

# PROTECTION OF THE MEDIATIZED PRIVACY IN THE SOCIAL MEDIA: ASPECTS OF THE LEGAL SITUATION IN TURKEY AND GERMANY

Seldağ GÜNEŞ PESCHKE\*

Lutz PESCHKE\*\*

## ABSTRACT

*Social media affect personal rights in a special way. The protection of personal datas as well as personal rights like the right to one's personal image, social networks, online forums or micro blogs like twitter and others cause a serious problem. Since the beginning of web 2.0 the online communication has become a central element of cultural change of privacy. On the premise of mediatization, the process of temporal, spatial and social penetration of our culture with media communication and their varied and partially contradictory imprint, a point can be made, that "life" in that culture beyond the media is no longer conceivable. Social media has accelerated the change in media communication. Many signs point to a change of culture to a media culture combined with a change of privacy. The present paper intends to give an overview of the current legislative framework in the protection of privacy in Germany and Turkey. The first part will deal with some aspects of the change of privacy in the mediatized everyday world. Therefore, it must be shown that the mediatization of privacy is a cross-cultural trend in the modern civil society and special social and cultural conditions of this trend play a role in this process. The second part will describe and discuss the different legislative situations and legal frameworks in Germany and Turkey.*

**Keywords:** Privacy, media culture, mediatization, social media, data protection

## SOSYAL MEDYADA ÖZEL HAYATIN KORUNMASI: ALMANYA VE TÜRKİYE'DEKİ HUKUKİ DURUM

### ÖZET

*Sosyal medya ve kişilik hakları arasında sıkı bir ilişki bulunmaktadır. Bir kişinin, kişisel verilerinin yanında, kişilik haklarına dahil olduğu düşünülen, kişisel resimleri, sosyal ağları, online forumlarına yazdıkları veya twitter gibi mikro*

---

\* Assoc. Prof. Dr. Seldağ GÜNEŞ PESCHKE, Gazi University, Faculty of Law, Beşevler Ankara, Turkey

\*\* Dr. Lutz PESCHKE, Rheinische Friedrich-Wilhelms-University of Bonn, Institute for Linguistics, Media and Sound Studies, Department for Media Studies, Bonn, Germany

*blogları, kişisel verilerin korunması açısından ciddi bir sorun teşkil etmektedir. Web 2.0'ın kullanımının başlamasından itibaren, online iletişim, özel yaşamın gizliliğinin kültürel değişiminde merkezi bir unsur haline gelmiştir. Medyatikleşen (mediatized) dünyada, medya iletişim kültürümüzün zamansal, mekansal ve sosyal etki süreci ve bunların baskısı noktasında, iletişimin ötesinde bir hayatın olması düşünülememektedir. Sosyal medya, medya iletişimindeki değişimi hızlandırmıştır. Kültürlerin, özel hayatın gizliliğine ilişkin değişimi içeren, medya kültürüne doğru bir değişim içinde olduğuna dair birçok işaret bulunmaktadır. Bu makale ile, Almanya'da ve Türkiye'de özel hayatın gizliliğinin korunmasına ilişkin genel bir hukuki çerçeve çizmeye çalışılmıştır. İlk bölüm, gündün güne medya ile içiçe giren dünyada özel hayatın gizliliğinin değişimine dikkat çekmektedir. Bununla beraber, özel hayatın gizliliğinin medyatikleşmesi, modern sivil toplumlarda bir çapraz kültür eğilimidir ve bazı özel, sosyal ve kültürel şartlar bu süreçte önemli rol oynar. İkinci bölümde ise, Türkiye ve Almanya'da bu konuya ilişkin genel düzenlemelerden bahsedilmiş ve hukuki uygulamalar incelenmiştir.*

**Anahtar Kelimeler:** Özel hayatın gizliliği, medya kültürü, medyatikleşme, sosyal medya, kişisel verilerin korunması

## INTRODUCTION

In our mediatized society, communication occurs increasingly in the internet. The nature of the internet and its potential has developed in recent years in a way, that computer generated communication can be performed easily even with full video. Thus, the technical barriers in the internet are getting less and less. Therefore, Höflich<sup>1 2 3</sup> refers to the internet as a hybrid or meta-medium and Krotz<sup>4</sup> as a broad electronic area of communication. The social media extend this area of communication many times more. Thereby time zones can be invalidated.

As an example, a person who is in Germany can simultaneously communicate with a friend in Turkey via Skype and accept a call from his brother in Paris via voice-over IP and at the same time chat with his girlfriend by instant messenger, sometimes watching a live-stream in a media player,

---

<sup>1</sup> HÖFLICH, Joachim: Der Computer als "interaktives Massenmedium" Publizistik 39 (1994), pp. 389-408.

<sup>2</sup> HÖFLICH, Joachim: Vom dispersen Publikum zu "elektronischen Gemeinschaften". Rundfunk und Fernsehen 43 (1995), pp. 518-537.

<sup>3</sup> HÖFLICH, Joachim: Technisch vermittelte interpersonale Kommunikation. Grundlagen – organisatorische Medienverwendung – Konstitution "elektronischer Gemeinschaften". Westdeutscher Verlag, Opladen 1996.

<sup>4</sup> KROTZ, Friedrich: Elektronisch mediatisierte Kommunikation. Rundfunk und Fernsehen 43, 4 (1995), pp. 445-462.

which just then broadcasts a football match from Barcelona. Perhaps he is also watching the spectacular goal in the English Premier League on YouTube, which he is talking about with the Turkish friend and following the tweets from all over the world, which pop up on his desktop while he is finally making a snapshot of his friend and uploading it onto Facebook to share with his “friends”.

The central character of social media is the active user, who mutates to a “prosumer” due to the participatory possibilities. Simultaneously he is producer, consumer and program manager in the web. The user-generated content becomes established as an important channel of social communication today. Its importance is identifiable in various places. With the help of commenting, drafting one’s own articles, rating, uploading of media files, such as images and videos, the user can intervene in the digital world and take a public position. In this way, a change is currently taking place regarding the question, which personal information should be made publicly available<sup>5</sup>.

The high level of participation changes not only the net itself, but also the attitude and behaviour of the user: they take advantage of their potential influence to organise themselves collectively as an individual and their interests as well as their knowledge in the virtual space in multiple ways<sup>6</sup>.

Since the beginning of web 2.0 the online communication becomes a central element of the cultural change of privacy<sup>7</sup>. In this context Krotz advanced the hypothesis, that a few people content themselves with being in a group, just one among many. They pay particular attention to stick out of the masses and participate in public life by using their own comments, images, videos as well as other formats<sup>8</sup>. In turn, this mediated self-representation via social media generates a kind of digital voyeurism. Tweets and re-tweets are

---

<sup>5</sup> THIMM, Caja: Medienkultur und Privatheit: Privatheit und Öffentlichkeit im medialen Diskurs. In: LENDERS, Winfried (ed.): Medienwissenschaft. Eine Herausforderung für die Geisteswissenschaft. Bonner Beiträge zur Medienwissenschaft vol. 2. Peter Lang, Frankfurt/New York 2004.

<sup>6</sup> PESCHKE, Lutz; SCHRÖDER, Alina: Visualisiertes Lernen im Web 2.0. Audiovisuelle Kommunikation durch Wissensspots. In: ANASTASIADIS, Mario; THIMM, Caja (ed.): Social Media. Theorie und Praxis digitaler Sozialität. *Bonner Beiträge zur Medienwissenschaft vol. 10*. Peter Lang, Frankfurt/New York 2011, pp.199-225.

<sup>7</sup> WEIß, Ralph: Privatheit im „öffentlichen Raum“ – Klärungsbedarf. In: WEIß, Ralph; GROEBEL, Jo (ed.): Privatheit im öffentlichen Raum. Medienhandeln zwischen Individualisierung und Entgrenzung. Leske + Budrich, Opladen 2002.

<sup>8</sup> KROTZ, Friedrich: Mediatisierung: Fallstudien zum Wandel von Kommunikation. VS Verlag, Wiesbaden 2007.

posted, articles are commented upon and shared, images uploaded, messages about where they are and what they are doing are posted on pinboards. Social media activists permanently change their roles between a digital exhibitionist and a digital voyeur.

Unlike the human view or the face-to-face communication, which leaves the counterpart just with an image, the new forms of observations leave data tracks<sup>9</sup>. With the help of these data tracks in the social media, the “modern voyeur” is able to create counter-images of a human being.

According to Nettesheim, privacy is not a natural fact, rather, it is a social reality in history, it is constructed in various societies in different ways. It can be regarded as residue of an individual which appears in the public as well as a privilege, that is given to individuals and families of society.

Privacy is not a rigid state. It is subjected by social movements. This is often a cause of complaints, because there are repeated border shifts and overlaps, which will be interpreted as a breakdown and loss of society. Nettesheim identifies gaps and contradictions in protecting privacy. While the Federal Constitutional Court of Germany operates very consistently and protectively, where the protection against the intrusion into the privacy by the government is involved – especially in the area of articles 13 (Inviolability of the home) and 10 (Privacy of correspondence, post and telecommunication) in the German Constitution, the jurisdiction in the forms of generating counter-images proves itself less certain.

With regards to personal data Nettesheim points out the unclear situation, that on the one hand the Federal Constitutional Court talks about the authority of every individual to decide for himself on the exposure and application of his personal data<sup>10</sup>, and on the other, an absolute right of control over personal data should not be granted, comparable with the right of property. This of course means, that although the development of an individual’s personality should be ensured, but the moment, he moves into the area of communication, he will never have a right to protection against external attributions.

Thus, from his point of view, contradictions in the valuation of individual situations are inescapable: e.g. a camera, which scans a public

---

<sup>9</sup> NETTESHEIM, Martin: Grundrechtsschutz der Privatheit. In: Der Schutzauftrag des Rechts. Veröffentlichung der Vereinigung der Deutschen Staatsrechtslehrer, vol 70. De Gruyter, Berlin/Boston 2011.

<sup>10</sup> BVerfG E 65,1 (43)

place, constitutes an illegal infringement of rights. But the data collection available from general websites does not affect an intervention into a person's fundamental rights.

In the context of the different types of data collection and in times of media databases, Diggelmann<sup>11</sup> raises the question, if there is a personal right to fading memories<sup>12</sup>. According to him, the information society did not find an answer to the human basic need of a periodic restart. Likewise he regards the social norm of being contemporary as the reason of the problem for the steady increase of technical possibilities if personal data is accessible. It is "cool" to use the technical possibilities like the uploading of images and short messages, given by W-LAN and mobile devices. This creates a deceptive image of trust in one's own invulnerability, if you just care the social norm to be contemporary. In this context the legitimate questions of intrusion into privacy are repressed. Numerous data scandals in recent years have only slightly affected the basic willingness to take care of one's own personal data. It is hardly surprising that society is worried about the future of their privacy. In this article, in the first part further aspects of changes to privacy in the mediatized everyday-world will be discussed. In the second part the theme will be discussed with the legal aspects.

## **1. THE CHANGE OF PRIVACY IN PUBLIC SPACES IN THE MEDIATIZED EVERYDAY WORLD**

The internet with its seemingly endless range of applications is no longer a medium, in which only the real world is represented. Due to the abilities of social media, where users can generate their own content in the internet, a separate world in the virtual environment is created, which determines their own rules and crosses the border of the real world<sup>13</sup>. The networking with each other is the central principle of society. Therefore, more and more people shift their communication into the web. The communication network can get extended quickly and easily.

---

<sup>11</sup> DIGGELMANN, Oliver: Grundrechtsschutz der Privatheit. In: Der Schutzauftrag des Rechts. Veröffentlichung der Vereinigung der Deutschen Staatsrechtslehrer, vol 70. De Gruyter, Berlin/Boston 2011.

<sup>12</sup> WARMANN, Matt: Online Right "To be Forgotten" Confirmed by EU, TELEGRAPH (Mar. 17, 2011, 12:53 PM), <http://www.telegraph.co.uk/technology/Internet/8388033/Online-right-to-be-forgotten-confirmed-by-EU.html> [last access: 02.04.2012]

<sup>13</sup> THIMM, Caja: Ökosystem Internet. Zur Theorie digitaler Sozialität. In: ANASTASIADIS, Mario; THIMM, Caja (ed): Social Media. Theorie und Praxis digitaler Sozialität. Bonner Beiträge zur Medienwissenschaft vol. 10. Peter Lang, Fankfurt/New York 2011, pp.19-42.

Computer-generated communication does not take place exclusively with real names of the users. Some platforms prescribe the selection of a username, some users voluntarily choose a nickname. These nicknames fulfil both functions of a mask. On the one hand they protect the user from others by hiding their true identity. On the other hand depending on the chosen nickname, it attracts more or less interest. In this way, obstacles for access to the communication network will be removed<sup>14</sup>. Thus, username users create various partial identities, e.g. professional, gender, fan, etc. These partial identities generate an identity patchwork of the individual<sup>15</sup>. The user has free choice in the creation of his partial identity and does not depend on reality. In principle, they can change their gender as they like.

Different reports have already dealt with the daily mediatization and the correlated change of social relations, culture and society. In recent years, particular attention has been paid to the approach of mediatization by Krotz<sup>16</sup>. The starting hypothesis of his work is, that in the context of social developments and changes, caused by the promotion and development of new media, communication increasingly differentiates more and more.

Krotz says, the media is not the active part, but the person who deals with the media, is. Not the media but the person using them plays the active role. Krotz makes a difference between face-to-face and media communication. In this area he divides it into three types<sup>17</sup>:

- Communication with other individuals, which are spatial, temporal and otherwise not personally present, e.g. letters, chats, phone calls.
- Communication with transmitted text, which will be heard, read, seen or otherwise recognised, independent from the author, reception and perception, e.g. watching TV, reading, searching the internet pages, listening to the radio.

---

<sup>14</sup> ACKERMANN, Judith: ‚Masken und Maskierungsstrategien – Identität und Identifikation im Netz‘. ANASTASIADIS, Mario; THIMM, Caja (ed.): Social Media. Theorie und Praxis digitaler Sozialität. Bonner Beiträge zur Medienwissenschaft vol. 10. Peter Lang, Fankfurt/ New York 2011, pp.61-86.

<sup>15</sup> KONERT, Bertram; HERMANN, Dirk: Der private Mensch in der Netzwelt. In: WEIß, Ralph; GROEBEL, Jo (ed.): Privatheit im öffentlichen Raum. Medienhandeln zwischen Individualisierung und Entgrenzung. Leske + Budrich, Opladen 2002.

<sup>16</sup> KROTZ, Friedrich: Mediatisierung kommunikativen Handelns. Der Wandel von Alltag und sozialen Beziehungen, Kultur und Gesellschaft durch die Medien. Westdeutscher Verlag Opladen 2001.

<sup>17</sup> KROTZ, Friedrich: Mediatisierung: Fallstudien zum Wandel von Kommunikation. VS Verlag, Wiesbaden 2007, p. 90.

• Communication with interactive systems, which are not with individuals but only represent communicated content and text, e.g. GPS systems or figures like “Lara Croft”.

Social media has accelerated the change in media communication. Media communication no longer works traditionally linear, like calling in the afternoon, cooking afterwards and watching the news on TV at 8 p.m. Place, time and sense are no longer distinct areas. As a consequence of an increasing intermixture of the media, personal life and daily work will blend into each other.

Krotz calls these phenomena the blurring of the provinces of meaning (“Sinnprovinzen”). There are no longer delineated images like computer on the desk, TV in the living room, telephone on the floor, radio in the kitchen and book on the chair. As a consequence of the blurring of the boundaries new forms of communication and cross-media integrations, which have been practiced so far, are developing.

In this context he points out three dimensions of media blurring the boundaries<sup>18</sup>:

1. Temporal: Media is available in ever-growing numbers at all times.
2. Spatial: All media are available in and combine to more and more places.
3. Social and in its connotation: Media is used in ever new contexts and connotations, with ever new perspectives and motives, on the communicator’s as well as the recipient’s side.

Thus, social media accelerates the change of culture into media culture.

According to Hepp, the existing approaches are not able to capture the continuous change appropriately. In his view, this is possible because „ein solcher Wandel [...] unterschätzt wird, indem nicht hinreichend reflektiert wird, wie Medien – oder konkreter: medial vermittelte Kommunikation – unseren Alltag, unsere Identität und unsere Formen des Zusammenlebens zunehmend prägen.“<sup>19</sup>

---

<sup>18</sup> KROTZ, Friedrich: Mediatisierung kommunikativen Handelns. Der Wandel von Alltag und sozialen Beziehungen, Kultur und Gesellschaft durch die Medien. Westdeutscher Verlag, Opladen 2001, p. 22.

<sup>19</sup> HEPP, Andreas: Medienkultur. Die Kultur mediatisierter Welten. VS Verlag, Wiesbaden 2011, p. 8 (Translation: This is possible “because such change is [...] underestimated by

According to him it is advisable to consider the media culture as a mediatized culture. That means, media cultures are cultures, whose resources of meaning are refereed by technical communication media and whose processes are affected by them in different ways, still to be defined.

In this context, “resources of meaning” are defined as communications we refer to, when “meaning” will be generated in media communication, e.g. texts, movies, websites etc. “Resources”, because communications do not contain meanings first and foremost, but are developed by the communicator’s adoption. But Hepp points out, that no culture is mediatized in such a way, where all resources of meanings are media-based. Then as a physical entity he will accomplish his communication and thus his production of meanings is always partly “direct” partly “not media-based”<sup>20</sup>.

On the premise of mediatization, the process of temporal, spatial and social penetration of our culture with media communication and their varied and partially contradictory imprint, a point can be determined, from which a “life” in that culture beyond the media is no longer conceivable<sup>21</sup>.

In this context, according to Krotz, communication will become more egocentric because of the blurring of the boundaries of mental images. In the daily media-based communication it is not so much about the understanding and establishing of common ground between the communicators, but more about the self-reflection of the individuals. The act of communication will increasingly be regarded as an event and as a possibility or an occasion to enter into a relationship with someone and to exchange views.

From the increasingly complex forms of media communication the question arises about the change of privacy. Many signs point to a change of culture to a media-culture combined with a change of privacy. But it is interesting to note, that in Germany a significant impulse of change had taken place in the 1950s<sup>22</sup>. Until the 1950s for the greater part of society life had

---

not adequately reflecting how media – or more precisely: media performed communication increasingly form our everyday life, our identity and our way of living together.”

<sup>20</sup> REICHERTZ, Jo: Die Macht der Worte und der Medien. 2. Ed., VS Verlag, Wiesbaden 2008, p. 17

<sup>21</sup> HEPP, Andreas: Medienkultur. Die Kultur mediatisierter Welten. VS Verlag, Wiesbaden 2011, p. 70

<sup>22</sup> WEIß, Ralph: Vom gewandelten Sinn für das Private. In: WEIß, Ralph; GROEBEL, Jo (ed.): Privatheit im öffentlichen Raum. Medienhandeln zwischen Individualisierung und Entgrenzung. Leske + Budrich, Opladen 2002b.



taken place within the family. Because of predominantly limited space, private life had been going on under the eyes of the family. Prost calls this state of privacy a “gruppeninterne Öffentlichkeit”<sup>23</sup> with “verhinderter Intimität”<sup>24 25</sup>. Only after apartments became larger due to increasing prosperity, every family member had their own room and with it a refuge, which offered them space for intimacy, secrets and identity within that privacy, and which was reproduced threefold between public, family and individual life<sup>26</sup>.

According to Ritter public and private communication is analytically distinguishable indeed. But from a particular point of view, the differentiation between privacy and publicity develops only at the moment of debate. First, the communicators debate as an individual or as a group. Then they decide if the topic to be discussed is a private or public one<sup>27</sup>. This point of view arises from the theory which Habermas formulated in his theory of communicative action<sup>28</sup>. In this theory he develops terms and definitions which enable the localisation of the communicators. The horizon of meanings, where he undertakes the localisation, he calls “Lebenswelt”<sup>29</sup>. The terms and definitions of privacy and publicity are intertwined in a special way. Experiences of the communicator in his “Lebenswelt” flow into his debate. And he decides, if the debate contains public relevance or remains private<sup>30</sup>. But public cannot be regarded as a topographical space. Instead, it is a temporal, symbolical space, which only arises in the debate of the communicator.

Thus, privacy as opposed to publicity has to be adapted. Privacy cannot be localised as home or family, which is associated with certain procedures. Privacy can be in many places, also in the middle of public places.

---

<sup>23</sup> Translation: Public within groups

<sup>24</sup> Translation: Prevented intimacy

<sup>25</sup> PROST, Antoine: Grenzen und Zonen des Privaten. In: Prost, Antoine; Vincent, Gérard (ed.): Geschichte des Privaten. 5. Bd.: Vom Ersten Weltkrieg zur Gegenwart. Frankfurt a.M. 1993, p. 73.

<sup>26</sup> Cf. p. 76.

<sup>27</sup> RITTER, Martina: Alltag im Umbruch. Zur Dynamik von Öffentlichkeit und Privatheit im neuen Russland. Krämer, Hamburg 2008.

<sup>28</sup> HABERMAS, Jürgen: Theorie des kommunikativen Handelns vol. 1&2. Suhrkamp, Frankfurt a.M. 1981.

<sup>29</sup> Translation: lifeworld.

<sup>30</sup> RITTER, Martina: Die Dynamik von Privatheit und Öffentlichkeit in modernen Gesellschaften. VS Verlag, Wiesbaden 2008.

But why should a difference be made between privacy and publicity in a media culture, where private life permanently becomes public? With the publication of private matters, socio-spatial borders of access to scenes from the private world of other people will be skipped over. But the borders will not be abrogated. It is still up to the individual, as to what should remain private and what should be transferred into public space, even if the mediatization of privacy blurs the distinction of privacy and publicity<sup>31</sup>.

However, because of the wide-spread communication via social media the difference between private and public communication is more difficult. In the internet, which creates a global public, an entanglement between publicity and privacy is amplified.

Thereby, an important phenomenon becomes visible. Via user-generated content it was never easier, to make revenge campaigns against ex-lovers, mobbing campaigns against unpopular school fellows or torrents of hatred against ex-superiors accessible to the general public<sup>32</sup>. This happens often, with no possibility for the relevant people to respond.

But the reason is not only the low technical barrier, which makes these publications of private emotions easy. In fact, it is the additional attraction, which arises because of the apparent anonymity caused by the hidden identity via nicknames. So users can perpetuate their wisdoms on pinboards, in blogs or comment areas, sometimes like graffiti. Thus, within different net cultures the protection of privacy becomes more and more important, be it through the protection of content, personal data or privacy itself. This will be discussed in the next chapter.

## **2. REGULATIONS OF SOCIAL MEDIA**

Over recent years, there has been a big increase in the usage of information and communication technologies. Many people, in their daily lives, spend most of their time in the networks of the internet environment. In other words, many transactions, regarding economic and social life, have started to be carried out in these electronic media.

The freedom of communication is one of the important rights that are given to the citizens by the State. Especially in recent years, because of technological improvement, new regulations are being put into force across

---

<sup>31</sup> WEIB, (2002b), p.82.

<sup>32</sup> THIMM (2004), p. 63.

Europe in communication areas. Parallel to these regulations, Turkey has to make new arrangements on this subject. It is stated in the Turkish Constitution (Article 22) that everyone has the right to freedom of communication and the secrecy of communication is fundamental<sup>33</sup>.

Social media is a new concept in the medium of the internet which has many members all around the world. The countries started to create their own "social media laws". In the integrating world, not only a global social media policy, but also a privacy policy should be created. With the implementation of these activities, there was a need to build up new regulations for the protection of the user's rights in the social media. The personal data is one of the most important values that should be protected in this area. In recent years, countries all around the world started developing their own regulations for the protection of personal data. Due to the importance given to this subject, personal rights, privacy and personal data will be discussed in this part of the article, as they are applied in Turkey and Germany.

### **2.1 An Overview of the Personality Rights**

Personality rights are mentioned in several international treaties. According to the Universal Declaration of Human Rights (UDHR) dated 10 December 1948, Article 12, "No one shall be subjected to arbitrary interference of 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." In the European Convention on Human Rights (04 November 1950), in article 8, it is stated that everyone has the right to respect for his private and family life, his home and his correspondence<sup>34</sup>. This article respects private life and protects people against interference by other individuals.

In many countries, personal rights are under the protection of the State. In Germany, the general right to personal life has been constitutionally guaranteed by Articles 1 and 2 of the Basic Law (Grundgesetz - GG) as a basic

---

<sup>33</sup> In consequence of numerous regulations on the right to privacy, the Press Law and the Telecommunication Law must be also be taken into consideration within the freedom of communication.

<sup>34</sup> In the European Convention on Human Rights article 2/2 states that there shall be no interference by a public authority with the exercise of this right. There can be exceptions in accordance with the law and when it is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country. The prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others are also included in these exceptions.

right which is also recognised in the case law of the Bundesgerichtshof since 1954.

GG Article guarantees the protection of human dignity and the right to free development of the personality. The respect and protection of human dignity is the duty of all state authority. No one can completely and conclusively relinquish his right to his name (BGB Art. 12) or another personality right. This would contradict the guarantee of human dignity (Art. 1 GG) and of the right to self-determination (Art. 2 GG).

The general personality right must be regarded as a constitutionally guaranteed fundamental right. According to article 2 of GG which consists of personal freedoms, every person has the right to free development of his personality as long as he does not violate the rights of others or offend against the constitutional order or the moral law.

In the 19th century, the idea of right to personality was first described by German jurists like Dernburg, Gierke and Kohler<sup>35</sup>. According to these jurists, personality rights are rights that give sovereignty to the person over their material and moral assets<sup>36</sup>. And with the statement in GG, “to respect and protect the honour and dignity of a person is the duty of the State”, personality rights were taken into consideration in German Positive Law.

In Germany personality rights are protected under the German Civil Code (BGB) paragraphs 823 and 826. According to paragraph 823 (1), a person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or other right of another person, is liable to make compensation to the other party for the damage arising from his actions. Here, in 823 some of the personality rights are mentioned and for the rest which are not stated in this paragraph, a general term is used as “other rights” (sonstiges Recht)<sup>37</sup>.

In Turkey, the main provisions on personality rights are introduced under Private Law in the TCC (Turkish Civil Code)<sup>38</sup> and TCO (Turkish Code

---

<sup>35</sup> AKİPEK, J./AKINTÜRK, T./ATEŞ, Karaman, D.: Türk Medeni Kanunu Kişiler Hukuku (Turkish Civil Code Law of Persons), V. I, 7. Ed., Istanbul 2009, p. 342.

<sup>36</sup> GIERKE, Otto von: Deutsches Privatrecht, vol. 1 Allgemeiner Teil und Personenrecht, Leipzig 1895, p. 703.

<sup>37</sup> LARENZ, Karl: Allgemeiner Teil des deutschen Bürgerlichen Rechts, Ein Lehrbuch, München 1980, p. 99.

<sup>38</sup> AKİPEK, AKINTÜRK, KARAMAN, ATEŞ, p. 354; OĞUZMAN, Kemal- SELİÇİ, ÖZER-OKTAY - ÖZDEMİR, Saibe: Kişiler Hukuku (Law of Persons), 10. Ed., Istanbul 2010, p. 162.

of Obligations). Personality rights are absolute rights that are given to a person at birth<sup>39</sup>. The “numerus clausus” principle is not accepted for the content of personal rights in the TCC<sup>40</sup>. In other words the personality rights are not specified individually. The legislator did not want to limit the content of the right to personality. All the values that are related with the personality can be included in the personality rights<sup>41</sup> like their name, life, honour, freedom, health, body, secrets, photos, voice, and many more<sup>42</sup>. But especially, some of them are protected in different articles separately like, name in TCC Article 26-27 and human body TCO Article 54-56.

As biological substances of human origin are part of a human body, they are also included in the personality rights. These biological substances that are mentioned in the TCC, are living organisms or parts of the body<sup>43</sup>. According to the last paragraph of article 23 of the TCC, the extraction, vaccination and transfer of biological substances of human origin is subject to the written consent of the body concerned. But there are also exceptions in practice. If the vaccination is needed because of the general health care of society, there is no need for a written consent of the person<sup>44</sup>.

It is stated that no one may waive even partially his rights and capacity to act freely neither a person may waive his freedom nor anyone may impose restrictions on a person contrary to the laws and ethics (TCC Art. 23). This article gives a general view of right to personality with the basic rights like legal capacity and the capacity to act, which cannot be waived. The only limitation of this article is public order. For example, no one can limit his

<sup>39</sup> BULUT, Harun: Kişilik Hakları ve Kişilik Haklarına Saldırıdan Kaynaklanan Hukuk Davaları, İstanbul 2006, p. 9; Y.H.G.K. 28.03.2001, 276-289; Y. 4.H.D. 30.05.1983, 4708-5665.

<sup>40</sup> TÜFEK, Ömer Faruk: Basın Yoluyla Kişilik Haklarının İhlali, 2. Ed., Ankara 2007, p. 19.

<sup>41</sup> HONSELL, H./VOGT, N.P./GEİSER, T.: Basler Kommentar, Zivilgesetzbuch I, 3. Auflage, 2006, Basel-Genf-München, Art. 28, N.8; 4. H.D. 10.02.1998, 9037/317 (YKD. 1998/4, p. 509)

<sup>42</sup> DURAL, Mustafa; ÖĞÜZ, Tufan: Türk Özel Hukuku, C.2, Kişiler Hukuku, 8. Ed., İstanbul 2006, s. 98; Özsunay, Ergun: Gerçek Kişilerin Hukuki Durumu, 5. Ed., İstanbul 1982, p. 98; AYAN, Mehmet, AYAN, Nurşen: Kişiler Hukuku, Konya 2011, p. 56.

<sup>43</sup> AKÜNAL, T. (2012): “Organ ve Doku Alınması, Saklanması, Aşılması ve Nakli Hakkındaki Kanun Açısından Hekimin Sorumluluğu üzerine Düşünceler”, Sorumluluk Hukukunda Yeni Gelişmeler, V. Sempozyum, İstanbul 1983, p.20; In the transfer of biological substances, the forensic science has its own rules, ibid. Toom, V. (2012): “Bodies of Science and Law: Forensic DNA Profiling, Biological Bodies, and Biopower”, Journal of Law and Society, 39, p. 151.

<sup>44</sup> AKİPEK/AKINTÜRK/KARAMAN/ATEŞ, p. 363.

legal capacity to act or his freedom, e.g. a person can not promise to work in the same job in all his life. These limitations of the personality rights must not be against legal and ethical rules, e.g. no one can give an undertaking that he will not sue anyone at all or will never be a member of a political party. If a contract is signed about these kinds of limitations, the contract will be seen as null and void from the beginning as stated in the Turkish Code of Obligations (TCO) Art. 27, e.g. if an engaged couple makes a contract with each other that they must marry in the future, this contract would be also invalid.

There is a basic principle in TCC Art.24 which protects the personality against the individuals who made the assault. The breach against personal rights is considered contrary to the law unless the assent of the person whose personal right is damaged, is based on the reasons related to private or public interest and use of authorisation conferred upon by the law. This article is put into force especially for unfair attacks against personality rights. The violation can be in several ways on the material integrity – like body, voice or moral integrity – like honour and dignity, secrets and photos of the personality<sup>45</sup>. This article is also applied directly in the Turkish Press Code (TPC). The personality rights are also protected under TPC in several articles like, 11, 13, 14<sup>46</sup>. The press is seen as the “fourth force” in society and has duties to the public such as, giving news, enlightening society and forming public opinion<sup>47</sup>. Although there is the freedom of press, it is limited under the Article 24 in TCC. For this reason, people working in this sector must be honest, objective, respectable and accurate.

In Germany, in addition to the articles about personality rights in the BGB, there is also very high constitutional protection of free expression of opinions in Art. 5 GG<sup>48</sup>. For this reason the legitimacy of free speech is

---

<sup>45</sup> In Turkey, in the case of a violation of personality rights a lawsuit can be brought. Besides, there are also more penalties for those who acted against those rights. According to article 25 of TCC, the claimant may demand from the judge to take action for prevention of assault, elimination of such threat and determination of unlawful consequences of the assault even though it is discontinued. In addition to such action, the claimant may also request publication or notification of the recovery or the judgment to the third parties.

<sup>46</sup> KILIÇOĞLU, p. 177.

<sup>47</sup> KILIÇOĞLU, p. 143; TÜFEK, p. 106.

<sup>48</sup> It is also stated in Art. 26 of the Turkish Constitution that “Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system

presumed. This is also valid in acrimonious debates in online forums. The OLG Koblenz decision<sup>49</sup> makes clear that criticism should be accepted in a public discussion, unlike discussions in online forums which could be exaggerated and even polemic. Otherwise there would be a danger of paralysis or narrowing of free expression of opinion. Only so called abusive criticisms can be thought of as value judgments without any objective basis in any sense, which turn to malicious and nasty abuses. When the defamation of a person dominates the discussion and there is no more involvement with the main subject, the border of abusive criticism is exceeded<sup>50</sup>.

Honour and dignity which are included in personality rights are very close with freedom of press and free expression of opinion. The limit of freedom of press is drawn in TCC article 24<sup>51</sup>. There is an interest by the public to know the news about the people who are working in high positions in the public sector or those in the public eye. Therefore these kinds of people should be separated from the ordinary people. The news, that are given about these people, related to their private lives should be discussed within the borders of privacy<sup>52</sup>.

If pictures of a personal nature<sup>53</sup> and in connection with a recreational activity published on the internet are linked to a report discussing critically the legal activities of the person in the picture, then the depicted lawyer is entitled to an injunction under § 1004, 823 BGB, 22, 23, Copyright Act, if the link to

of licensing.

The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

<sup>49</sup> OLG Koblenz, judgment of 7th December 2007, MMR 2008, 54.

<sup>50</sup> HOEREN, Thomas: "Persönlichkeitsrechte im Web 2.0." In: KLEIST, Thomas; ROßNAGEL, Alexander; SCHEUER, Alexander (ed.): Europäisches und nationales Medienrecht im Dialog. Schriftenreihe des Instituts für Europäisches Medienrecht (EMR), Band 40. Baden-Baden: Nomos 2010, p. 487.

<sup>51</sup> Therefore, news without any control can violate one's personality rights and this can transcend the boundaries of the personality rights and violate the honour and dignity. There is a very sensitive and thin boundary between public disclosure and personality rights. The press has a right of criticism, but the public interest must be discussed, as well. Y. 4.H.D. 27.03.2001, 2000/11119-3040; Y.4.H.D. 15.05.2002, 4-402/412; Y.H.G.K. 15.03.2003, 521/586.

<sup>52</sup> BULUT, p. 159; Y.4.H.D. 12.04.1979, 1978/9042.

<sup>53</sup> KILIÇOĞLU, p. 44.

the images is used to underpin the critical remark (Munich Higher Regional Court, judgement of 26 June 2007 - 18 U 2067/07, MMR 2007, 659). Even if the images may still be understood as a contribution to a general discussion, the legitimate interest by the pictured person in his privacy outweighs that of the news organisation from publishing, because the published photo is taken out of the private context and used as proof of the criticism. In accordance with § 23 paragraph 1 No. 1 Copyright Act a lawyer is typically not a person relative to history and therefore has a claim for an injunction against the publication of photos against the newspaper Die Welt<sup>54</sup>.

It is difficult to separate public and private life of the persons who have submitted themselves to the attention of the public<sup>55</sup>. According to the Court of Appeals in Turkey, these kinds of interventions are seen mandatory by the press<sup>56</sup>. It is thought that the public interest is very important in these news<sup>57</sup>. If there is public interest, the critics would be founded on a legal basis.

Both in Turkey and Germany the secrets of a person are also included in the personal rights and his privacy which form part of the secret sphere, like personal letters, recordings, professional experiences<sup>58</sup>, e.g. the publication of a private e-mail can be an invasion into the personal rights of the sender or person concerned.

In the Turkish Constitution the privacy of individual life<sup>59</sup> and the nature of fundamental rights and freedoms are published in two different articles (Article 12 and 20)<sup>60</sup>. Everyone possesses inherent fundamental rights and

---

<sup>54</sup> HOEREN, (2010), p. 483.

<sup>55</sup> According to the decisions of the Court of Appeals in Turkey, if there is public interest in the news or in the publication, it is thought that there is no violation of personality rights; Yarg. HGK. 19.03.2008, T. 2008/4-263 E. 2008/262; Yarg. 4. HD., 28.04.1987, 2077/3267; Yarg. 4. HD., 12.04.1979, 9042/4435. Public interest means community interest, not individual; Yarg. 4. HD. 11.03.2008, 739/3149; HGK. 25.06.2008, 4-445/450.

<sup>56</sup> 4. H.D. 16.12.1978, 9419/12048; 4. H.D. 09.03.1953, 473/1093; 4. H.D. 27.06.2006, 6753/7795; KILIÇOĞLU, A.: Şeref Haysiyet ve Özel Yaşama Basın Yoluyla Saldırılarından Hukuksal Sorumluluk, Ankara 2008, p. 25.

<sup>57</sup> KILIÇOĞLU, p. 151.

<sup>58</sup> LG Köln, judgment 28th May 2008 – 28 O 157/08; TÜFEK, p. 117, Y.4. H.D. 03.03.2000, 2000/522E., 2000/8659.

<sup>59</sup> ARASLI, Oya: Özel Yaşamın Gizliliği Hakkı ve T.C. Anayasası'nda Düzenlenişi, Yayınlanmamış Doçentlik Tezi (not published), Ankara 1979.

<sup>60</sup> The right to legal protection of private life, honour, name and the right to determine one's private life were introduced in Turkish Constitution which also contains guarantees of freedom to communicate and protection of secrecy of communication, guarantees of freedom



freedoms which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to society, their family, and other individuals. The privacy of individual life is also taken under protection as everyone has the right to demand respect for his private and family life. It is added that the privacy of an individual or family life cannot be violated<sup>61</sup>.

Privacy issues are taken very seriously in Germany<sup>62</sup>, especially in recent years. Germany and France have very strict rules on this issue. For example, CNIL (French National Freedom and Information Commission) rejected Fiat's request to send personal data of their workers from their branch in France to their headquarters in Italy<sup>63</sup> by reasoning that Italy did not have a strong enough data protection code at that time.

Germany's privacy laws generally restrict photographs of people and property without a person's consent except in public places<sup>64</sup>. The picture of a person is also included in his privacy. Photos of a company's employees may be published on the internet only with their consent. This can be also applied to company executives, who represent the company to the public.

## **2.2 Personal Data and Data Protection**

Data protection has been at the core of privacy legislation around the world. Within this category are the Data Protection Acts of the European Union's (EU) member states, mandated by the EU Data Protection Directive 95/46<sup>65</sup>. "Personal data" is also described in the United Kingdom's Data Protection Act (DPA) 1998<sup>66</sup>. According to this Act, "personal data" concerns

to express opinions and to obtain and disseminate information, as well as guarantees of consumer protection against the actions threatening their privacy.

<sup>61</sup> BAYRAKTAR, Köksal: Özel Yaşamın Gizliliğine Saygı İlkesi, Maltepe University Law Journal, Year: 2007, No: 1, p. 111.

<sup>62</sup> In German the term "Privatsphäre" is generally used for "privacy".

<sup>63</sup> AKTARAN CATE, Fred H.: "The EU Data Protection Directive, Information Privacy and the Public Interest", Iowa Law Review 1994-1995, p. 439 (Deliberation no. 89-78 du 11.07.1989).

<sup>64</sup> HOEREN, Thomas (2010), p. 483; According to the Turkish Intellectual and Artistic Works Code Art. 86, the pictures of a person cannot be displayed without his consent. TÜFEK, p. 110, Y.4. H.D. 11.02.1985, 9517-958; Y.2. H.D. 29.01.1976, E. 9404 K. 625.

<sup>65</sup> BAJAJ, Kamlesh: Promoting Data Protection Standards through Contracts: The Case of the Data Security Council of India. Review of Policy Research, Volume 29, Number 1, 2012, p. 131-139.

<sup>66</sup> The Data Protection Act 1998 is a United Kingdom Act of Parliament which regulates the data on identifiable living people. This Act which mentions the protection of personal data in

data which relate to a living individual who can be identified from such data, or other information which is in, or likely to come into, the possession of the data controller. Individuals can be identified by various means including their name and address, telephone number or email address, but anonymous or collective data is not regulated in this Act<sup>67</sup>. Therefore it is clear that there is a strong link between personal data and personality rights. Accordingly, illegal usage and storage of these data cause the violation of personality rights.

The protection of personal data is also a part of the Maastricht Treaty<sup>68</sup>. In this context, the meaning of “personal data” must be clarified. In Germany the general term “Datenschutz” is used for the collection, storage and usage of personal data. According to EU Data Protection Directive 95/46/EC<sup>69</sup>, “personal data” shall mean any information relating to an identified or identifiable natural person<sup>70</sup>. Thus, the definition of “identifiable person” is very important. An identifiable person can be described as one who can be identified, directly or indirectly, by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity<sup>71</sup>. So if the person is not identifiable, his personal data cannot be under the protection of EU Data Protection Directive 95/46/EC.

A large number of sensitive data and information are kept by social media platforms like Facebook, StudiVZ, Twitter, LinkedIn<sup>72</sup>. The users have

---

the UK, aims to bring UK law in parallel with the European Directive of 1995 which protects fundamental rights and freedoms of the people in Member States and in particular their right to privacy with respect to the processing of personal data; [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

<sup>67</sup> <http://www.legislation.gov.uk/ukpga/1998/29/section/1> [last access: 03.04.2012]

<sup>68</sup> Treaty on European Union, 07.02.1992, OJ C 224/01 (1992)

<sup>69</sup> Directive 95/46/EC of the European Parliament and the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data. OJ L 281 p. 31, date: 23.11.1995 (<http://eur-ex.europa.eu/Notice.do?val=307229:cs&lang=en&list=307229:cs,&pos=1&page=1&nbl=1&pgs=10&hwords=95/46/EC~&checkbox=checkbox&visu=#texte>) [last access: 03.04.2012]

<sup>70</sup> The term ‘personal data’ undoubtedly covers the name of a person in conjunction with his telephone number or information about his working conditions or hobbies – Paragraph 24 of the Opinion of Advocate General Tizzano in the Lindqvist case (Bodil Lindqvist v Aklagarkammaren i Jonkoping – Case Commissioner-101/01 – European Court of Justice) delivered on 19 September 2002.

<sup>71</sup> [http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf) [last access: 03.04.2012]

<sup>72</sup> The LG Berlin recently decided (judgment of 6 September 2007 – case docket number 23 S

the option to give their personal data in these platforms about themselves e.g. personality profiles and photos. These platforms not only save these data, but also they get to know the behaviour and the interests of their users. It is known that the providers must take the necessary technical organisational measures to guarantee data security.

In Germany, storage and usage of personal data is legal within the consent of the person or the existence of a rule of law. In other words, without the permission of the person, the personal data kept about him would be seen as illegal.

Personal data must be kept in good faith on a legal basis. As it is stated in the 6th article of the EU Data Protection Directive 95/46/EC, it is forbidden to record these data without the knowledge of the person by different technical means.

For example, Facebook is threatened with legal action because of the violation of privacy and data protection laws. German officials have launched legal proceedings against Facebook for accessing and saving the personal data of people who are not registered in this social network<sup>73</sup>. Facebook is accused of saving private data of non-members without their permission, to be used for marketing purposes. It is accepted that data from persons who have declared their consent to store their profiles, can be stored in the database of the network. In other words, because of data protection and privacy, the personal data will only be stored if the person is a registered user of Facebook and he or she is currently logged into the service.

The aim of data protection is to protect the personal data which can be thought of as part of personal rights on the one hand and to prevent the improper storage on the other. Recording of data and unlawful delivery and acquisition of data without the consent of the person are taken into consideration in the Turkish Criminal Code in two articles. According to article 135 of the Turkish Criminal Code, the person who unlawfully records personal data including the political, philosophical or religious concepts of

---

3/07) that any storage of IP-addresses or any other personal data that exceeds the actual time of the visit infringes § 15 Telemediengesetz (TMG). This judgment, as well as preceding ones, did not only cause a great uncertainty amongst the persons concerned as to what was still legal according to data privacy law but also led to fears in respect to the evolution of a new wave of warnings.

<sup>73</sup> SCHMIDT, Jürgen: Das-Like-Problem, 2011. <http://www.heise.de/security/artikel/Das-verraet-Facebooks-Like-Button-1230906.html> [last access: 02.04.2012]

individuals, or personal information relating to their racial origins, ethical tendencies, health conditions or connections with syndicates is punished with imprisonment from six months to three years. Thus it can be said that to record the personal data without consent of the person, can cause the violation of personality rights. In this case two different law suits can be brought, one is for the damages and the other for the penalty regarding the illegal recording.

Many of the countries in the world have been preparing their own data protection codes. In Turkey personal data are protected under several codes, but still no specific code is in force. As personal data are included in the personality rights, they are the fundamental rights given by the State. For this reason, the necessary arrangements about personal data should be organised by a specific Code, as in Germany. The Data Protection Code (Bundesdatenschutzgesetz - BDSG) in Germany was first put into force in 1978. In addition to this code, every federal state has formed their own Code (Landesdatenschutzgesetz).

In Turkey, a draft has been prepared in 2008, but not yet become law, about the protection of personal data<sup>74</sup>. According to the draft, a specialised Institution called “The Protection of Personal Data Institution” will be formed to control the storage and translation of personal data. The person whose rights are violated, can apply to the commission under this Institution for the protection of their personal data and besides that, a law suit can be brought for damages, according to the TCC.

As stated above, the consent to protection of personal data and procedures are regulated in several Codes<sup>75</sup>. Unlawful delivery or acquisition of personal data are punishable under article 136 of the Turkish Criminal Code. The person who unlawfully delivers data to another person, or publishes or acquires the same through illegal means is punished with imprisonment from one to four years.

In recent years, Germany considered restrictions on the use of social media. The German Cabinet presented a bill dated August 25th, 2010 to Parliament which would restrict employers’ use of social media in their recruitment process. This bill appears to be one of the first pieces of national legislation. It aims specifically to regulate employers’ use of social media content for employment purposes. Under the current version of the bill,

---

<sup>74</sup> [www2.tbmm.gov.tr/d23/1/1-0576.pdf](http://www2.tbmm.gov.tr/d23/1/1-0576.pdf) [last access: 02.04.2012]

<sup>75</sup> KÜZECİ, Elif: Kişisel Verilerin Korunması, Ankara 2010, p. 2010.

employers would be permitted to access only social media content that the applicant makes publicly available, therefore social media content restricted to “friends only” would be off limits.

Many employers use social networking sites, while searching for new employees. And when they find candidates for their firms, initially they prefer researching these people in social media platforms. Germany has drafted a new law which will prevent employers from looking at a job applicant’s pages on social networking sites during the employment process.

With this draft the employers will no longer have the right to research the job candidates in their personal pages which they have in the social media, like Facebook. However, there is an exception for social media platforms which are only used by members to publish their qualifications, e.g. XING and LinkedIn<sup>76</sup>.

A great number of personnel managers initially research the job applicants in the networks before inviting them to a job interview. There are some examples in practice, that potential employers reject job applicants after looking at their profiles in the networks, based on what they found there. For that reason, according to the draft, it is acceptable for an employer to have the job candidate’s name, address, telephone number and e-mail address, but further research is forbidden. This draft –also states that the companies will only be able to monitor employees’ telephone calls and e-mails under certain conditions, and firms will be obliged to inform staff accordingly<sup>77</sup>. It is said that this rule would create “an equitable balance between the interests of employees in protecting personal data and the legitimate interests of employers”<sup>78</sup>.

<sup>76</sup> Article 32, paragraph 6, p. 2 BDSG-E.

<sup>77</sup> SANCHEZ ABRIL, Patricia; LEVIN, Avner; DEL RIEGO, Alissa: Blurred Boundaries: Social Media, Privacy the Twenty-First-Century Employee, *American Business Law Journal*, 49 (2012), pp. 65.

<sup>78</sup> [http://www.bundesregierung.de/nn\\_1264/Content/DE/Artikel/2010/08/2010-08-25-beschaeftigungsdatenschutz.html](http://www.bundesregierung.de/nn_1264/Content/DE/Artikel/2010/08/2010-08-25-beschaeftigungsdatenschutz.html) [last access: 03.04.2012]

## CONCLUSION

The use of information and communication technologies is increasing each and every day in the modern world. As a result of this the online communication becomes a central element of the cultural change of privacy. In this article the implementation of social media and privacy policies have been discussed with examples from Turkey and Germany.

The central character of social media is the active user, who mutates to a “prosumer” due to the participatory possibilities. Simultaneously he is producer, consumer and programme manager in the web. In this capacity social media activists permanently change their roles between a digital exhibitionist and a digital voyeur. On the one hand they post their complete profile on social media platforms, on the other they follow micro blogs, “like” comments and watch private videos on video platforms.

Networking with each other is the central principle of society. Today many people want contact with more people in their personal lives through their social networks than face to face contacts, email and phone. The so-called social media tracker 2010 “wave.5” concluded that on average people stay in contact socially with 52 people via these networks<sup>79</sup>.

Krotz pointed out temporal, spatial and social blurring of the boundaries by social media, which accelerate the change of culture into media culture. The question of the change of privacy will be derived from the more complex forms of media communication. Many signs point out the change of culture to media culture combined with a change of privacy. Because of the widespread communication via social media the differentiation between private and public communication is more difficult. In the internet, which creates a global public, an entanglement between public and privacy is amplified.

In this context the important question arises about how you can protect a person, when you can see, use and abuse every data of everyone in the world. In that information society, the personal right has developed into a common right of media and information self-determination. Without batting an eyelid, users post their very private data on many platforms. How should the State react? Can, may and should the State protect the citizens from themselves?

In Germany personal rights are strictly protected by the German Constitution and German Civil Code. Some limitations arise from a high

---

<sup>79</sup> Universal McCann GmbH: Wave.5 The Socialisation of Brands. [http://universalmccann.de/social\\_media\\_studie/wave5/](http://universalmccann.de/social_media_studie/wave5/) [last access: 02.04.2012]

degree of constitutional protection of free expression of opinions, e.g. in online forums. Only so-called abusive criticisms can be thought of as value judgments without any objective basis in any sense, which turn to malicious and nasty abuses.

The draft of Art.32, paragraph 6 p.2 BDSG-E. The legislature differentiates between privately used social network platforms like Facebook and platforms like XING or LinkedIn mostly used for publishing qualifications. With this draft the employers will no longer have the right to search for job candidates in their personal pages which they have in the privately used social media platforms, on the other hand the search is allowed on platforms used by members to publish their qualifications. But the criteria are very soft. Indeed members of XING use this platform for professional affairs. But there are also many groups and forums, which also deal with private themes, e.g. fans of football clubs. It will have to be assessed, how practicable this distinction will be for the courts.

In Turkey, the main provisions on personality rights are introduced under Private Law in the TCC. But the personality rights are not specified individually. The lawmaker did not want to limit the content of the right to personality. Personal data are protected under several codes, but there still is no specific code in force. A draft has been prepared about the protection of personal data in 2008. According to the draft, a specialised Institution called “The Protection of Personal Data Institution” will be formed to control storage and translation of personal data. In our opinion, this kind of institution is urgently needed. The average age of Turkish people is 29,2<sup>80</sup>; much younger than in Germany (44,2<sup>81</sup>). This is probably one of the reasons, why the activity of Turkish people on social media platforms is higher than in Germany. It can be assumed, that the behaviour of Turkish users is very similar to that of German users. Thus, the protection of privacy and personal data will be one of the greatest challenges for the future.

---

<sup>80</sup> Turkish Institute for Statistics: [http://www.tuik.gov.tr/PreTablo.do?tb\\_id=39&ust\\_id=11](http://www.tuik.gov.tr/PreTablo.do?tb_id=39&ust_id=11) [02.04.2012]

<sup>81</sup> Demography report of the EU <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home> [02.04.2012]

## REFERENCES

- ACKERMANN, Judith: Masken und Maskierungsstrategien – Identität und Identifikation im Netz. In: ANASTASIADIS, Mario; THIMM, Caja (ed.): Social Media. Theorie und Praxis digitaler Sozialität. Bonner Beiträge zur Medienwissenschaft vol. 10. Peter Lang, Frankfurt/New York 2011.
- AKTARAN CATE, Fred H.: “The EU Data Protection Directive, Information Privacy and the Public Interest”, Iowa Law Review 1994-1995, p. 439 (Deliberation no. 89-78 du 11.07.1989).
- AKİPEK, Jale; AKINTÜRK, Turgut; ATEŞ KARAMAN, Derya.: Türk Medeni Kanunu Kişiler Hukuku (Turkish Civil Code Law of Persons), V. I, 7. Ed., Istanbul 2009.
- AKÜNAL, Teoman: “Organ ve Doku Alınması, Saklanması, Aşılması ve Nakli Hakkındaki Kanun Açısından Hekimin Sorumluluğu üzerine Düşünceler”, Sorumluluk Hukukunda Yeni Gelişmeler, V. Sempozyum, İstanbul 1983.
- ARASLI, Oya: Özel Yaşamın Gizliliği Hakkı ve T.C. Anayasası’nda Düzenlenişi, Yayınlanmamış Doçentlik Tezi (not published), Ankara 1979.
- AYAN, Mehmet, AYAN, Nurşen: Kişiler Hukuku, Konya 2011.
- BAJAJ, Kamlesh: Promoting Data Protection Standards through Contracts: The Case of the Data Security Council of India. Review of Policy Research, Volume 29, Number 1 (2012), p. 131-139.
- BAYRAKTAR, Köksal: Özel Yaşamın Gizliliğine Saygı İlkesi, Maltepe University Law Journal, Year: 2007, No: 1.
- BULUT, Harun: Kişilik Hakları ve Kişilik Haklarına Saldırıdan Kaynaklanan Hukuk Davaları, İstanbul 2006.
- DIGGELMANN, Oliver: Grundrechtsschutz der Privatheit. In: Der Schutzauftrag des Rechts. Veröffentlichung der Vereinigung der Deutschen Staatsrechtslehrer, vol. 70. De Gruyter, Berlin/Boston 2011.
- DURAL, Mustafa; ÖĞÜZ, Tufan: Türk Özel Hukuku, C.2, Kişiler Hukuku, 8. Ed., İstanbul 2006.



- GIERCKE, Otto von: Deutsches Privatrecht, vol. 1 Allgemeiner Teil und Personenrecht, Leipzig 1895.
- HABERMAS, Jürgen: Theorie des kommunikativen Handelns vol. 1&2. Suhrkamp, Frankfurt a.M. 1981.
- HEPP, Andreas: Medienkultur. Die Kultur mediatisierter Welten. VS Verlag, Wiesbaden 2011.
- HÖFLICH, Joachim: Der Computer als “interaktives Massenmedium”. In: Publizistik 39 (1994), p. 389-408.
- HÖFLICH, Joachim: Vom dispersen Publikum zu “elektronischen Gemeinschaften”. In: Rundfunk und Fernsehen 43 (1995), p. 518–537.
- HÖFLICH, Joachim: Technisch vermittelte interpersonale Kommunikation. Grundlagen – organisatorische Medienverwendung – Konstitution “elektronischer Gemeinschaften”. Westdeutscher Verlag, Opladen 1996.
- HOEREN, Thomas: “Persönlichkeitsrechte im Web 2.0.” In: Kleist, Thomas; Roßnagel, Alexander; Scheuer, Alexander (ed.): Europäisches und nationales Medienrecht im Dialog. Schriftreihe des Instituts für Europäisches Medienrecht (EMR), vol.40. Nomos, Baden-Baden 2010.
- HONSELL, Heinrich; VOGT, Nedim Peter; GEISER, Thomas: Basler Kommentar, Zivilgesetzbuch I, 3. Auflage, 2006, Basel-Genf-München, Art. 28, N.8; 4. H.D. 10.02.1998, 9037/317 (YKD. 1998/4, s. 509)
- KILIÇOĞLU, Ahmet.: Şeref Haysiyet ve Özel Yaşama Basın Yoluyla Saldırlardan Hukuksal Sorumluluk, Ankara 2008.
- KONERT, Bertram; HERMANNNS, Dirk: Der private Mensch in der Netzwelt. In: WEIß, Ralph; GROEBEL, Jo (ed.): Privatheit im öffentlichen Raum. Medienhandeln zwischen Individualisierung und Entgrenzung. Leske + Budrich, Opladen 2002.
- KROTZ, Friedrich: Elektronisch mediatisierte Kommunikation. Rundfunk und Fernsehen 43, 4 (1995), pp. 445-462.
- KROTZ, Friedrich: Mediatisierung kommunikativen Handelns. Der Wandel von Alltag und sozialen Beziehungen, Kultur und Gesellschaft durch die Medien. Westdeutscher Verlag, Opladen 2001.
- KROTZ, Friedrich: Mediatisierung: Fallstudien zum Wandel von Kommunikation. VS Verlag, Wiesbaden 2007.

- KÜZECİ, Elif: Kişisel Verilerin Korunması, Ankara 2010.
- LARENZ, Karl: Allgemeiner Teil des deutschen Bürgerlichen Rechts, Ein Lehrbuch, München 1980.
- NETTESHEIM, Martin: Grundrechtsschutz der Privatheit. In: Der Schutzauftrag des Rechts. Veröffentlichung der Vereinigung der Deutschen Staatsrechtslehrer, vol. 70. De Gruyter, Berlin/Boston 2011.
- OĞUZMAN, Kemal- Seliçi; ÖZER- OKTAY, Saibe: Kişiler Hukuku (Law of Persons), 10. Ed., Istanbul 2010.
- ÖZSUNAY, Ergun: Gerçek Kişilerin Hukuki Durumu, 5. Ed., Istanbul 1982.
- PESCHKE, Lutz; SCHRÖDER, Alina: Visualisiertes Lernen im Web 2.0. Audiovisuelle Kommunikation durch Wissensspots. In: ANASTASIADIS, Mario; THIMM, Caja (ed.): Social Media. Theorie und Praxis digitaler Sozialität. Bonner Beiträge zur Medienwissenschaft vol. 10. Peter Lang, Frankfurt/New York 2011.
- PROST, Antoine: Grenzen und Zonen des Privaten. In: PROST, Antoine; VINCENT, Gérard (ed.): Geschichte des Privaten. 5. Bd.: Vom Ersten Weltkrieg zur Gegenwart. Frankfurt a.M. 1993, pp. 15-152.
- REICHERTZ, Jo: Die Macht der Worte und der Medien. Zweite Auflage. VS Verlag, Wiesbaden 2008, p. 17.
- RITTER, Martina: Alltag im Umbruch. Zur Dynamik von Öffentlichkeit und Privatheit im neuen Russland. Krämer, Hamburg 2008.
- RITTER, Martina: Die Dynamik von Privatheit und Öffentlichkeit in modernen Gesellschaften. VS Verlag, Wiesbaden 2008.
- SANCHEZ ABRIL, Patricia; LEVIN, Avner; DEL RIEGO, Alissa: Blurred Boundaries: Social Media, Privacy the Twenty-First-Century Employee, American Business Law Journal, 49 (2012), pp. 65.
- SCHMIDT, Jürgen: Das-Like-Problem. <http://www.heise.de/security/artikel/Das-verraet-Facebooks-Like-Button-1230906.html>, 2012 [last access: 02.04.2012]
- THIMM, Caja: Ökosystem Internet. Zur Theorie digitaler Sozialität. In: ANASTASIADIS, Mario; THIMM, Caja (ed.): Social Media. Theorie und Praxis digitaler Sozialität. Bonner Beiträge zur Medienwissenschaft vol. 10. Peter Lang, Frankfurt/Wiesbaden 2011.

- THIMM, Caja: Medienkultur und Privatheit: Privatheit und Öffentlichkeit im medialen Diskurs. In: LENDERS, Winfried (ed.): Medienwissenschaft. Eine Herausforderung für die Geisteswissenschaft. Bonner Beiträge zur Medienwissenschaft vol. 2. Peter Lang, Frankfurt/New York 2004.
- TOOM, Victor: “Bodies of Science and Law: Forensic DNA Profiling, Biological Bodies, and Biopower”, *Journal of Law and Society*, 39 (2012), p. 151.
- Universal McCann GmbH: Wave.5 The Socialisation of Brands. [http://universalmccann.de/social\\_media\\_studie/wave5/](http://universalmccann.de/social_media_studie/wave5/) [last access: 02.04.2012]
- TÜFEK, Ömer Faruk: Basın Yoluyla Kişilik Haklarının İhlali, 2. Ed., Ankara 2007.
- WARMAN, Matt: Online Right “To be Forgotten” Confirmed by EU, TELEGRAPH (Mar. 17, 2011, 12:53 PM), <http://www.telegraph.co.uk/technology/Internet/8388033/Online-right-to-beforgotten-confirmed-by-EU.html>, (2011) [last access: 02.04.2012]
- WEIß, Ralph: Privatheit im „öffentlichen Raum“ – Klärungsbedarf. In: WEIß, Ralph; GROEBEL, Jo (ed.): Privatheit im öffentlichen Raum. Medienhandeln zwischen Individualisierung und Entgrenzung. Leske + Budrich, Opladen 2002.
- WEIß, Ralph: Vom gewandelten Sinn für das Private. In: WEIß, Ralph; GROEBEL, Jo (ed.): Privatheit im öffentlichen Raum. Medienhandeln zwischen Individualisierung und Entgrenzung. Leske + Budrich, Opladen 2002.

BOŞ