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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)*
- UDHR
- ICCPR

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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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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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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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ECHR – Article 8

- *Right to privacy, the right to live as far as one wishes, protected from publicity...The right to respect for private life does not end there. It comprises also (...) the right to establish and develop relationships with other human beings especially in the emotional field, for the development and fulfilment of one's own personality*
X v Iceland App. 6825/74 (Decision 18 May 1976) (1976) 5 DR 86
- Private life = anything having to do with personal health, philosophical, religious or moral beliefs, family and emotional life, friendships and (in some cases) professional and material life
e.g. Niemetz v Germany (Judgement 16 December 1992) (1993) 16 EHRR 97



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ECHR – Article 8

- *It would be too restrictive to limit the notion to an 'inner circle' in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.*
- This includes activities of a professional or business nature since it is , after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world. (...) In the case of a person exercising a liberal profession, his work in that context may form part and parcels of his life to such a degree that it becomes impossible to know in what capacity he is acting at a given moment.



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Sources of infringement / applicability

- State agencies
- Bodies independent of the state



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Abstention from interference or positive protection?

- Contains positive elements
- Failure to intervene by the State which results in a failure to secure respect for the rights protected by the article amounts to a breach of Article 8 even though the interference is not caused directly by the state.

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Abstention from interference or positive protection?

- Two types

1. State must take some action to secure respect for the rights protected under the Article
2. Duty for the state to protect individuals from interferences by other individuals

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Conflicts



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Conflicts

- Right to privacy
vs
- Freedom of speech (expression)
 - *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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