly, and the borderline which after the status has significance, moved towards the private figure -end of the line. This might have created more uncertainty considering the rulings, especially in cases where the status is in the grey area.

On the other hand, the fact that we lack definite definitions for privacy and public figure, has a silver lining. Having malleable approach to privacy, who is and how a public figure is defined, reflects the societal understanding of them and their development over time. It has been different to be a public figure in the sixteenth century were men with notable positions of power, were considered to be public figures. Then came mass-circulated newspapers, which draw interest also into the glamorous and others based on their lifestyle and looks, making them public figures. The growth of social media as a phenomenon in 2000´s has changed this yet again.[151] Today one may become world widely known overnight via social media, or in other words „well known to the public”.[152] Both traditional media and social media are full of news stories about people who seem to be famous just for being famous.

[149] Korkein Oikeus KKO:2011:72
[150] YLE *supra nota* 26
[151] (Erkkola, 2009)
[152] Suomen Rikoslaki 19.12.1889/39

The aim of the research was to attempt defining privacy and can be concluded, that after mirroring theories to Finnish case law, that such common and agreed definition doesn´t exist. Instead, the Courts use concept of “core area of privacy”, which isn´t defined clearly either. It seems, that since we lack the definition for privacy, the Court is forced to consider the statuses of the parties closely to see if the loss of privacy is justified and reasonable. Thus, the status gains weight. Which is followed by the evaluation of the past conduct of the person, which gains even more weight if the status is not clear.

CONCLUSION

We know everyone has the right to privacy, but what we do not know for certain, is what this term covers. The number of privacy theories increases, new ones take the best parts from the old ones and add something new. Something all the theories do have in common, is the agreement of its existence and importance. Privacy has everything to do with the society. The Court has not faced a situation in Finland, where they would have to define the scope of privacy or have had to state that something doesn´t enjoy protection of privacy due to it not being a privacy matter in the first place.

The Court preferers to state if the topic belongs to the core area of privacy or not, avoiding the question of what privacy is and what are the limits of it. In Finnish case law is not clearly defined the boundary for the core and the periphery. The privacy interests in the core gain more protection than the interests closer to periphery.

Public figure doctrine has become an inseparable part of privacy law and its case law. It started out as a clear and simple concept but at the same time when our society has evolved, the doctrine has become more complicated and multilateral. Bringing us to a situation where it´s no longer simply black and white between being a public or private figure. Instead, we seem to have a "status line" which starts from the high end of the slide as a private person and starts easily to slip towards the public figure status at end of the slide.

The Finnish case law shows that the public figure doctrine is in use and follows the Strasbourg Court´s criteria created in Von Hannover No.2. And ones one starts to slip, it is hard to stop and climb back to the start, as seen in the cases of the Writer and the Prime Minister, where the past conduct was given notable amount of weight.

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