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The right to privacy

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Structure

- Generally about *privacy*
- Legal framework
 - International
 - EU
 - National
- Conflicts

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What is *privacy*?

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Provide examples of what you consider to be invasion of privacy



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Privacy - examples

- Public transport card
- Bank transactions
- Mobile phone calls

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The legal framework



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Legal framework - background

- Rule of Law and legal certainty
- Democracy
- Search and seizure, warrants
- Property, trespassing

Ironical development:
Prince Albert v Strange [1849] EWHC Ch J20



Warren, D., and Brandeis, L.D., *The Right to Privacy* (1890) Harv L Rev 193



right to privacy in







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International law

- Convention for the Protection of Human Rights and Fundamental Freedoms 1950
 - *European Convention on Human Rights (ECHR)*
- Universal Declaration of Human Rights (UDHR) => International Covenant on Civil and Political Rights 1966

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ECHR – Article 8

- **Right to respect for private and family life**

1. Everyone has the right to respect for his **private** and **family life**, his **home** and his **correspondence**.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law ...

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UDHR – Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

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EU law

- Charter of Fundamental Rights of the European Union adopted in 2000
 - Articles 7 and 8
 - Protected by TEU
 - EU has not formally acceded to ECHR (yet)
- Data protection framework
 - Protected by TEU by implication (EU Charter)

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National law

- EU Member States signatories to ECHR independently of (potential) EU accession
- Manifested differently depending on the jurisdiction
 -  Sweden – no independent right
 - Although see Chapter 2 Instrument of Government
 -  UK – no independent tort
 - Although see Human Rights Act 1998
 -  Poland – protected by the Constitution

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Conflicts



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Conflicts

- Right to privacy
- vs
- Freedom of speech
 - *For individuals*
 - *Freedom of the press*
- Freedom of information (access)
- Public policy

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Conflicts – how to resolve?

- Balancing of rights
 - Any interference must be:
 - in accordance with the law
 - pursue a legitimate aim
 - which is necessary in a democratic society
 - Legitimate aims?



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Conflicts- example

von Hannover v Germany [2004] ECHR 294

- 3 sets of photographs taken in France - later published in Germany - showing day to day activities, holidays and leisure time, all taken in **public places**
- Injunction sought in Germany – denied
⇒ test: was she in 'a secluded place'?
- Application made to ECtHR alledging breach of Art.8 – right to privacy

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Conflicts - example

von Hannover v Germany [2004] ECHR 294

- ECtHR: core is interaction of art.8 and art.10 ECHR.
- Article 10 covers information and ideas that offend and disturb as well as those not objected to by the society they are broached in.
- photos appearing in the tabloid press often taken in a climate of continual harassment which induce in the person concerned a very strong sense of intrusion into their private life.
- decisive factor in balancing the protection of private life against freedom of expression **should lie in the contribution that the published photographs and articles made to a debate of general interest.**
- The photographs showed Caroline von Hannover in scenes from her daily life, and thus engaged in activities of a purely private nature.

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Conflicts - example

von Hannover v Germany [2004] ECHR 294

- Photos taken without knowledge or consent and, in some instances, in secret.
- Clear that they made no contribution to a debate of public interest, since the applicant exercised no official function and the photographs and articles related exclusively to details of her private life.
- German courts had not struck a fair balance.
- Held: violation of art.8

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