

Public Figures and Right of Privacy in Greek Private Law

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I. Introduction

In modern society the clash between one's right to privacy and the right of the public to be informed in conjunction with the freedom of the press is a matter which has occupied the legal literature and the courts on many occasions. This clash becomes even more evident when it refers to the private life of public figures where the interest of the public is more intensive. The issues that arise on this point are what the scope of the right of privacy is and how this right interacts with the freedom of the press especially in particular circumstances where a potential balancing of interests is not always an easy task. What is the role of the notion of 'justified interest', as this notion is provided for in the law in cases where there is an interest of the public to be informed on matters relating to public life. This paper will discuss some of the above issues as well as how the Greek courts have reacted in situations where aspects of a public figure's private life have been published in the press, the notions of public and private life, the legal bases concerning them and the issue of whether there is a core in the right of privacy which cannot be overtaken by the freedom of the press.¹

¹ For a complete analysis of these issues see Karakostas, *Personality & Press*, Ant.N. Sakkoulas Publications, Athens 2000 and Karakostas, *Media Law*, Ant.N. Sakkoulas Publications, Athens 2003.

II. Right to personality

The human dignity and individuality are values which are enshrined in the Greek Constitution. Article 2 paragraph 1² and article 5 paragraph 1³ of the Greek Constitution provide for the fundamental state obligation for the respect and protection of the value of the human being.

The protection of the personality of the human being from the civil law point of view is provided for in article 57 of the Greek Civil Code (GCC).⁴ This provision acknowledges a general exclusive right for the individual which provides for the protection of the person and in general the value of the human being.

In reality Article 57 GCC mirrors and integrates articles 2 paragraph 1 and article 5 paragraph 1 of the Greek Constitution in such a manner so as to include both the value of the human being, which also constitutes the very essence of this right, as well as the freedom of the person to develop his/her personality. It is therefore advisable that one distinguishes between the ‘static side’ of the personality, which in fact coincides with the value itself of the human being, and the ‘non-static side’ of it, which coincides with the person’s freedom to develop its personality. Therefore when one refers to the abuse of one’s personality according to article 57 GCC, one refers to the clash between two rights which are alike in nature, the right of the victim, whose static side of personality has been abused (i.e. abuse of its honor, of its name, of its private life and so on), and the right of the abuser, whose freedom to develop its personality is affected (i.e. through a publication, through the selection and processing of information concerning the victim and so on). Consequently, article 57 GCC is not only directed towards the protection of the person whose reputation has been abused, e.g. by the press, the radio or the television, but also towards the protection of the

² Article 2 paragraph 1: “Respect for and protection of human dignity constitute the primary obligation of the State”.

³ Article 5 paragraph 1: “All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages”.

⁴ Article 57 GCC: “If one’s personality has violated, one has the right to claim the rectification of the violation and the refrain of it in the future. If the violation has taken place against a deceased person then this right can be exercised by one’s husband or wife, one’s descendants, or ascendants, brothers or sisters or inheritants as these are provided in one’s will. One may also have the right to compensation according to the tort provisions”.

author of the publication, if a publication is at issue, when this author has acted within the defined lines of its profession and has observed the obligations deriving from it.⁵

The wording of Article 57 GCC does not provide for any precise boundaries to the right of personality. In fact the legislator has left it open on purpose so as to allow the continuous expansion of the right. The lack of any definition allows for an all encompassing protection of the personality and also for the adjustment of this right to the continuously developing and expanding social needs and mentalities. This particular purpose of the legislator is also confirmed in the Explanatory Report⁶, where it is provided that “the right should be extended to also include those parameters which make up the individuality of the person either from the point of view of its physical integrity or from the point of view of its moral and intellectual integrity. It is not only its physical and non physical integrity [which is included] but also the moral world within which the person finds its existence”. In the light of the above one could argue that article 57 GCC should be seen as guidance to the interpreter of the law since the notion of personality is expanding and evolving and can never be defined with absolute certainty. From that point of view it is crucial for one to see how each time the judges make use of this provision, in order to submit certain facts and activities to it and either characterize them as facets of one’s right to his personality or exclude them from it altogether.⁷ This right seems to leave ample space for discretion from the part of the judges since this provision is more of a moral rather than a legal provision.

The right to personality cannot be defined by including it in an exhaustive list of things which come under it. What one can only allege with certainty is that the right to personality encompasses all facets of one’s personality, which form an integral part of him for the very reason that one is born with them and therefore cannot be seen in isolation from them, such as for example his honor, his freedom of movement and so on, as well as those acquired in the course of his life, such as political and religious convictions, including the rights which, though capable of being seen in isolation (i.e. intellectual works) they are, however, directly related and linked to him.⁸

⁵ Karakostas, Media Law, 2003, pp. 224-225.

⁶ Pages 64seq.

⁷ Karakostas, Media Law, 2003, p. 226.

⁸ The Greek case law in an effort to define the notion of personality has accepted, almost unanimously, that “the right to personality is made up of a number of facets which constitute the notion of the

The right to privacy for public figures is nothing more than an aspect of the general right to personality. Therefore the interpretation of its form, content and boundaries coincide with these applying to the wider right to personality.

III. The right of privacy as part of the right to personality

The right of privacy forms part of the right to personality and is also recognized and protected by the Greek Constitution. Article 9 paragraph 1⁹ of the Greek Constitution provides that one's private and family life is inviolable, whilst article 19¹⁰ provides for the secrecy of letters and all other forms of free correspondence or communication. Article 93 paragraph 2¹¹ is also important since it provides for the exclusion of the public hearing of courts when special reasons dictate the protection of the private and family lives of the parties involved.

Another characteristic of the right of privacy is that this right forms part of the 'framework right' to personality. The theory for the 'framework right' is of German origin. According to it the 'framework right' must be defined in content by categories of rights, which cover parts of the general right to personality, whilst the illegality of the act should always be judged by the particular facts of the case.¹² Subsequently the

individual with which they are inextricably linked" (Athens Court of Appeal, Case 6277/1999 (2000) *Elliniki Dikaioisini* 1431 and Athens Court of First Instance, Case 1322/1997 (2000) *Nomiko Vima* 285). It is also underlined that it is not possible to list exhaustively the facets of the right to personality" (Athens Court of Appeal, Case 7347/1998 (2000) *Nomiko Vima* 642). However, there is an indicative mention of certain facets which come within the scope of article 57 GCC, such as facets relating to the human body and soul, the human dignity, the freedom and in particular the freedom of development of one's personality, the individual life, secrecy, the development of one's image, voice and in general of one's life, the inviolable of one's home (Athens Court of Appeal, Case 12154/1990 (1991) *Elliniki Dikaioisini* 1673, Piraeus Court of Appeal, Case 927/1997 (1999) *Elliniki Dikaioisini* 1412, Supreme Court, Case 13/1999 (1999) *Elliniki Dikaioisini* 753).

⁹ Article 9 GC: "1. Every person's home is a sanctuary. The private and family life of the individual is inviolable. No home search shall be made, except when and as specified by law and always in the presence of representatives of the judicial power. 2. Violators of the preceding provision shall be punished for violating the home's asylum and for abuse of power, and shall be liable for full damages to the sufferer, as specified by law".

¹⁰ Article 19: "Secrecy of letters and all other forms of free correspondence or communication shall be absolutely inviolable. The guaranties under which the judicial authority shall not be bound by this secrecy for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law".

¹¹ Article 93 paragraph 2: "The sittings of all courts shall be public, except when the court decides that publicity would be detrimental to the good usages or that special reasons call for the protection of the private or family life of the litigants".

¹² Fikentscher, *Schuldrecht*, p. 736, Hubmann, *Das Persönlichkeitsrecht*, p. 140, Steindorff, *Persönlichkeitsschutz*, p. 16seq., Gazis, *General Principles*, p. 41, Papantoniou, *General Principles*, p. 127, Simantiras, *General Principles*, p. 381seq., Georgiades, *General Principles of Civil Law*, p. 146seq., Westermann, *Person und Persönlichkeit als Wert im Zivilrecht*, p. 17seq.

right to personality includes in it a series of protectible rights, which in other jurisdictions either form or tend to form separate and in their own right rights, such as the right to remain anonymous or the right to form as one wishes one's own public image.

Infringement of the right to privacy constitutes any intrusion which violates one's private life, such as spying on one,¹³ taping one's private conversations by the use of any technical means, taking pictures of one in private places without his authorization, publication in the press of information concerning one's private life and so on.¹⁴

Irrespective of the difficulties presented by any exercise of inclusion within one's right of privacy facets or activities relating to it, the Greek literature provides for a definition of that right which leaves ample discretion to the judge regarding whether to include or not certain facet or activity within one's right of privacy. According to it "one's private life is considered to be the space set by the person itself within which he is considered to enjoy his private and family activities uninterrupted and without intrusions by third parties. The scope of this space is delineated between the wider space of its social and professional life and the narrower space of his strictly speaking private life"¹⁵ ¹⁶.

This definition can be better understood if it is approached in the light of the distinction between the separate spheres of one's personality.¹⁷ According to this theory, there are three spheres in a person's life: the personal, the private and the confidential or secret sphere. It is not possible for one to define clearly the boundaries of each one of these spheres in advance. The confidential or secret sphere extends to this part of one's life which the person does not reveal to anyone unless in special circumstances. The private sphere extends to this part of one's activities, which though accessible to the close family and relatives, it is not accessible to others apart

¹³ See also Dagtoglou, *Constitutional Law, Private Liberties*, t. A, 1991, p. 324 and Manesis, *Constitutional Rights, a. Private Liberties*, 1982, pp. 229-230.

¹⁴ Dagtoglou, *Constitutional Law, Private Liberties*, t. A, 1991, p. 515.

¹⁵ The proposed definitions in Greek and foreign literature see Michaelides-Nouaros, «*The inviolable of private life and the freedom of the press*», (1983) Syntagma 369, Pateraki, *Moral Damages*, 1995, p. 116seq.

¹⁶ Dagtoglou defines the notion of "private life" in contrast to a person's "public life". The latter encompasses the social and professional life to the extent that it includes the person's relations with an open circle of persons which aims at affecting the "public affairs". In that sense one's private life is the life which limits itself to the individual as such, its family and its close circle of friends and acquaintances.

¹⁷ Steindorff, *Persönlichkeitsschutz im Zivilrecht*, 1983, p. 16seq.

from special cases. Lastly, the individual sphere aims at protecting the individual to retain its individuality and special characteristics of its personality in relation to its social environment. It is within this individual sphere that one's professional and social activities are protected.

The scope of the right of privacy is each time defined by the taking into account of both subjective and objective criteria.

One can only claim respect to its personality to the extent that one has defined the scope of his personality in society and generally towards third parties.¹⁸ A person has the right to define himself which parts of his life are to be kept private and which not. This right is also enshrined in the Greek Constitution which provides for one's freedom to develop his personality as he wishes. Each person is free to decide which parts of his life are to be disclosed to third parties, to choose the image that he wants to be communicated to third parties and to decide when his personality is violated.¹⁹ This right of self-determination is not without boundaries. These boundaries are set by the current social mentality in the particular time and place, as well as by the activity at issue and by the position of the person at issue in the particular social environment.

The person is supposed to put up with intrusions to his personality, which are related to the mode of life he has chosen. The person that has chosen to dominate in a social environment should expect that this may create public interest about his person. This interest may lead to discussions about him, which he needs to tolerate.²⁰ This is especially so for public servants, for political figures and also for persons of modern history. By public servants we do not only mean the public servants in the narrow sense of the word but also those which, even temporarily, have undertaken a public office whether this is a state position, a position in a local government or in any institution providing public services.²¹ By politicians it is not only meant people that have been elected as members of the Parliament or placed in any other state related post but also those people that aim at being elected at some stage. By figures of modern history are meant all persons which are of a general public interest or interest

¹⁸ Paland-Thomas, *BGB Komm*, paragraph 823, no 15B, Schwerdtner, *München Komm, BGB* paragraph 12, no 199. Karakostas, *Personality & Press*, p. 43seq., Karakostas, *Media Law*, p. 179seq.

¹⁹ Hanke, [1982] 11 DVR 129.

²⁰ See Dagtoglou, *Constitutional Law, Private Liberties*, t. A, 1991, p. 518 and Michaelides – Nouaros, "The inviolable of private life and the freedom of the press" 9(1983) Syntagma 387.

²¹ Article 13 GPC.

the public for that particular moment by reason of some special current or very recent fact or incident.²²

The Greek case law mirrors the view that intrusions in the private life of public figures and public figures should be approached in a special manner.

According to the Athens Court of Appeal case 8908/1988, which dealt with the violation of the image of common person, “free journalism is not allowed to violate the right of respect to the person of persons that are not of public interest. In the case of public figures, for which readers have an interest for their private lives, the responsibility of a journalist shall be judged on the basis of other, special criteria”.

In another court decision the Court provided that “any person who, in a democratic society, chooses to take any post, which relates or is considered to relate to public life, and such is also the post of the Governmental curator of a bank, even if such a post is temporary, is submitted to the strict control of the press. If such control does not unnecessarily violate his honor and reputation, the person holding this post is expected to tolerate it”.²³

In the Supreme Court Case 854/2002,²⁴ the Court has decided that a publication referring to the private and family life of a professor and rector of the National Technical University of Athens, who also was a public figure holding various positions of public interest, was not infringing his right of privacy. Although the publication referred to the content of a suit which has been filed against him by his wife, the Court held that there was justified interest from the part of the newspaper to inform the public especially because the person whom the publication concerned communicated through interviews parts of his private life to the public.

According to the prevailing German law view, which is also followed in Greece, public figures are distinguished between those who interest the public in

²² Constitutional Court of West Germany, Case of 3.6.1973, known as *Lebachurteil*. See Bundesverfassungsgericht vom 5, Juni 1973, Archiv für Presserecht, 2 1973, p. 423seq., Filia, *The constitutional right of the freedom of the press and the additional protection of article 367 of the Code of Penal Procedure*, p.39seq., Krippas, *The freedom of the press against the right to private life*, 1972, p.54, Skorini-Papargopoulou, *The protection of the personality of the accused*, ___ 25, p.98, Kontaxi, *Press and Law*, 1989, p. 502seq.

²³ Athens Court of Appeal, Case 9975/1986, 28 _Iliniki Dikaioisini 300; Athens Court of Appeal, Case 3129/1988; 36 _omiko Vima 1247, Athens Court of Appeal, Case 8908/1988; 36 _omiko Vima 1666.

²⁴ Published in Nomos Database.

general, and those who interest the public for that particular moment by reason of a special incident.²⁵

Consequently, the definition of private life is the result of a dual procedure: the self determination of the person itself and of an objective determination on the basis of standard criteria according to the current social mentality. The point on which these two procedures meet constitutes the protecting object of the right of privacy.

IV. Protection of the right of privacy

A. Violation of the right of privacy of public figures

As explained above the right of privacy is essentially protected by Article 57 GCC.

According to the prevailing view, the facets constituting the right to personality have an absolute character. Consequently each person is obliged to respect each other's right of privacy which may also form the object of violation by someone.²⁶

By reason of the absolute character of this right any intrusion to one's private life is considered to be illegal unless dictated by a reason capable of extinguishing the illegal character of the act (in particular the exercise of a legal right, the consent of the party or a justified interest).²⁷

The above is not acceptable by the Greek jurisprudence, since, according to it, a violation in general does not suffice for an act to be illegal; there is also need for breach of a particular provision in the law in order for the illegal character of the act to be established.²⁸

The leading view in the Greek literature, which is also adopted here, has been confirmed by the amendment of article 28 of the Swiss Civil Code, which has also

²⁵ For the notion of figures of relative publicity and the intrusions to their personality which they need to put up with by reason of this publicity see Athens Multimember First Instance Court, Case 1189/2001 (2001) *Chronika Idiotikou Dikaiou* 416-417.

²⁶ Hubmann, *Das Persönlichkeitsrecht*, p. 140, Steindorff, *Persönlichkeitsschutz*, p. 16seq., Gazis, *General Principles*, p. 41, Papantoniou, *General Principles*, p. 127, Simantiras, *General Principles*, p. 381seq., Georgiades, *General Principles of Civil Law*, p. 126.

²⁷ For the establishment and the extinguishing of the illegal character of an act see Karakostas, *Personality & Press*, pp.51-76 and Georgiades, *General Principles of Civil Law*, p. 129.

²⁸ See for example, Supreme Court, Case 849/1985, 34 *_omiko Vima* 836; Supreme Court, Case 2058/1986 (1987) ____ 755; Athens Court of Appeal, Case 6805/1987 (1990) *_lliniki Dikaiossini* 1459.

served as a model for Article 57 GCC. Article 28 of the Swiss CC has been amended in 1985 as follows: “a violation is illegal unless it is justified by the consent of the person involved or by a prevailing private or public interest or by law”.

The importance of the particular consideration of the illegal intrusions in the private lives of the public figures should now be examined.

Before we go any further we should first clarify that a violation of that part of one’s private life which that person has excluded from protection by his activities or behavior (e.g. by providing an interview to the media), is not illegal. This exclusion by the person itself is made by the use of his right for self-determination.

In addition, any violation, which, for objective reasons, in combination also with the person’s right of self-determination, does not form part of the hard core of the private life of the person, is also not illegal. An example would be where a known actor appearing in a theatre opening performance undertakes the risk of him being photographed and having his photograph being published in a magazine. This is something he has, according to the morals of our society, to put up with.

Even if one alleges in the aforementioned cases that there is an illegal violation, the illegal character of the act is extinguished by reason of the express (in the case of the interview) or implied (in the case of the appearance in a public place)²⁹ consent of the person at issue or on the basis of the German in origin Sozialadequanz theory, according to which when one leaves in a society where one needs to co-exist with other people, one is expected to tolerate certain intrusions in his private life.³⁰

There are also cases where a violation relates to a person’s private activity, which comes within its private sphere. In this case if the private activity reaches the public domain through the press and without the consent of the victim, the illegal character of the act is only extinguished if the persons responsible for publishing it can prove that there was justified interest from the part of the public.

According to the Greek case law the press has a justified interest to inform the public in cases where public servants’ activities are involved. In these cases the courts have applied Article 367 of the Greek Penal Code (GPC).³¹ According to Article 367

²⁹ Athens Multimember First Instance Court, Case 2364/2002, Nomos Database, where it was decided that an actor’s old photographs, even if these photographs have been taken in a public place, cannot be used without this person’s consent.

³⁰ See Coing, *Ehrenschaft und Pressrecht*, 1960, Geiger, *Die Grundrechte in der Privatrechtsordnung*, p. 49, Weber, *Ehrenschaft im Konflikt mit der Pressefreiheit*, *Festschrift H. Faller*, 1984, p. 457.

³¹ Athens Court of Appeal, Case 4056/1988 (1990) _Iliniki Dikaioissini 151. Supreme Court, Case 854/2002, Nomos Database; Court of Appeal of Thrace, Case 964/2002, Nomos Database; Athens

paragraph 1 subparagraph c “activities which take place for the execution of legal rights, the exercise of legal power or the protection of right dictated by a justified interest, do not constitute an illegal act”. Paragraph 2 of the same article provides that “the above provision does not apply when a) the above expressions or activities meet all the requirements of Article 363 act and b) when by the manner of the activity or by the conditions under which the act was executed an intention for defamation is implied”.

According to the case law,³² a justified interest may also be derived by the freedom and the social mission of the press as these are enshrined in the Greek Constitution. Justified interest may be the interest of the persons linked to the press and in particular the interest of journalists. This interest may relate to the publication of facts and reviews relating to the behavior and acts of public figures. Publications concerning these persons may also involve strict critique or unpleasant comments. However, in any case the freedom of the press should not be exercised abusively.³³

The question that arises at this point is what the behavior of the public figures is, which justifies the interest of the press. According to article 367 GPC, the existence of an interest alone does not suffice; this interest has to be justified. On the basis of which criteria then the judge will assess whether an interest is justifiable or not? Given that the notion of “justified interest” is a legal notion, the criteria for its definition should be sought for in law. The balancing between the legal rights to personality and those to the freedom of the press, as these rights are provided for in the Greek Constitution, leads us to the conclusion that an interest is essentially justifiable only if it is linked to the public and social activity of these persons. This

Multimember First Instance Court, Case 7036/2002, Nomos Database; Piraeus Multimember First Instance Court, Case 4100/2002, Nomos Database; Thessalia Multimember First Instance Court, Case 33182/2002, Nomos Database; Thessalia Multimember First Instance Court, Case 18905/2002, Nomos Database.

³² Athens Court of Appeal, Case 2323/1986 (1986) _liniki Dikaioissini 695; Athens Court of Appeal, Case 3129/1988 (1988) _omiko Vima 1243; Athens Court of Appeal, Case 2456/1988 (1989) _liniki Dikaioissini 810; Athens Multimember First Instance Court, Case 11656/1995 (1996) Arhio Nomilogias 166; Supreme Court, Case 729/1985 (1985) Nomiko Vima 1075; Supreme Court, Case 1407/1988 (1989) Nomiko Vima 1207; Supreme Court, Case 854/2002, Nomos Database; Supreme Court, Case 1177/2002, Nomos Database; Piraeus Multimember First Instance Court, Case 4100/2002, Nomos Database, Athens Multimember First Instance Court, Case 7470/1998, not yet reported.

³³ Article 14 of the Greek Constitution: “1. Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State. 2. The press is free. Censorship and all other preventive measures are prohibited”. Whether the freedom of the press as this is provided for in this article is exercised abusively or not is tested against article 281 GCC. See Court of Appeal of Dodoni, Case 98/2002, Nomos Database.

activity should also be known by reason of the constitutional principle of the transparency of these persons' public life.³⁴

The cultural activity of the representatives of art also forms a justified interest since culture is a constitutional value (Article 16 GC) worth of public dialogue and critique. In any case, article 367 GPC paragraph 1 subparagraph a, provides that negative comments for scientific, artistic or professional works are not considered to be an illegal act.

The public's interest for the private life of persons who hold public offices is not in principle not a justified interest. The Greek Constitution in its article 9 provides that the private and family life of the individual is inviolable. The private sphere of a person is a sphere where intrusions are not allowed.

An exception is recognized in those cases where the private activity of a person is directly linked to its public duties. This is derived from article 366 GPC which provides that the act of defamation should not be punished if the defaming statement is true. It, however, forbids the proof of the true fact if this fact is directly related to the private and family life of the person and not to its public life. Subsequently, if the activity is a private life activity, which however is related to the public life of the person, should also be submitted to the same transparency requirements which apply to all public life incidents and activities. An example would be a case where the press finds out that a very famous strong protester against nudism is in his private life an active nudist.

Interesting in this respect is the Athens Court of Appeal Case 9975/1986³⁵ where an ironic and degrading publication was at issue referring to a public figure's private life as follows: "Could mr A.S., General Secretary of the Ministry, tell us what the two professors working in the Ministry but being on detachment to his house is, if they are paid by the state and how is his beloved son doing with his homework?".

In relation to the above publication the Court has examined and reached the following conclusions: a) the publication is capable of insulting the honor and dignity of the person, b) the incident at issue came within the sphere of the person's public life and therefore there are grounds for the justified interest of the press and for its critique for that person's public life, c) the professors' detachment outside the Ministry was a good enough reason for the rising of questions and lastly d) although

³⁴ Dagtoglou, Constitutional Law, Private Liberties, t. A, 1991, p. 517.

³⁵ (1987) _lliniki Dikaiosiini 299seq.

the publication was inaccurate, there was no way in which the truth about this incident could have been found out apart from the setting of the question. The Court decided that - also in view of the fact that a rectifying the situation statement had been published – this publication falls within the scope of the Constitution and of article 367 GPC which set the boundaries for the freedom of the press and its justified interest “so as [this act] not to constitute an illegal behavior under articles 914 and 932 [GCC] from the part of those who committed it”.

Lastly, in relation to a public figure’s private life, when the person concerned does not hold a public office but has been known by reason of its contribution to art or literature, an interest for its private life is not justified. The press intervention into these peoples’ private lives is only allowed to the extent set by them according to the theory of self determination or to the extent to which these persons have consented to it.

The illegal character of the violation of the right to personality may also be extinguished by reason of the exercise of a legal activity. A subcategory of a legal activity could also be the justified interest from the part of the press. In such a case there should be a balancing between the right to privacy and that of the freedom of the press.³⁶

In such a balancing of rights one should take as a starting point the absolute right to personality which excludes any third party intervention to it. When a third party intervention takes place against one’s personality, it is examined whether the intervener has a right to intervene. Such right is provided for by the law (i.e. defense, state of emergency and so on) and extinguishes the illegal character of the intervention. Apart from such a right provided for in the law there could also be a justified interest through which the constitutional principle of the freedom of the press is expressed.

When the reason for the third party intervention is one of the exhaustively listed in the law absolute reasons, which justify such an intervention, the balancing of rights is done in the law itself. When, however, the reason for such an intervention is relative, then it is the judge that has to balance the rights at issue, without of course having unlimited powers on this point.³⁷ To the extent possible the judge must seek

³⁶ For a balancing of interests see Dagtoglou, *Constitutional Law, Private Liberties*, t. A, 1991, p. 516seq.

³⁷ Karakostas, *Media Law*, 2003, p. 251 and Georgiades, *General Principles of Civil Law*, p. 129.

for criteria, if not of general application, at least capable of being applied in cases he is asked to decide. The judge must take into account the violation (the nature of the violated right, the gravity of the violation and the result it may have on the victim) as well as the justifying reason which is invoked by the person having committed the violation, how this reason is established, its gravity and what would the result be in case this reason is rejected.

Regarding the balancing between the freedom of the press and a public figure's right to privacy, one has to take into account that in the cases where the freedom of the press allows the press to intrude into a public person's private life, this intrusion should reach that point where the very essence and core of the right of privacy is not affected. If that was the case then there would be no core for that right and therefore no real respect for the value of a human being.³⁸ The absolute protection for the value of a human being is a protection provided for in article 2 paragraph 1 of the Greek Constitution and forms one of the fundamental principles of the Greek legal order.

B. Special provisions for the protection of privacy and their application to public figures

Privacy in Greek law is also protected by the following special provisions, from the point of view of civil law. These provisions are particularly helpful first because they expand the existing protection offered by private (civil) law and second because they are useful in establishing within the terms of articles 57 and 914 GCC³⁹ the illegal character of a violation as well as the reasons for the extinguishing of the illegal character of an act:

- a) Penal Code Provisions which punish any violation of one's home which is considered to be a sanctuary (articles 241 and 334 GPC), the secrecy of letters (article 370 GPC) or other forms of communication (article 370A), breach of confidentiality in professional matters (article 371 GPC), and article 366 GPC which forbids the proof of the truth of a defaming fact when this fact refers to the private or family life of a person.

³⁸ Dagtoglou, *Constitutional Law, Private Liberties*, t. A, 1991, pp. 517-518. See also Case 100/2000 of the Authority for the Protection of Personal Data which provides that "...the public's interest for information does reach this point where sensitive private data should be disclosed. This would result in an insult to the human value through the humiliation and degradation of the human dignity...".

³⁹ Article 914 GCC provides that "Any person causing damage in breach of the law and by being in fault to another is under an obligation to compensate him."

- b) The sole Article of Law 1178 of 1981 which provides for the objective responsibility⁴⁰ of the owner of a newspaper for publications that infringe the right to personality, irrespective of the subjective responsibility of the author of the article or if unknown the responsibility of the publisher or the publication manager. According to article 4 paragraph 10 of the Law 2328 of 1995, the sole Article of Law 1178 of 1981 also applies to the electronic mass media.⁴¹ The special legislation for mass media increases the protection which is provided through the provision of the objective responsibility of the entrepreneur and through the provision of a minimum amount of money as damages for non pecuniary (moral) damage.
- c) Article 3 paragraph 11 of the Law 2328 of 1995 (which has amended article 3 paragraph 12 of Law 1730 of 1987) provides that: “any person whose personality or honor or dignity or private and family life or professional, social, scientific, artistic, political or other activity is violated by a television, radio or other similar emission is entitled to rectification by the station which has emitted the emission at issue”.
- d) Also interesting in this respect is the Law 2472 of 1997 for the protection of the person against the processing of its personal data. This law, by reason of the wide definition afforded to the ‘processing of personal data’, it essentially encompasses every journalistic activity which relates to personal data and especially research by journalists which comes within the notions of collection of data, its storage and publication which in fact constitutes dissemination of data.⁴² The Law also distinguishes between sensitive and non sensitive data. Particularly relevant are the provisions of article 7 paragraphs 1 and 11.⁴³ Article 7 paragraph 1 introduces special provisions for the processing of sensitive data in cases where the permission of the Authority for the Protection

⁴⁰ Objective responsibility is the responsibility where one does need to prove fault or intention.

⁴¹ According to Law 1178/1981 a ‘publisher’ is considered to be the legal representative or the legal representatives of the licensed company, ‘manager’ is considered the person responsible for the program and if journalistic emissions are at issue the person responsible for the news section, ‘editor’ is considered the producer or the journalist-producer or presenter of the emission. It is also provided in the law a minimum amount of money as compensation for moral damage.

⁴² Tsevas, “*The individual’s protection from the processing of personal data in the press and the media*”, (1998) _ritiki Epitheorissi 181seq.

⁴³ It is also argued that this provision is unconstitutional since it contradicts article 14 paragraph 2 of the Constitution. In particular, it is argued that the provision of a pre-emptive measure, such as the prerequisite for a permission by the Authority for the Protection of Personal Data, contradicts the prohibition of censorship and the provision of suppressive measures by article 14 paragraph 2 of the Constitution, Tsatsou – Skouri – Spyropoulou, Opinion, (1998) Syntagma 497.

of Personal Data is asked for the collection and the processing of sensitive data as well as for the setting up and maintenance of an archive for the use for research only by journalists when the processing at issue relates to data concerning public figures who hold a public office or administer the interests of third parties. The Authority grants its permission in those cases only where processing is absolutely necessary for the information of the public on issues of public interest and to the extent that the right to private and family life is not affected in its core.

One could ask oneself at this point whether this provision is altogether excluded in cases where sensitive data is at issue, which relates to the private and family life of a public person, and if not, what is the scope of its application in these cases. The purposive (or else teleological) interpretation of this provision leads us to the conclusion that the drafter of this provision has intended to have a balancing between the right of privacy and that of the freedom of the press and in particular the right of the public to be informed in relation to matters of public life in advance. That means that when the requirements for the application of paragraph 1 are there then the processing of sensitive data relating to private life is allowed without however the core of this right being affected. In that case this provision is rather useless since one could come to this conclusion just by the application of the existing law. The law, however, reserves at this point the judgment as to the legality of an act for the Authority for the Protection of Personal Data rather than for the court. Although the Authority for the Protection of the Personal Data (APPD) is an independent authority, it does not provide the guarantees provided by the hearing and examination of a case by a judicial authority. In any case one could argue that the role of the APPD is only preemptive and not suppressive. That means that one can always turn to the courts in order for them to judge the validity of the APPD's decision. However, it is very likely that the court will be heavily influenced the APPD's decision.

Article 11 of Law 2472/1997 is also of great practical significance for the scope of protection of the public figures' private life. According to it there is no need to inform the person whose personal data is processed, if that person is a public figure, that this data is processed for journalistic purposes. At this point it becomes apparent that the legislator takes seriously into account the

importance of research from the part of the journalists and the need for the collection of such information in order for the media to perform their role as this role is protected and provided for by the Constitution. In fact the Law facilitates the role of the media by refraining from distinguishing between sensitive and non sensitive data. By introducing this exception the Law practically exempts the press from the scope of the article which provides the processing of sensitive data in cases only where one has the consent of the person whose data is being processed. If the person whose personal data is being processed by the press is informed for such processing, it still has the rights afforded to it by articles 12 and 13 of the Law. These rights are the person's right to access the data concerning him or her and the right to object to such a processing respectively. Consequently the protection of the personal data of a person whose data is being processed by the press is only activated when the person is informed of such a processing, in other words only when such a processing has already taken place.

The aforementioned provisions do not preclude the possibility where a person can be protected in such cases by making use of other legal provisions which define the scope of the permissive journalistic research. Also, article 4 paragraph 1 of Law 2472/1997 provides that the processing of personal data is only allowed when this data has been collected in a legal and legitimate manner.

- e) Article 5 paragraphs 1 to 3 of Law 2690 of 1999 concerning "Penalties of the Administrative Procedure Code and Other Provisions" provides that "any interested party has the right to be informed of the content of the administrative documents after applying for it in writing". "In addition any person that has particular legal interest in relation to a case has the right to be informed of the content of private documents which are kept in public authorities and relate to its case which is either pending or has been examined by them after having applied for it in writing". Paragraph 3 of the same article provides for the protection of private life. "The right enshrined in the above paragraphs cannot be invoked if the document applied for concerns the private or family life of a third person or if confidentiality which is provided by a special legal provision is to be breached". From the above it is submitted that

one cannot be informed of the content of administrative documents when these documents concern the private life of a third party, e.g. even if a journalist has a legal interest to be informed of some administrative document relating to a case of his which is pending or has been concluded by an administrative authority will not have the right to learn the content of this document to the extent that this document concerns the private life of a third party.

Article 33 paragraph 1 of Law 2690/1999 has repealed article 16 of Law 1599 of 1986 to the extent that this article refers to State, Local Authorities on a municipal and/or regional level and Public Law Legal Entities services (article 1 of Law 2690/1999). It, however, still applies to the remaining public sector. Article 16 of Law 1599/1986 provides that any citizen, with the reservation of paragraph 3, has the right to be informed of the content of administrative documents, unless these documents refer to the private and family life of a third party.⁴⁴

The question also remains whether article 25 paragraph 1 2nd sentence of Law 1756 of 1988, according to which the District Attorney of First Instance has the right to order the public authorities, the public law legal entities, the public benefit organizations and in general all the state enterprises to render to him documents or copies of them when these documents are applied for by natural persons or legal entities who have a right or a legal interest for that (unless the article 261 of the Penal Administrative Code documents are at issue)⁴⁵.

V. Conclusion

The Greek position on the protection of the public figures privacy is very similar to the rest of the civil law systems on this matter, such as the Swiss, the French and the German one, without however presenting a clear preference for one of them. In particular French law on this matter seems to favor the right of privacy in comparison

⁴⁴ For the purposes of article 16 of Law 1599 of 1986, 'administrative documents are all documents drafted by the public sector'.

⁴⁵ Article 261 GPC provides that: "Public servants which have undertaken, even temporarily, a public office, as well as the persons mentioned in article 212, should, if asked by the interrogator, to handle in to the judicial authority any document and/or object which they possess by reason of their responsibilities, their task or their profession, unless they declare in writing, even if this declaration lacks any explanation, that the document at issue is a diplomatic or military secret concerning the state security, their task or their profession.

with the right of the freedom of the press in a balancing of interests,⁴⁶ whilst the German one leaves the balancing of the two rights entirely on the judge who will reach its conclusions by taking into account the particular facts of the case. There may, however, be cases where the law expressly favors the freedom of the press in order to facilitate the information of the public against the right of privacy.⁴⁷ Greek law follows more or less the Swiss model⁴⁸ where the protection of privacy forms part of a general provision concerning the right to personality and combines it with the German theory of the balancing of rights. This, however, does not exclude instances where the law in certain situations has balanced the two rights in advance, as this was explained when the Law 2472/1997 on the protection of personal data was discussed. This is not always desirable because these ready-to-use solutions do not always provide the flexibility required since they do not take into account the particularities and the special facts and circumstances of each case. In that sense the powers of the judges are restricted and unnecessarily limited.

Lastly, one can conclude that Greek law provides sufficient protection for privacy respecting at the same time the role and function of the media. It also provides sufficient flexibility to the judge in order for him to be able to take into account the evolving morals of the modern society and the particularities of each case that comes before him and reach a decision which will be both equitable and realistic.

⁴⁶ According to French law intrusion in the private sphere of the person is not allowed unless the person has consented to it or unless the intrusion is absolutely linked to a public activity. Article 9 of the French Civil Law provides that private life is expressly and particularly protected within the right to personality. The French judge has to follow the judgment of the legislator which gives priority of the right to private life against the freedom of the press.

⁴⁷ German law leaves the balancing of the right to privacy and that of the freedom of the press to the judge. There are however instances where the freedom of the press is favored on the basis of the serving the need to inform the public sometimes at the expense of the private sphere of a person. See Paragraph 23 II KUG.

⁴⁸ According to article 28 paragraph 2 of the Swiss Civil Code: "a violation is illegal unless justified by the consent of the victim or by a prevailing private or public interest or by the law".