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GENERAL INTEREST AND FREEDOM OF THE PRESS IN THE EUROPEAN COURT OF HUMAN RIGHTS' CASE LAW

A comparative study between France and the United Kingdom

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ABSTRACT

In matter of the Press, the use of the concept of general interest is increasing in the European Court of Human Rights case law. The emergence of new means of communication has led, first, to the advent of information in real time and, second, in a weakening of public figures' private lives. This thesis attempts to examine the evolution of the notion and function of general interest within the ECtHR case law. In order to properly address this evolution, the ECtHR case law analysis will be employed.

Linked to the idea of public good, the notion of general interest differs depending on the matter in which it is used. By the praetorian approach of the judges, the notion has been developed in the light of the current society.

Initially used as a valorisation of the freedom of press, the general interest became one of determining criterion in the dispute resolution between the right to private life and freedom of press. Although its function seems undermined by the Court, in practice it seems to predominate. A case-by-case Court's appreciation has given rise to much criticism by academics. There is a need for more clear criteria for the Court to use the notion of "debate of general interest". To illustrate and investigate the points made above, the proposed research will examine the judicial dialogue between the ECtHR and the French and United Kingdom courts.

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TABLE OF ABBREVIATIONS

AGNU	General Assembly of the United Nations
CA	Court of Appeal
Civ. Div.	Civil Division
CJEU	Court of Justice of European Union
Crim. Div.	Criminal Division
Coe	Council of Europe
Com.	European Commission of Human Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
DHCR	Declaration of Human and Civic Rights
GC	Grand Chamber
HC	High Court of Justice
HL	House of Lords
HRA	Human Rights Act
ICCPR	International Covenant on Civil and Political Rights
IT.	Information Tribunal
PA	Parliamentary Assembly of the Council of Europe
PCC	Press Complaints Commission
Rec.	Recommendation
Res.	Resolution
TGI	Tribunal de Grande Instance
UDHR	Universal Declaration of Human Rights
UK	United Kingdom

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INTRODUCTION

According to J-P Vernant¹ “*the debate, the exchange of ideas, such as food, obey rules*”². Thereby, although the debate is essential in a democratic society, the press, which is the “public watchdog” of the democracy, is subject to certain rules.”³.

From the tragic death of the Princess of Wales to the disclosure of information concerning Health status of a President of the Republic, through the publication of a book tackling subjects such as the private life of a politician, the relationship between press and privacy has generated positive, as well as, negative comments.

The emergence of a society based on new technologies, has led to new issues, both, conceptually and legally. In this area, the term “general interest” is commonly used.

Hence, the *ground of general interest* that, traditionally, constitutes the action of public authorities is linked to the idea of public good.

The general interest can be defined as “*a good thing for the public*”⁴. Indeed, the concept of interest is “*something we may have or show or feel*”⁵. The interest is closely connected with notions such as “*attention, enjoyment and motivation*”⁶. The word general is “*involving or relating to most or all people, things or places, especially when these are considered as a unit*”.

¹ Quoted in Lemmens, p.111.

² Translated from French, “*le débat, l’échange des idées, comme celui de la nourriture, obéissent à des règles*”.

³ Ibidem.

⁴ <http://dictionary.cambridge.org/fr/>

⁵ White, 1964, p. 319.

⁶ Ibidem.

On the European level, general interest tends to undermine national interest, in order to ensure broader goals or human rights defined by the supra national level. In matter of general interest in Europe, the European Union and the Council of Europe are the main actors.

The core values of the Council of Europe are the human rights, rule of law and democracy.

Born just after World War II, the ambition of the Council of Europe has always been to preserve peace in Europe. By that, while the European Convention on Human Rights (ECHR) protects certain individual rights, freedom of expression constitutes “ *one of the most precious rights of man*”⁷. The European Convention of Human Rights entered into force on 3 September 1953.

Although the drafters of the Convention aimed to incorporate freedom of expression in article 10, they included, nevertheless, some restrictions to its exercise within the paragraph two of this provision⁸.

Within article 10, the concept of general interest is missing, as much as, freedom of the press, which is not incorporated in the Convention. Therefore, the European Court of Human Rights (ECtHR), by its teleological interpretation, addresses a reading of the Convention, in view of the current society due to its main feature, which is to be a “ *living instrument*”⁹.

Therefore, the idea of democratic society is, undeniably, linked to the press built in “ *public watchdog*”¹⁰.

The Press is “ *those who work in the news media, especially, newspaper reporters and photographers*”¹¹. As noted by professor Rials, The print has gradually lost its massive distribution of information monopoly in favour of the media television, due to new technologies. The press is only a written branch of the communications law¹².

⁷ Declaration of Human and Civic Rights, 1789, article 11.

⁸ European Convention on Human Rights, 1950, article 10§2.

⁹ Sudre, 2011, p.245.

¹⁰ ECtHR(GC), Jersild v. Denmark, 23 September 1994.

¹¹ www.collinsdictionary.com.

¹² Alland and Rials, 2003, p.1190.

Although the Court (ECtHR) grants an increased protection to freedom of the press, it raises an inexistent concept in this matter, the debate of general interest. It appears a concept of metamorphosis that tends to adapt to the new challenges of contemporary society.

This pattern is, currently, going to be called into question by challenges of globalisation and new ways of governance.

The Court provides an evolution of the notion and the function of general interest in society, where “ *the sensation succeeds reflection, emotion to reason, the spectacle to information* ”¹³.

How does the Court deal with the emergence of the concept, glorifying itself and containing no definition? In other words, is the notion a benefit to media or, conversely, does it tend to erect some limits on the press, once overprotective? By the metamorphosis of notions such as privacy and the press, when is there public interest in private life?

In other words, the main focus will be the evolution of the notion and the function of general interest in the area of freedom of press, provided by the Court.

The thesis will examine the implications of the current development, in the freedom of the press field, and the general interest one.

Concerning the substantive scope, the research will be descriptive and normative. It will take into account, first of all, the historical background of the concept itself and, subsequently, the ECtHR approach. The general interest recurrently appears in the ECtHR case law. Thereby, the study will focus on the area of freedom of the press because the notion seems to be in constant development. It should be emphasised that the notion evolves only considering the freedom of the press and the private life. Consequently, in addition, it will be enhanced the evolution of the privacy within the Convention and the ECtHR case law. Concerning the general interest, it will be used terms such as concept, notion and function.

¹³ Ravanas, 2000, p.459.

In the first section, the term concept will be utilised. The concept is a term, which may refer to several meanings, such as for instance the general interest. Thereby, the concept differs depending of matter in which it is used¹⁴.

Some notions come from the concept, which appear as a definition. The notion of the general interest will be studied in order to try to bring out a definition or, at least, some criteria¹⁵.

In the thesis, the function means the role granted to the general interest by the Court. In this regard, the term “ general interest” will be used at the expense of the term “public interest” due to the new approach of the Court, which uses the term “ debate of general interest”. Thereby, throughout the thesis, primary and secondary sources, namely the Convention, the ECtHR case law and the legal theory, will be pinpointed in order to examine this issue.

Concerning the geographical scope, the research will be focused on the ECtHR case law because of the development of article 10 and, particularly, the freedom of the press by the praetorian interpretation of the Court. Furthermore, it is essential to study the reception of ECtHR case law by the domestic court. Thereby, it will be examined the judicial dialogue between the ECtHR and the French and British courts.

The United Kingdom (UK) is known for its liberal approach of the press and its lack of protection of privacy, thereby, France provides restrictive measures to journalists, particularly, in matter of defamation and tries to adopt its jurisprudence in regard to the ECtHR case law.

Due to the numerous conviction of France, it seems important to study the reception by the domestic court of the ECtHR case law. Likewise, it is interesting to analyse the reasoning of the English domestic court in matter of conflict between privacy and press. It should be stressed that the UK has incorporated into its law the European Convention on Human Rights with the entry into force of Human Rights Act in 1998.

This incorporation has played a prominent role in choosing to study this country.

¹⁴ Bioy, 2010, p.37.

¹⁵ Ibidem.

By studying the reception of the ECtHR case law by domestic court, it will be useful to examine the role played by the ECtHR in Europe and the place it offers to the principle of subsidiarity.

In the first part, it should be examined the emergence of the general interest in the area of freedom of the press by the Court. The general interest is one of the principles that founded the modern society. Used in order to legitimate the action of public authorities, the blurred concept has a variable meaning depending on the context in which it is applied.

De facto, it will be studied the notion in the area of the freedom of the press and it will be useful to analyse the important role of the public, which has the right to receive information. Thereby, the notion has a fundamental function in the democratic society and, it will be necessary to study how is it perceived in Europe, both under the European Union and the Council of Europe.

In this regard, whether the Court of Justice of European Union (CJEU) takes into account the debate of general interest in its cases, it is in ECtHR case law that the notion is, increasingly, evolving.

Due to the lack of the notion in article 10 of the Convention, the Court will have to interpret the Convention in the light of current society. Thereby, it uses, increasingly, the notion. As a result, it permits to delineate the outlines of general interest. It takes into consideration the matter in which the information can be qualified as a public interest but, also, it associates it to the quality of the individual. Therefore, the politicians or public figures can be the subject of the debate of general interest. Taking into account the spatial-temporal framework within which the information is disclosed, the Court, recently, considered new criteria to determine whether or not there is a debate of general interest. Thereby, the function of general interest has evolved over the years.

In the second chapter, it will be studied the initial function of the general interest which is used as a valorisation of the press. Indeed, the Court provided a certain degree of impunity for journalists in justifying their immoral or illegal actions with the concept of general interest. The Court gave rise to the public's right to know.

Nevertheless, as regard to the paragraph 2 of the article 10, the Court provided some limitation, notably when the protection of reputation and right to others were at stake. The action of the press is often in conflict with the right to others. In this regard, it is important to notify that the Court has developed this right within the article 8 of the Convention, related to the right to respect for private life, and not within the article 10 paragraphs 2. Thereby, the Court demonstrates its tendency to protect the private life of individuals effectively.

De facto, in the second part of the thesis, it will be studied the mutation of the notion of the general interest as an alternative dispute resolution between right to private life and freedom of the press. The function of the general interest has been modified by the Court and has become the key factor of the dispute resolution between the article 10 and the article 8. The concept of private life has evolved within the ECtHR case law, taking into account the emergence of new means of communication. Hence, it will be necessary to analyse the different conceptions of private life in France and in UK. Thereby, due to the different approaches of the Convention concerning the private life, the Court has to provide guideline. In response to the request from States parties to the Convention, the Court provides a grid of criteria.

The second chapter will highlight the consequences of the new approach by the Court. Although, *prima facie*, the function of general interest appears diminished since the Court makes this notion among many others, however, in practice, its role remains crucial. Indeed, the Court gives considerable weight to the debate of general interest and affords to States a margin of appreciation, in accordance with the principle of subsidiarity.

However, although the approach of the Court provides some precisions concerning the role and features of the concept, it could be considered, in a first section, the consequences of this use. Indeed, the Court, in this area, provides an *in concreto* approach. Therefore, whereas, theoretically, it seems resolve gaps, in practice, this technic is quite perplexing the doctrine due to, mainly, the instrumentalisation of the debate of general interest. This analysis will be based on the positive, as well as, negative doctrinal observations.

Nonetheless, the Court, due to its lack of clarity in its case law concerning the frequent use of the concept, should clarify the essence of this term. Thereby, the last section will be consecrated to the main issues, in accordance with the notion. It will be studied the substance of the subject matter and the institutional issue, namely the role of the Court to determine if there is a debate or not, that will enable to doctrine to provide some recommendations to the Court in this area.

The Court, by its innovative approach, tends to transform the general interest in the area of freedom of the press, in the light of the emergence of new communication society.

Part I. The emergence of the concept of general interest as a determining factor of the value of freedom of the press

Whether it is difficult to provide a definition of the concept (chapter I), the ECHR uses this concept as a determining factor to consider if the press plays its role of « public watchdog » in democratic society by a scrupulous scrutiny (chapter II).

Chapter I. The difficult identification of the concept of general interest

Being a blurred concept (section I), the General interest occurred, in the area of freedom of the press, by the teleological interpretation provided by the ECHR. Thereby, the ECtHR lays down the essence of the concept by providing the features of the notion (section II).

Section I. A blurred definition of the concept, its appearance in the ECtHR Case law

The notion of the general interest is a blurred concept, which differs in the light of the area in which it is used (paragraph 1). Therefore, the ECtHR developed this notion in the area of the press by providing features of the notion (paragraph 2).

Paragraph 1. An indefinable concept depending of the context

The concept of general interest is a broad concept undefined by the European Convention on Human Rights, nor even by the Court in its role as interpreter of the instrument. Each States parties to the Convention have its own view of the concept of general interest (A). Thereby, the blurred definition of the general interest needs to be examined as regard to the field in which it is applied (B).

A. The blurred definition of the general interest

Due to the imprecision of the concept, it is delicate to provide a definition of general interest because it varies according to States. First of all, it should be noted that the term itself has some inaccuracy because whether the French conception talks, mainly, about "general interest", the Anglo-Saxon vision adopt the concept of "public interest". Thereby, it is difficult to issue a distinction between these two notions as the concept and its literal definition is imprecise, their definition varying according to authors.

Thus, as John Locke pointed out, in *an essay concerning human understanding*, " *the names of simple ideas, and those only, are incapable of being defined*"¹⁶. Aristotle had already asserted that the human being is, by nature, "political animal" and its function is to ensure the common good¹⁷. Aristotle stated that the man is a "communitarian animal"¹⁸. Thereby, he deduces, during the various government's classification, that good government is one who pursues the " *common interest* ". Reaffirmed by Cicero, the political thought will be resurrected by Saint Thomas Aquinas, whereby the common good is the worthy goal of government¹⁹.

The Roman law, through the Justinian code, will favour the return of the notion.

It should be stressed that the public interest traditionally differs from the interest of individuals and are, therefore, superior to them.

In this regard, as pointed out by professor Baranger during its study on the judgments of the French parliament in the thirteenth century, this concept had a pejorative connotation and the French parliament preferred terms of "*common good*", "*mutual benefit*" or "*public utility*"²⁰.

According to the Anglo-Saxon concept, the general interest consists of all interests. As noted by Adam Smith, the individual issues shares to improve his fate²¹. Thus, according to the author, the individual seeks his own interest but had acted,

¹⁶ Locke, 1689, p.27.

¹⁷ Aristotle (ed. Saunders), 1981, p. 857.

¹⁸ Aristotle (ed. Kenny), 2011, p.1242.

¹⁹ Baranger, 2013, p.12.

²⁰ Ibidem.

²¹ Hayek, 1969, p. 12.

unknowingly, for the good of society. The general interest is, therefore, to seek it, unconsciously, through research of particular interest.

In the eighteenth century, the idea of general interest, in France, had two concepts. Whether the utilitarian concept is the sum of individual interests, in the voluntarism conception, the particular interest is outweighed by the general interest. Whether the first translated a mistrust towards the State, the second still in force, demonstrates both that an individual democracy entails the reduction of public space. Furthermore, this concept calls for an exercise of freedom system, which will form a political purpose company²². Thereby, the general interest will limit the exercise of individual freedom in favour of higher goals it represents. This idea is characterized in that it covers several areas. Generally, in the context of public law, it is composed of the administrative and economic aspects.

Within the Council of Europe, it should be noted that in its recommendation²³, certain elements on the concept might stand out. Indeed, the Council of Europe seems to explain that it is difficult to define it, because there is no consensus on the definition by the States. The Council of Europe recognizes the usefulness of facilitating general interest information revelations. Thereby, in this context, the notion includes the violation of human rights and law and public safety, the environment and health.

Whether the general interest, in principle, legitimates the action of public authorities in most of the States Parties to the Convention, it should be emphasized that the concept has been able to take a variable meaning depending on the context and the individual use.

B. The concept in the area of freedom of the press

Defining as “ *newspapers or journalists viewed collectively*”, the term ‘press’ is ambiguous due to the nature of newspapers, these various functions²⁴. Indeed, the press

²² Conseil d’Etat, 1998.

²³ CM/ Rec 7 (2014).

²⁴ Alland and Rials, 2003, p. 837.

must be free to speak in order to perfect its main function, which is to inform. It is, however, important to note that the press is different from the expression. If the expression created a real dialogue, the press implies a unilateral process of informing the public²⁵. The right to information was one of the primary concerns of the organization of the United Nation. From its first appearance in 1946, the General Assembly adopted a resolution that " *Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated*"²⁶.

This vague wording would be at the origin of the definition given in Article 19 of the Universal Declaration of Human Rights which recognizes the right to " *seek, receive and impart*" information²⁷. The International Covenant on Civil and Political Rights synthesizes this idea in the article 19²⁸. Recognizing the right of information receivers, this international organization opens the scope of freedom of expression. The same right will be granted in the article of the ECHR.

Indeed, information is the act of informing. The information is analysed as "*the act by which some facts or some opinions are made public*"²⁹. Thereby, information is the act of being informed. The act comes from the reporter who transmits this information to the public.

Indeed, it should be noted that the information includes the link between the sender, who is the journalist, and the recipient, the public.

The information only makes sense if there is an information receiver.

However, who can legitimately affirmed that information is in the interests of all? Indeed, the notion of general interest, especially in the context of the Anglophone concept with the expression of "matter of public interest", entails some confusion.

As noted by the tribunal, in *Guardian Newspapers Ltd and Heather Brooke versus the Information Commissioner and the British Broadcasting Corporation* case³⁰, "*There is*

²⁵ Lemmens, 2004, p.73.

²⁶ AGNU/ Res 59(I).

²⁷ UDHR, 1948, article 19.

²⁸ ICCPR, 1966, article 19.

²⁹ Agostinelli, 1994,p.60.

³⁰ IT, *Guardian Newspapers Ltd and Heather Brooke v. the Information Commissioner and the British Broadcasting Corporation*, 8 January 2007,§34.

*a wide difference between what is interesting to the public and what it is in the public interest to make known". However, in practise there is no distinction between " matters which were in the interests of the public to know and matters which were merely interesting to the public "*³¹.

Whether the public has the right to receive this information, what is the information? Indeed, the concept is also vague on the subject. The subjective information appears namely the information for people may seem important while the same information may seem unnecessary for other people. The information consists of knowing the facts that occurred in the world of social life. The media reports the facts and enlightens citizens about the causes and consequences of these facts³².

Thereby, the criterion of general interest demonstrates the importance of information and the debate appears, consequently, necessary in democratic society.

The general interest in matters of press, is serving the public. Because of the lack of reference in the ECHR, the judges should develop this concept.

Paragraph 2. The premises for the inclusion of the concept

Due to the blurred definition of the concept and its emergence in the field of the new society of communication, European Union developed this notion in matter of the press as well as the Council of Europe (A). However, the emergence of the notion appears with the interpretation of the European judges (B).

A. The legal basis of the concept in the European law

The concept of general interest is increasingly present within European bodies. The European Union ensures that the public is essential as the recipient of this information³³.

³¹ Information commissioner's office, 2013, p.7.

³² Charaudeau, 2011, p.69.

³³ Directive 95/46/EC.

Whether CJEU has been developed the concept in some case law, the study will be focused on news reports on event of high interest to the public.

The main goal is, in the framework of the European Union, to seek a balance between the right to property and freedom of enterprise and freedom to receive information and pluralism of the media. The Directive of the 10 March 2010³⁴ is aimed at the coordination of certain provisions laid down by laws, regulations and administrative provisions of the Member States concerning the provision of audio-visual media services. Under the news item transmission rights, it ensures the interest of the public. Indeed, the article 15 of the Directive aimed at recognize, for the broadcasters, the right to make short news reports on “*events of high interest to the public*”³⁵ which are subject to an exclusive transmission broadcaster³⁶.

The issue before the CJEU was whether the directive, which provides that such compensation could not exceed the additional costs directly occurred in providing access, was an infringement of the right to property and freedom of enterprise.

On the question whether the infringement of rights protected has an objective of general interest, the advocate general, in his opinion, states that the right to disclose short excerpts provided by Article 15 paragraph 6, is linked to the objective to “*to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the Union*”³⁷.

These objectives, as underlined in the directive, are to facilitate the emergence of unique information space. The Advocate General examined whether it was possible to consider that, in adopting Article 15, paragraph 6 of the Directive, the EU legislatures has established a fair balance between, on the one hand, the right to property and the freedom to conduct a business and, on the other hand, the freedom to receive information and media pluralism³⁸. For the CJEU, the adoption of Audio-visual Media Services Directive demonstrates the willingness of the EU legislature to protect the

³⁴ Directive 2010/13 / EU.

³⁵ Ibidem., article 15.

³⁶ CJEU, C-283/11, Sky Österreich GmbH v. Österreichischer Rundfunk, Opinion of the Advocate General, 2012, pt.2.

³⁷ Directive, 2010/13, pt.55.

³⁸ CJEU, C-283/11, Sky Österreich GmbH v. Österreichischer Rundfunk, Opinion of the Advocate General, 2012.

freedom to receive information and media pluralism, which are part freedom of expression guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union. Therefore, the article 15 of the directive, allows any broadcaster to produce short news reports, thus ensuring access to information and achieving the freedom to receive information and media pluralism. By that judgment, the Court, establishing the principle of the right of the public to sports information, emphasizes that the objective of general interest must be guaranteed³⁹.

Thereby, the CJEU, in UEFA versus Commission⁴⁰, stated that all games of the final phase of the World Cup and EURO raised sufficient public interest to be part of a major event. It considers that the wider public should have the opportunity to follow the events live or deferred coverage on free access.

Thereby, there is a tendency to take into account the legitimate aim of general interest in order to protect the consumer.

At the Council of Europe, it is granted a special place to the public's right to know. In its Recommendation of 2011 related to The protection of journalists' sources⁴¹, the Parliamentary Assembly states that *"In so far as Article 10 of the Convention protects the right of the public to be informed on matters of public concern, anyone who has knowledge or information about such matters should be able to either post it confidentially on third-party media, including Internet networks, or submit it confidentially to journalists"*⁴². In this way, the private life of a politician may face a general discussion of interest since, according to the Council of Europe (Coe) *« may indeed be of interest to citizens, and it may therefore be legitimate for readers [...] to be informed of those facts »*⁴³. Sensitive to the protection of the press⁴⁴, the Coe " *Taking into account its declaration on mass communication media and human rights, which confirms the principle of the independence of the press and other mass media, and in*

³⁹ Wilhem, 2013, p.12.

⁴⁰ CJEU, C-201/11 P, UEFA v. Commission, 18 July 2013.

⁴¹ PA/ Rec 1950 (2011).

⁴² Ibidem, pt. 9.

⁴³ PA/Res 1165 (1998), pt.9.

⁴⁴ PA/ Rec 1950 (2011).

particular says that these media play an essential role in the general public interest."⁴⁵. The link between freedom of the press and the notion of general interest is recognized currently in European States, such as in UK with the freedom of information Act 2000⁴⁶.

Whether the European bodies recognize the right to be informed for the public, the notion of general interest, in this area, emerged with the ECtHR case law.

The lack of provision for this concept in the Convention has led to a judicial construction by the judge.

B. The emergence of the notion in the ECtHR Case law

The concept of general interest does not appear in the second paragraph of Article 10 of the Convention on freedom of expression. In the context of Article 10, restrictions are included. Nevertheless, it should be noted that whether the French text talks about necessary restrictive measures, the English text are considered in terms of "interest of" public safety, among others.

Thereby, the lack of concept in the agreement creates its evolution through praetorian interpretation, in order to ensure the effectiveness of the Convention.

Ensured the effectiveness of Convention rights is the main approach operated by judges. Indeed, as the Court points out in *Airey versus Ireland*, « *The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective* »⁴⁷.

In order to achieve this effectiveness, the ECHR, dynamically, interprets the Convention⁴⁸. As it confirms, the Convention is a "*living instrument*"⁴⁹ that "*must be interpreted in the light of the conditions of today*."⁵⁰

In that context, freedom of press was a democratic result, which was amplified by the emergence of the new technologies. There is an increased interest of public debate due

⁴⁵ PA/ Rec 582 (1970), §2.

⁴⁶ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

⁴⁷ ECtHR, *Airey v. Ireland*, 9 October 1979, §24.

⁴⁸ Sudre, 2011, p. 245.

⁴⁹ ECHR(com), *Tyrer v. UK*, 25 April 1978.

⁵⁰ ECHR(com), *Marckx v. Belgium*, 13 June 1979, §58.

to the fact that, nowadays, information is widespread thanks to new means of information. Faced with these developments, it is up to the judges to take into account the necessary means to guarantee the effectiveness of the Convention.

In *Sunday Times versus United Kingdom* case law⁵¹, the Court uses, for the first time, the notion. Indeed, it considers of public interest the communication of information or idea that contributes to the public interest. In this case, was involved the diffusion of information concerning children suffering of malformation due to medication. However, it should be noted that in this case, the Court uses the term "*public interest*" and not "*general interest*".

Thereafter, the Court, without giving any meaning, reaffirmed the idea that even though there is a lack of definition of the concept, it started to incorporate this notion in its case law and to give an interpretation of the provision by, inter alia, using the concept of general interest.

Indeed, in *Jersild versus Denmark*⁵², the Court uses the notion of "matter of public interest". In this case, the domestic court had sentenced the author of "green jackets" report, claiming racist and xenophobic statements. According to the Court, whether the dissemination allowed communicating opinions racist, the press must, nevertheless, respond to its function, which is to impart information and ideas on matters of public concern. In addition, "*the public also has a right to receive them*"⁵³.

This expression of general interest is included in the *De Haes and Gijssels versus Belgium*⁵⁴, in which the Court recalled that "*the press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest, including those relating to the functioning of the judiciary*"⁵⁵. The emergence of the role of the press and the rights for the public to

⁵¹ ECtHR, *Sunday times v. UK*, 26 April 1979.

⁵² ECtHR(GC), *Jersild v. Denmark*, 23 September 1994.

⁵³ Ibidem, §31.

⁵⁴ ECtHR, *De Haes and Gijssels v. Belgium*, 27 February 1994.

⁵⁵ Ibidem, §37.

receive information concerning matters of public interest, raised by the interpretation of the judge.

In *Thoma versus Luxembourg*⁵⁶, related to the disclosure of article concerning the behaviour of forest rangers in forest reforestation in Luxembourg, the Court used this notion, likewise, concerning defamation case⁵⁷.

Thereby, whether the Court raises this blurred concept, from a literal point of view, it is difficult to determine what is, *stricto sensu*, the meaning of the concept. Indeed, it is delicate to provide difference between public interest and general interest, knowing that, currently, the Court referred to “debate of general interest”⁵⁸. It must be noted that, in these cases, the Court talks about debate, subject and questions of general interest⁵⁹.

Section II. The Features of the notion of general interest

The Court tries to provide some features of the notion, referring to the field (paragraph 1), and take into account, at the beginning, some characteristics (paragraph 2).

Paragraph 1. The application area of the concept

The Court has developed its jurisprudence as regard to the subject matter (A) and the person implicated in the case (B).

A. The *rationae materiae* field

The identification of this area should not be understood as analysing areas, where the Court noted that certain issues and topics have required the general interest. Indeed, as

⁵⁶ ECtHR, *Thoma v. Luxembourg*, 29 March 2001.

⁵⁷ ECtHR, *Paturel v France*, 22 December 2005.

⁵⁸ ECtHR, *Von Hannover v. Germany (no2)*, 7 February 2012.

⁵⁹ Monfort, 2012, p.23.

noted by Professor François, such an approach would accentuate the difficulty of determining the notion⁶⁰. It is preferable to focus on the areas where this concept is flawed by a real jurisprudential basis.

The concept is emblematic in the political field. Indeed, from its *Lingens versus Austria*⁶¹, the Court has defined certain rules with regard to political life and men who compose it. Indeed, the ECtHR has demonstrated that, in the context of a political debate, the press is important because it “ *impart information and ideas on political issues just as on those in other areas of public interest* ”⁶².

According to the Court, the freedom of the press allows everyone to participate in a free political debate. Thus, the allegations in an article by a Senator are a political debate, even if they are not made within the parliamentary precincts⁶³. It should be noted that, in these cases, the opinion expressed, remains in connection with the exercise of the mandate of the individual. Therefore, both journalists and politicians can be engaged in political debate since the involved issues concerns general interest. Thereby, it is by the nature of the allegations of the Basque senator, concerning series of murders and attacks, that the Court recognizes freedom of expression of the person in the newspaper. The Court stresses the importance of freedom of the press when it is dealing with political issue, considering that it is very valuable in circumstances “ *in which State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature* ”⁶⁴.

Therefore in political field, the implementation of the right to receive information is asserted. In the *Lesquen De Plessis-Casso versus France*⁶⁵, related to political controversy, the Court concluded that the discussion of expenditures and management of the municipality, during a public meeting, is in the public interest⁶⁶.

⁶⁰ François, 2014(1), p.2.

⁶¹ ECtHR, *Lingens v. Austria*, 8 July 1986.

⁶² *Ibidem*, §41.

⁶³ ECtHR, *Castell v. Spain*, 23 April 1992, §42-43.

⁶⁴ ECtHR(GC), *Stöll v. Switzerland*, 10 December 2007, §110.

⁶⁵ ECtHR, *De Lesquen du Plessis- Casso v. France*, 12 April 2012.

⁶⁶ François, 2014(1), p.4.

The appearance of this concept is extended to areas other than political matters⁶⁷. Indeed, the ECtHR considers that issues of general interest will, also, cover issues relating to public health⁶⁸, history⁶⁹, and religion⁷⁰. Recently the field has been expanded to the functioning of institutions and public services.

According to the Court, “*whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest.*”⁷¹. It added that, the maintenance of the guarantee of the judiciary authority cannot be invoked, in order to muzzle criticism of the Court composition to the extent that, these critics contribute to public discussion concerning the structural impartiality⁷².

Hence, no one may prohibit that, before the trial, the case could lead to a discussion in specialized journals, the mainstream press or the public in general. Also, if the media must not overstep the bounds set to ensure the proper administration of justice, it is incumbent upon them to communicate information and ideas on such issues⁷³.

Subsequently, the ECtHR has considered that the actions of the police are “*on a matter of serious public concern*”⁷⁴. In the same way, a discussion related to the functioning and the quality of university teaching contributes to a public debate and raises, nowadays, the interest of public⁷⁵. The Court went further in *Telegraaf Media Nederland BV and Others Landelijke versus Netherland*, in which, it considers that the publication of information on the methods of intelligence services contributes to a subject of general interest, particularly, from the fact that these methods can jeopardize some human rights guaranteed by the Convention⁷⁶.

⁶⁷ Ibidem.

⁶⁸ ECtHR, *Bergens Tidende v. Norway*, 2 May 2000.

⁶⁹ ECtHR, *Monnat v. Switzerland*, 31 January 2006.

⁷⁰ ECtHR, *Paturel v. France*, 22 December 2005.

⁷¹ ECtHR, *Sunday times v. UK*, 26 April 1987, § 65.

⁷² Ibidem.

⁷³ Ibidem, §63.

⁷⁴ ECtHR, *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 67.

⁷⁵ ECtHR, *Brunet Lecomte and SARL Lyon Mag v. France*, 20 November 2008, §62.

⁷⁶ ECtHR, *Telegraaf Nederland Landelijke Media B.V and others v. Netherland*, 22 November 2012.

These questions, qualified as public or general interest, can also refer to scientific discoveries⁷⁷ or strategy a private company⁷⁸. After *Von Hannover versus Germany* (no1)⁷⁹, the Court has extended the public matter, recognizing that an article concerning an athlete contribute to general interest⁸⁰. Thus, a book concerning a thesis, within the topic is the star phenomenon, quoting a singer, is not comparable to the sensation press⁸¹.

Consequently, the field seems quite extensive. Thereby, the Court addresses a field also based on *rationae personae* approach⁸².

B. The *rationae personae* field

The Court recognised the extension of the field to public person due to theirs status and notoriety. Therefore, it is in political matter that the Court underlined the particularity of the applicable regime to politician. This particularity arises from their position in the democratic society. Thus, the Court, in several cases, stated that “*The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual*”⁸³. Indeed, the function of politicians is to participate in political life, which, necessarily, exposes them to criticism of their actions and their words. The Court requires that certain rules be imposed in this specific area, as regard to the nature of the political debate and democracy. Thereby, the Court condemned Austria for the sanction imposed on the journalist who published an article about the chancellor in office in not very flattering terms⁸⁴. The Court stressed that this penalty could deter journalists from contributing to public discussion and, that, could impede the mission of the press, which is to contribute to the public discussion of issues affecting the life of

⁷⁷ ECtHR, *Sunday times v. UK*, 26 April 1987.

⁷⁸ ECtHR(GC), *Goodwin v. UK*, 27 March 1996.

⁷⁹ ECtHR, *Van Hannover v. Germany*, 24 June 2004.

⁸⁰ ECtHR, *Nikowitz and verlagsgruppe News GMBH v. Austria*, 27 February 2007.

⁸¹ ECtHR, *Sapan v. Turkey*, 8 June 2010, §34.

⁸² Michalski, 2013, p.19.

⁸³ ECtHR, *Lingens v. Austria*, 8 July 1986, §42.

⁸⁴ ECtHR, *Oberschilk v. Austria*, 23 may 1991.

the community. In other words, the Court considers that freedom of the press is one of the best means of discovering the ideas and attitudes of political leaders. The complaint against a politician for a public discriminatory purpose is a public debate on an important issue.

Similarly, a book containing health information of a Head of State is an important debate due to the necessary transparency of public life of politician⁸⁵.

Recently, the Court acknowledged that the offensive comments against Head of State could be considered as the expression of critic, since its form part of the public debate of general interest. Thus, the requirement is lower when the litigious comments take place during an election campaign. Thereby, the Court held that the comments are part of general interest because the accusation against Mr Brosa was related to the ability of a candidate to serve as mayor⁸⁶. The acceptable limits are rejected as soon as one enters the political debate whose liveliness is part of democratic debate⁸⁷.

Whether the Court emphasized that civil servant would be treated, as politician, critics against them, are broader than private individuals.

Since *De Haes and Gijssels versus Belgium*, the Court found that the attitudes of judges, even out of court, might constitute legitimate preoccupation of the press and contribute to the debate concerning the functioning of justice and morality of those who are guarantors⁸⁸. In *Mamere versus France*⁸⁹, The Court illustrates this trend to admit the free criticism of public officials. In this case, Mr Mamere, former journalist and member of the ecological party, participated to TV show. During the interview, the nuclear accident at Chernobyl is evoked. He formulated criticisms of the former director of Protection Services against ionizing rays, that would have claimed, “*the Chernobyl cloud had not crossed our borders.*”

The Court stressed that these remarks “ *were part of an extremely important public debate focused in particular on the insufficient information the authorities gave the*

⁸⁵ ECtHR, *Editions Plon v. France*, 18 May 2004 ; *Sudre*, 2004, p.1161.

⁸⁶ ECtHR, *Brosa v. Germany*, 17 April 2004.

⁸⁷ ECtHR, *Schorsch and News Verlagsgesellschaft v. Austria*, 13 November 2003.

⁸⁸ ECtHR, *De Haes and Gijssels v. Belgium*, 24 February 1997.

⁸⁹ ECtHR, *Mamère v. France*, 7 November 2006.

population regarding the levels of contamination to which they had been exposed and the public-health consequences of that exposure”⁹⁰. The official status justifies the right to criticism toward the officer in the exercise of his duties.

The Court extends this field to public figures. Thereby, after recalling the importance it attaches to freedom of the press, the Court notes that the publication of a second text published in a local newspaper had not intended to be a "gratuitous personal insult" against a director⁹¹. In this case, the Court stressed that his qualification forces him to admit higher degree of tolerance to criticism directed against him⁹². Thereby, the Court concluded that a journalist, political book author and presenter in a local broadcast might be subject to criticism on the occasion of a debate of general interest⁹³.

The Court provides an extensive approach of what is a public figure. Thereby, the Public figure covers, inter alia, an actor⁹⁴, a popular singer⁹⁵, a princess⁹⁶ or the director of French mosque⁹⁷.

Paragraph 2. The criteria of the characterisation of the general interest notion

The Court provided some criteria of the characterisation of the debate of general interest. The Court takes into account the public activity of the individual (A) and the media coverage of the subject (B). This criterion will be study in link with the temporal and spatial framework⁹⁸.

⁹⁰ Ibidem, §20.

⁹¹ ECtHR, Bodrožić and Vujin v. Serbia, 23 June 2009, §32.

⁹² Ibidem, §34.

⁹³ ECtHR, Avgi Publishing and Press Agency SA & Karis v. Greece, 5 June 2008.

⁹⁴ ECtHR(GC), Axel Springer AS v. Germany, 7 February 2012.

⁹⁵ ECtHR, Sapan v. Turkey, 8 June 2012.

⁹⁶ ECtHR, Von Hannover v. Germany, 24 June 2004.

⁹⁷ ECtHR, Chalabi v. France, 18 September 2008.

⁹⁸ In this sense, Francois, 2014 (1), p.5.

A. From the spatial framework to the emergence of the public activity

Traditionally, the spatial framework should have an impact on the identification of the debate of general interest. Indeed, this framework covers the space and, therefore, the debate would be of general interest in connection with these criteria⁹⁹. Therefore the debate is focused on useful information to the public without distinction. Thereby, it emerges from the ECtHR Case law, that the debate may be of general interest at local, regional or international level. In its, Thereby, the Court considers that the article, denouncing practices contrary to the regulations related on sealing, is an important debate at local, regional and international¹⁰⁰. The Court holds that the debate exists, regardless of whether the information is only useful regionally¹⁰¹.

The Court, out of respect for freedom of the press, does not provide distinction or any gradation of the information, considering the public interest to have such legitimate information.

Thereby, the Court considers that there are facts of great interest to public opinion in the region of the Basque Country¹⁰². In the present case, the denunciation of the passivity of the authorities to a series of murders and bombings in the region is of interest for public opinion¹⁰³. Therefore, the Court considers that knowledge by the public of the personal experiences of women, who have had recourse to cosmetic surgery, is a characterized debate¹⁰⁴.

Undoubtedly, the Court takes into account the location of the debate.

However this criterion is not decisive¹⁰⁵. Thereby, It is appropriated to link the factual criteria for studying cases in which this debate is. As emphasized implicitly in its case law, the Court takes into account the criterion of public activity. Indeed, in light of the analysis made on jurisprudence, the overriding factor is characterized herein in

⁹⁹ Michalski, 2013, p.21.

¹⁰⁰ ECtHR, *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999.

¹⁰¹ ECtHR (dec), *Abeberry v. France*, 21 September 2004.

¹⁰² ECtHR, *Castell v. Spain*, 23 April 1992.

¹⁰³ *Ibidem*, §45.

¹⁰⁴ ECtHR, *Bergens Tidende v. Norway*, 2 May 2000, §51.

¹⁰⁵ Michalski, 2013, p.20.

assessing the link between the public dimensions that would justify the public's right to know¹⁰⁶.

Thus, public activity appears as an information legitimization criterion.

In *Jonhsen Nilsen versus Norway*¹⁰⁷, the Court recognized that the publication concerning a politician is, "to some extent", a debate of general interest. Thereafter, the Court confirmed the emergence of the criteria¹⁰⁸.

Thus, as pointed out by professor François, the notoriety and the individual concerned should be taken into account as to the appreciation of debate of general interest¹⁰⁹.

Thus, the Court refers to the idea of "*objectively informative released* " which means that the elements are legitimate, even though in first view the information concern the private matter, because of the public activity of the individual. This overriding criterion is present, mainly in political field. In *Standard Verlags GmbH versus Austria (no.2)*¹¹⁰, the Court held that the private interest is limited when the information concerns a public person and affect political activities. In this case, the facts related did not involve the political activities, and therefore, was not of general interest¹¹¹.

In the same spirit, the Court points out that the health of a former president falls on debate of general interest, while, private facts do not need the debate by the public opinion¹¹². The Court takes the function of the person into account, at the material time¹¹³.

The Court also takes the temporal factor into account although this is not a decisive criterion in the identification of the concept of debate of general interest in view of the consequences of the erosion of new technical processes.

¹⁰⁶ Kaminski, 2009, p.111.

¹⁰⁷ ECtHR, *Bergens Tidende v. Norway*, §28 and 52.

¹⁰⁸ ECtHR, *Von Hannover v. Germany*, 24 June 2004.

¹⁰⁹ François, 2014 (1), p.4.

¹¹⁰ ECtHR, *Standard Verlags GmbH v. Austria (no.2)* 4 June 2009.

¹¹¹ Ibidem, §42 and 44.

¹¹² ECtHR, *Editions Plon v. France*, 18 May 2004.

¹¹³ ECtHR, *Ruusunen v. Finland*, 14 January 2014.

B. The temporal framework neglected in favour of the inclusion of the media context

The temporal aspect played a significant role in the analysis of information concerning the publication of "state secret". Indeed, in *Editions Plon versus France*, whether the temporary ban of the book is legitimized, the maintenance of the broadcast ban structure is not in conformity with Article 10, since the time flow has to be taken into account¹¹⁴. The Court, also, has taken into consideration the fact that the book was already available on the Internet. Therefore, Internet distribution generates any loss of confidentiality¹¹⁵.

Whether the debate must be on going¹¹⁶, if the debate is already public, it is not a matter of public interest.

Faced with the complexity of the Court's decisions, the impact of the information in society seems an important vector. The event will be different in the time of the saying of information by the press, which itself will be different from the reception time. The emergence of new technologies makes it difficult to take into account the time since the media support design, which portrays the event, does not necessarily coincide with time. Therefore, the media or dissemination via Internet, will allow immediate information of the event in contrast to the print media, which it, subsequently provides elements.

The temporal framework is undermining and the Court, currently, becomes more receptive to the impact of the event in the media. Indeed, according to professor François, the media resonance will have an impact on the characterization of the debate of general interest¹¹⁷.

In this regard, it is necessary to analyse two judgments of the Court.

First, in *Thoma versus Luxembourg*, is involved a citation during a radio program from an article published in the press concerning the corruption of administrative officials of

¹¹⁴ Ibidem, §52.

¹¹⁵ Ibidem, §53.

¹¹⁶ ECtHR, *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999.

¹¹⁷ François, 2014 (1), p.6.

water and forests¹¹⁸. The reporter was merely reproducing the insinuations of the journalist who wrote the article¹¹⁹. He was sentenced by the domestic court for infringement of the duty of fair information¹²⁰.

The Court ruled otherwise, pointing out that the topic was already discussed in the media and it concerned a problem of general interest.

Thus, the Court concludes that a general requirement for journalists, systematically and formally, to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas"¹²¹. Consequently, there was a breach of Article 10.

This judgment is to be compared with the judgment *Dupuis and others versus France*¹²². The revelation, by the media, for wiretapping operated by the Head of State and the French government, has attracted many critics. The mediatization entailed the indictment of Deputy Chief of Staff of the President of the Republic, demonstrating the impact of media on society. In addition, the Court admits that the document concealment may be justified because there is a contribution to a debate of general interest in a wiretapping system. Therefore, the Court establishes the obsolescence of confidentiality of investigations because, at the time of the publication of the book, the public already knew the secret. It can be seen that the journalist can give himself the event of material information quality for the public¹²³.

In its analysis, Lyn François denounced a "media strategy" which involves "maintain public interest in the subjects concerned with the approval of the Court."¹²⁴.

By the revelation of information, the reporter is responsible for the creation of public emotion. This emotion will lead a discussion of public interest and weaken the duties and responsibilities of journalists.

¹¹⁸ ECtHR, *Thoma v. Luxembourg*, 29 March 2001, §50.

¹¹⁹ *Ibidem*, § 12.

¹²⁰ *Ibidem*, §50.

¹²¹ *Ibidem*, §64.

¹²² ECtHR, *Dupuis and others v. France*, 7 June 2007.

¹²³ Derieux, 2007, p.10128.

¹²⁴ François, 2014(1), p.6.

The Court has highlighted the notion of general interest, which has a considerable weight in its review. Thereby, the Court provides some characteristics to the function of the general interest and seems to use the notion in order to justify the valorisation of freedom of the press.

Chapter II. The initial function of the general interest

Initially, the Court used the notion of General interest as a justification of freedom of journalist to ensure the public's right to know (section I). However, the Court, progressively, limited this excessive strengthening of freedom of the press, by imposing a certain journalist ethical, as soon as, the reputation of individual is under threat. Furthermore, the Court tried to ensure certain compliance with rights of others, such as, the presumption of innocence and the right to private life (section II).

Section I. The use of the general interest as a valorisation of the freedom of the press

The Court ensures freedom of the press, providing power to journalist by the use of this notion (paragraph 1) on behalf of the public's right to know (paragraph 2).

Paragraph 1. The enhancement of freedom of the press

The Court enhanced the freedom of the press by providing to the journalist, the right to criticise people, as soon as, the general interest is at stake (A) and tends to use the notion as justification of press infraction (B).

A. The right to criticism by the journalist

The protection of the press is relatively strong. Recognizing, repeatedly, the role of the press as a “ public watchdog” in democratic society¹²⁵, the Court recalls that “ journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation”¹²⁶. In *Lingens versus Austria*, the Court, unanimously, recognized the breach of the article 10. The Court held that “ *In the context of political debate such a sentence would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community*”¹²⁷. The Court operates a scrutiny and the subsequent decisions, particularly in matter of defamation, point out the favourable approach of the Court towards the press.

It is important to note that the Court uses a control that is done in three phases.

In the framework of article 10, the ECtHR will tend to shift the first two criteria in favour of the assessment of the necessity of the State interference in the democratic society. Thereby, the margin of appreciation provided to the State is narrow because there is a scope under the article 10 paragraphs 2 in matter of political speech¹²⁸ and “ *on debate on matter of public interest* ”¹²⁹.

In matter of defamation, the notion of debate of general interest is the essential criterion to consider. The Court is up to journalists to impart information and ideas on matters of general interest¹³⁰ and in the matter, it takes into account the debate of general interest as one of the factors allowing a quasi immunity of journalist¹³¹.

The *Paturel versus France* judgment is a good illustration. The Court points out that some passages in question, have a negative connotation but, in this case, the subject has been recognized as matter of general interest. Consequently, the Court provides a

¹²⁵ ECtHR(GC), *Goodwin v. UK*, 27 March 1996, §39.

¹²⁶ ECtHR, *Prager and Oberschlik v. Austria*, 26 April 1995, §39.

¹²⁷ ECtHR, *Lingens v. Austria*, 8 July 1986, §44.

¹²⁸ ECtHR, *Brasilier v. France*, 11 April 2006, §41.

¹²⁹ ECtHR(GC), *Sürek v. Turkey*, 8 July 1999, §61 ; ECtHR, *Brasilier v. France*, 11 April 2006, §47.

¹³⁰ ECtHR, *De Haes and Gijssels v. Belgium*, 27 February 1994, §37.

¹³¹ François, 2014(2), p.3.

“narrow interpretation”¹³², since the issue fall, unquestionably, within the matter of public interest in a democratic society¹³³. It found a violation of article 10.

The Court addressed a similar argument in *Brasilier versus France*¹³⁴, in which it concluded that the condemnation to pay the symbolic sum of one franc by domestic court was contrary to provisions of the Convention. The Court stated that the assertions of the public interest fell more to the statements of fact than the value judgements. It is important to notice that, in matter of defamation, the Court observes a distinction between the statements of fact and value judgements, which cannot be proved¹³⁵. In *Mamère versus France*, the Court confirms its doctrine in matter of subject of public interest. Indeed, it strengthens the protection of freedom of expression, admitting that the moderation of the comment is not necessary required when the public debate is part of general concern¹³⁶. Thereby, the Court recognizes “ *a high level of protection of the right to freedom of expression*”¹³⁷. This innovative approach was confirmed in the *July and Sarl Liberation versus France*¹³⁸. In this case, the Court rules on the ground of matters of public interest and held that “ *the public have a legitimate interest in the provision and availability of information about criminal proceedings*”¹³⁹. Thereby, the Court infers that the margin of appreciation of the authorities is narrow¹⁴⁰. Recently, recalled in *Otegi Mondragon versus Spain*¹⁴¹, it follows an attachment of the critics during a debate of public interest. This method has the effect of leaving large “ *latitude to freedom of expression or the right to free journalistic criticism*”¹⁴².

This method has consequences in domestic courts. Thereby, the French jurisdictions have shown great responsiveness in the *Executive Life* judgment¹⁴³, which followed the

¹³² ECtHR, *Paturel v. France*, 22 December 2005, §41-42; ECtHR, *Giniewski v. France*, 31 January 2006.

¹³³ ECtHR, *Giniewski v. France*, 31 January 2006, § 51.

¹³⁴ ECtHR, *Brasilier v. France*, 11 April 2006.

¹³⁵ ECtHR, *Lingens v Austria*, 8 July 1986.

¹³⁶ ECtHR, *Mamère v. France*, 7 November 2006, §25.

¹³⁷ *Ibidem*, §20.

¹³⁸ Monfort, 2012, p. 23.

¹³⁹ ECtHR, *July and Sarl Libération v. France*, 14 February 2008, § 63.

¹⁴⁰ *Ibidem*, §67.

¹⁴¹ ECtHR, *Otegi Mondragon v. Spain*, 15 March 2011.

¹⁴² François, 2012(2), p.37.

¹⁴³ Crim. Div., *Executive Life*, 11 March 2008.

ECtHR case law. In this case concerning the publication of an interview on a matter of debate of general interest, the Criminal Chamber found that the article in question does not exceed the limits of freedom of expression under Article 10. There is a clear desire on the part of the domestic courts to comply with the judgments of the Court. Thereby, the Criminal Court has required in Morel case law, the legal basis of the imputation¹⁴⁴. But as evidenced by the French doctrine¹⁴⁵, it is regrettable that French domestic courts have not specified the elements underlying the notion, although in this case the domestic court bases its analysis of the notion, in the field of good faith¹⁴⁶.

In the UK, the defamation law, enacted 25 April 2013¹⁴⁷, helped mitigate the criticism of the British government. The jurisprudence of these last ten years is “*probably the most significant development in libel law*”¹⁴⁸ such as the evolution of the Reynolds defence. The House of Lords, in the Reynold versus Times Newspapers¹⁴⁹, which concerned a virulent critic against a former head of government, had, from the pen of Judge Nicholls, given ten criteria allowing to appreciate whether the publication was realized as part of a public debate.

Thereby, there has been a favourable advanced for validating publications on this matters in which journalist could not establish the truth of the assertions.

By the implementation of the law, the UK tends to overcome the weaknesses of this progress, nevertheless, this law has certain weaknesses.

On the one hand, the law does not define the notion of public interest, a notion at the heart of this means of defence. On the other hand, by this lack of clarification, the practical application of this law, will only revive the debate on the conditions of such a debate and “*we may be back to Reynolds, Jameel and Flood more or less, under a different name*”¹⁵⁰.

¹⁴⁴ ECtHR, *Brasilier v. France*, 11 April 2006, §36.

¹⁴⁵ Dupeux, 2009, pp.1779-1787.

¹⁴⁶ Monfort, 2012, p.21.

¹⁴⁷ www.legislation.gov.uk.

¹⁴⁸ Glanville, 2012, p.8.

¹⁴⁹ HL, *Reynold v. Times Newspapers*, 28 October 1999.

¹⁵⁰ Pinto, 2013, p. 3.

B. The use of the notion as justification of press infraction

The Court grants the investigative reporter immunity from criminal prosecution. The journalistic sources are protected by the decisions of the Court. Indeed, the Court leaves it for journalist to decide whether it is necessary to reproduce “*such documents to ensure credibility*”¹⁵¹. The State interference can be justified by “*an overriding requirement in the public interest*”¹⁵². Thereby, the Court points out that the journalist condemnation for handling had contravened provision of freedom of the press¹⁵³.

As emphasized by the ECtHR, information on the annual amount of Mister Calvet was lawful and its disclosure permitted, the applicants' condemnation was based on having published the documents, namely the reproduction of notices of assessment to tax, which was an infringement of the article 10¹⁵⁴. In the present case, the Court reviews the measure, basing its analysis on the necessity of the measure taken by domestic court. Thereby, debates have neither addressed the legislation, which may seem questionable in particular because of its lack of predictability, nor the purpose of incrimination. Thus, restricting the freedom of journalists would be to admit “the threat to the investigation itself”¹⁵⁵.

In the same spirit, in Dupuis versus France, the Court considers that the amount of the fine did not appear to be justified in the circumstances of the case¹⁵⁶. The Court exempts the journalist to some obligations such as handling documents obtained through a breach of professional confidence. However, the Court, asserting that the condemnation is a breach of provision, leaves to imply that the only secret to consider would be that of journalistic sources¹⁵⁷. The protection of the journalistic sources is consecrated by the Court case law¹⁵⁸.

¹⁵¹ ECtHR(GC), Fressoz and Roire v. France, 21 January 1999, §54.

¹⁵² ECtHR, Goodwin v. UK, 27 March 1996, §39.

¹⁵³ ECtHR(GC), Fressoz and Roire v. France, 21 January 1999.

¹⁵⁴ Ibidem, §54.

¹⁵⁵ Bigot, 1999(1), p.689.

¹⁵⁶ François, 2007(1), p.4.

¹⁵⁷ Derieux, 2007, 10133.

¹⁵⁸ ECtHR, Goodwin v. UK, 27 March 2006; ECtHR, Roemen and Schmit v. Luxembourg, 25 February 2003.

Nevertheless, the freedom to inform cannot justify that journalist be convicted of criminal offenses, such as, helping to violate secrets and documents.

In order to deal with media impunity, should not the Court be cautious and ensure compliance with journalistic ethics in solving this issue?

The European label tends to justify journalistic exercise by stating that, whether the matter concerned is the debate of general interest, freedom of the press prevails. Therefore, the notion is used as a justification of the offense¹⁵⁹.

This emergence of an “ *imperialism of free speech*” undermined the principle of the legality of criminal offences and penalties.

Indeed, the Orban versus France¹⁶⁰ is an illustration. In this case, the French courts had convicted the editor of a book of apology of war crime leader. Whether the conviction appears justified, the Court’s reasoning, in paragraph 43, leaves sceptical. The Court, after stressing that it does not have to comment the elements constituting an offense, based its assessment on the necessity of the interference. Thereby, the Court takes into account a criterion, for which it is particularly sensitive, considering that the publication was part of a debate of general interest¹⁶¹.

Recalling that the publisher provided this information in order to inform the public, the Court held that the criticism by domestic courts against them, for not having taken distance from the testimony story, is not justified. By the temporal character and the concept of general interest, which it stresses, at the end of its judgment, “ *the singular importance* ”¹⁶², the Court reviews the decision of domestic court. The author Conte points out that what is reprehensible in these case law is that the Court “ *moves the legal argument of legality to that of discretion* ”¹⁶³. Indeed, the offense is, traditionally, characterized as soon as the components of the qualification are met.

However, the Court use an *in concreto* approach and appreciates the decision on the ground of expediency. According to the author, this displacement on the ground of

¹⁵⁹ François, 2014(1), p.3.

¹⁶⁰ ECtHR, Orban and others v. France, 15 January 2009.

¹⁶¹ Ibidem, §49.

¹⁶² Ibidem, §50.

¹⁶³ Lepage, 2009, p.42.

expediency is of different legal culture and it is, through the criterion of the general interest, that the judge appreciates the expediency of the decision of domestic courts¹⁶⁴.

Thereby, this approach by the judge entails an uncertainty of the law and difficulties for domestic courts to take into account the decisions of the ECtHR.

According to the professor Lepage, these criteria have an influence under the law and jurisprudence in domestic jurisdictions¹⁶⁵. However, the Court urges jurisdictions to measure the interest that the publication should have in terms of its contribution to the public interest and, introduces the logic of a justification of the offense, which is not foreseen by the criminal law.

However, the rule of law is enacted by the legislature and, by incriminating criminal offenses, the legislator limits the freedom of expression. Thereby, it seems that this function does not belong to national judges.

The Court proves an uncertainty of the law and demonstrates, once again, the need for the establishment of a substantial definition of the notion. Nevertheless, the Court strengthens the protection of freedom of the press due to its quality of public watchdog. Therefore, valuing journalistic freedom, the Court reinforces the public's right to know.

Paragraph 2. The strengthening freedom of information

By the use of the notion, the Court strengthens the freedom of information, which is necessary for the public (A), even through, other ECHR provisions appear to be in jeopardy (B).

¹⁶⁴ Lepage, 2009, p.42.

¹⁶⁵ Ibidem.

A. The necessary information for the public

In the concurring opinion of the case of Lindon, Otchakosvky- Laurens and July versus France¹⁶⁶, the judges Loucaides stated, “ *The main argument in favour of protecting freedom of expression, even in cases of inaccurate defamatory statements, is the encouragement of uninhibited debate on public issues*”.

The right to receive information means that under the article 10, even though in Groppera Radio AG case law¹⁶⁷, the Court declined to give a definition of the “ information and ideas”, the press has the duty to impart information in the areas of public interest¹⁶⁸.

Thereby, the public has the right to receive information as noted by the Court¹⁶⁹.

The Court has recognized the “ *essential function the press fulfils in a democratic society*”. Its special role has been recognized in some cases and the Court underlines that it is incumbent to the press “ *to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has the right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘ public watchdog’*”¹⁷⁰.

Thereby, the Court has taken a positive approach towards to the protection of the media and applies, in these cases, a strict scrutiny to the decision of the domestic courts and founds an infringement in a large percentage of case.

Thus, in a number of cases, the Court has held that the need for the public to obtain this information has more weight than the rights to person, as regard to the article 8, who has been hurt by the publication. Subject to the manipulation by the media, of a speech inciting to violence, the Court tends to favour the need for information. The press is an

¹⁶⁶ ECtHR(GC), Lindon, Otchakosvky - Laurens and July v. France, 22 October 2007.

¹⁶⁷ ECtHR, Groppera Radio AG and Others v. Switzerland, 28 March 1990.

¹⁶⁸ ECtHR, Lingens versus Austria, 8th July 1986, §56 ; ECtHR(GC), Jersild v. Denmark, 23 September 1994, §39.

¹⁶⁹ ECtHR, Sunday times v. UK, 26 April 1987; ECtHR(GC), Fressoz and Roire v. France, 21 January 1999.

¹⁷⁰ ECtHR, Observer and Guardian v. UK, 1992, §159.

essential foundation of society and the Court refers expressively to the public's right to know in Sunday time's case law¹⁷¹.

As noted by the Court in its judgment in Lingens versus Austria¹⁷², during its proportionality test, the press provides the best way to judge and know the leaders. The Court emphasizes the importance of allowing a large manoeuvre to journalists in the exercise of criticism¹⁷³ in order to not discourage the latter, to provide information of public interest¹⁷⁴. Thus, restrictions on freedom of press can be reconciled, only if it is justified by an “*overriding requirement in the public interest*”¹⁷⁵.

Thereby, the Court gives more weight to the right of defence of the press when it comes to determine whether the restriction was proportionate to the legitimate aim. There is a legitimate public interest to use that information.

Thereby, in the framework of the reproduction of notices of assessment to tax, the judge, in the context of his margin of appreciation, “*makes triumph the one which seems to be the most important and most legitimate*”¹⁷⁶.

This gives a wide margin of appreciation to weigh the actual intensity of the need for public information. By recognizing the legitimacy of the information as regard to its necessity and topicality, the Court provides low weight to the acquisition of the documents by the applicant and lets the public interest prevails over the individual interest since the information is relevant of the public¹⁷⁷.

Thereby, the Court appears to grant an advantage to the freedom of the press such as, for instance, when it held that the public interest prevails over doctor's reputation¹⁷⁸. Indeed, the Court protects the public's right to know when the information is crucial for

¹⁷¹ De Frontbressin, 1996, pp.444-447.

¹⁷² ECtHR, Lingens v. Austria, 8 July 1986.

¹⁷³ Ibidem, §44.

¹⁷⁴ ECtHR(GC), Jersild v. Denmark, 23 September 1994 §31 ; ECtHR(GC), Goodwin v. UK, 27 March 1996, §39.

¹⁷⁵ Ibidem.

¹⁷⁶ Ravanis, 2000, p.459 et seq.

¹⁷⁷ Massias, 1999, p. 634.

¹⁷⁸ ECtHR, Bergens Tidende and others v. Norway, 2 May 2000.

it¹⁷⁹ and, therefore, the State cannot censor information that constitutes a legitimate public interest.

However, Should the Court put certain limits to this overprotection since other interests, such as, the course of justice are involved?

B. The judiciary secrets known by the public

The contentious proceedings relating to the protection of confidential judicial proceeding was discussed in *Du Roy and Malaurie versus France*¹⁸⁰. In this case, the Court raised the question of whether the publication of information about the criminal proceedings in the form of constitution *de partie civile*, before a judicial decision is taken, is an infringement of the freedom of the press.

Contrary to domestic courts, the Court of Strasbourg held that the refusal to publish it “*impedes the right of the press to inform the public about matters which, although relating to criminal proceedings in which a civil-party application has been made, may be in the public interest*”¹⁸¹.

The judgment raises a conflict between two provisions. On the one hand, the Court reiterates, repeatedly, that the public is entitled to know the information on legal proceedings and, the other hand, the Court seems, as regard to its judgment, reluctant to be witness of the emergence of the “trial by newspaper”¹⁸² because the justice must have the confidence of the public¹⁸³. The public has a legitimate interest to be informed about these proceedings¹⁸⁴ due to their impacts on the society. The Court concludes that the public has the right to know the course of criminal justice. As a result, the publication of a book satisfies “*a concrete and sustained public demand in view of the*

¹⁷⁹ ECtHR, *Editions Plon v. France*, 18 May 2004 ; ECtHR(GC), *Fressoz and Roire v. France*, 21 January 1999.

¹⁸⁰ ECtHR, *Du Roy and Malaurie v. France*, 3 October 2000.

¹⁸¹ *Ibidem.*, §35.

¹⁸² ECtHR, *Sunday Times v. UK*, 26 April 1979, §57.

¹⁸³ *Ibidem.*, §37.

¹⁸⁴ ECtHR, *Dupuis and others v. France*, 7 June 2007, §47.

increasing interest shown nowadays in the day-to-day workings of the courts”¹⁸⁵. Nevertheless, Emmanuel Derieux criticized the ECtHR approach in that judgment, pointing out that the reference of the Coe recommendation¹⁸⁶ has no real legal force and appears in the relevant domestic law.

Whereas the Court imposes certain limitations, no doubt it tends to favour the public's right to know and even admit a right of defence by the media exercise.

Indeed, the Court recognizes that the public needs to have the confidence of the course of justice. Thus, a lawyer is allowed to talk about an on going trial.

Thereby, the Court recognized, once again, the impact of "this media trial" on the public. Nevertheless, the doctrine is controversial because the Court legitimates the media exercise of the right to defence and seems to confirm the possibility to violate the confidentiality of criminal proceedings¹⁸⁷.

Whether the lawyer is not able to cause himself the mediatisation and to publish official documents, this approach suggests, as underlined by the professor Marguénaud, the weakening of the presumption of innocence because “*there is no need for secret when a case has been mediatized by some ways in respect of which We don't question their loyalty nor who have deployed them*”¹⁸⁸.

Whether the Court tends to favour an increased protection of the press, it provides, however, some limitations to this right.

Section II. The use of general interest limited by the protection of reputation and right to others

The restrictive measure taken by the State can be justified if it is necessary in a democratic society. Particularly sensitive to the protection of individuals, the Court has provided duties and responsibility to the journalist in order to protect the reputation of

¹⁸⁵ Ibidem., §41.

¹⁸⁶ Derieux, 2007, p.1029.

¹⁸⁷ François, 2012(1), p.667.

¹⁸⁸ Marguénaud, 2012(1), p.262.

individual (paragraph 1), and, seems to grant an increased protection to individuals in matter of privacy and presumption of innocence (paragraph 2).

Paragraph 1. The strengthening journalistic ethics, the protection of reputation

The Court requires from the journalist to prove his good faith (A) and to provide reliable and precise information (B).

A. The good faith of the journalist

The punishment of journalist for assisting the dissemination of statements made by a person can seriously hamper the contribution of the press in matter of public interest¹⁸⁹. Nevertheless, the fact of issuing allegations must be based.

Thereby, the Court researches whether the journalist is acting “*in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism*”¹⁹⁰. The journalist must, concerning questions of general interest, respect his “*duties and responsibilities*”¹⁹¹.

This principle is connected to the second paragraph of article 10. The Court takes into account this principle when it assesses that restrictions by the State is necessary in a democratic society. In other words, the Court proceeds more to the assessment of the respect of “*duties and responsibilities*”, than the factual circumstances¹⁹². The journalist must be careful with the information it receives. Thereby, in its decision of inadmissibility, the Court considered that the lack of adequate measures taken by the journalist, including the lack of ascertaining the accuracy of the information, justifies

¹⁸⁹ ECtHR(GC), *Jersild v. Denmark*, 23 September 1994, §35.

¹⁹⁰ ECtHR(GC), *Fressoz et Roire*, § 54, ECtHR, *Bladet Tromsø et Stensaas*, § 58, et ECtHR, *Prager et Oberschlick*, pp. 18-19, § 37.

¹⁹¹ ECtHR(GC), *Pedersen and Baadsgaard v. Denmark*, 17 December 2004, §79.

¹⁹² Galland, 2002 p. 856.

the State interference on the basis of Article 10 paragraph 2¹⁹³. In this case, an article was published about a doctor who proposed a liposuction to a patient with bulimia.

The Court observes that the journalist had disseminated statements made by a disgruntled patient. As the domestic courts emphasised in its judgement, the doctor had proposed such a service because he was unaware of the health status of the patient. It follows that the request of the journalist is inadmissible as manifestly unfounded. The Court declares the application inadmissible.

The court uses a method of reasoning which tends to protect the rights of others. Thus, good faith requires proportionality between allegation provided by journalist and factual basis¹⁹⁴. The Court, therefore, takes into consideration the context and the broadcast medium. Thus, it is clear from its case law, that in case of dissemination of information a large number of times on a station with a large audience, the journalist must exercise more vigilance. Thereby the Court held that “ *the potential impact of the medium concerned is an important factor, and it is commonly acknowledged that the audiovisual media have often a much more immediate and powerful effect than the print media*”¹⁹⁵.

In *Cumpana Manzare versus Romania*¹⁹⁶, the Court, while finding a violation of article because of disproportionate penalties inflicted on the journalist, emphasises that the messages were “ *couched in virulent terms, as is demonstrated by the use of forceful expressions*”¹⁹⁷.

The Court, in order to assess whether the interference corresponds to a “pressing social need”, provides a careful distinction between facts and value judgments. Whether the “*existence of facts can be demonstrated*”, the truth of value judgments is “ *not susceptible of proof*”¹⁹⁸. In case of lack of sufficient factual basis, the Court states that the State interference is not justified¹⁹⁹.

¹⁹³ ECtHR(dec), *Verdens Gang and Kari Aarstad AASE v. Norway*, 26 October 2001.

¹⁹⁴ François, 2006(3), p.52.

¹⁹⁵ ECtHR, *Radio France and Others*, 30 March 2004, §40.

¹⁹⁶ ECtHR(GC), *Cumpana and Mazare v. Romania*, 17 December 2004.

¹⁹⁷ Ibid, §97.

¹⁹⁸ ECtHR, *De haes and Gijssels v. Belgium*, 27 February 1994, § 42 ; ECtHR (dec), *Harlanova v. Latvia*, 3 April 2003.

¹⁹⁹ ECtHR, *Jerusalem v. Austria*, 27 February 2001, §41.

The court grants protection to the individual when these allegations have consequences for them. Thus, in the Pedersen and Baadsgaard versus Denmark, as professor François underlines, the allegations could lead to criminal prosecution for the individual²⁰⁰. Similarly, the allegations may, by virulent remarks, harm the reputation of individual²⁰¹ because, as underscored by the Court “*confronted with such wholesale criticism, an impartial reader had little choice but to suspect that the plaintiff had behaved basely and that he was of despicable character*”²⁰².

The Court seems to protect the reputation of individuals namely “ *the beliefs or opinions that are, generally, held about someone or something*”²⁰³. The reputation is not an “ individual good”²⁰⁴ but a “ social fact ”²⁰⁵. The individual itself will be affected but also its social status.

Thereby, as defined by the professor Moscovi the reputation “ *is a judgement by the community concerning a particular individual who, generally and necessarily belong to the same community*” ²⁰⁶. The journalist has to provide good faith and give the opportunity to participate in the debate since the facts are alleged against an individual²⁰⁷ in order to defend his reputation in society.

B. The accurate and reliable information

Once the journalist undermines the reputation of the individual, information that is issued by the latter, must be accurate and reliable. In Bladet Tromsø versus Norway, the Court affirms that, in matter of public interest, the journalist has to respect his duties and responsibilities and to disclose “ *accurate and reliable information*”²⁰⁸.

²⁰⁰ François, 2006(3), p. 53.

²⁰¹ Ibidem.

²⁰² ECtHR, Prager and Oberschilk v. Austria, 28 April 1995, §37.

²⁰³ <http://www.oxforddictionaries.com>.

²⁰⁴ Translated from French, “ bien individuel” in Lemmens, 2004,p. 212.

²⁰⁵ Translated from French, “donnée sociale” in Lemmens, 2004, p. 212.

²⁰⁶ Moscovici, 1994, p.119.

²⁰⁷ ECtHR(GC), Nilsen and Johnsen v. Norway, 25 November 1999.

²⁰⁸ ECtHR, Bladet Tromsø and Stensaas v. Norway, 20 may 1999, §65.

Thereby, the unsubstantiated allegations about police inadequacies were the subject of an analysis by the Court²⁰⁹. Indeed, the Court underscored that journalist have to refer to the testimony and cannot make value judgment on this basis, especially, when they never endeavoured to provide justification for the allegation²¹⁰. Recalling that the allegations must be based on sufficient factual basis, the Court concluded that the convictions and sentences imposed of journalist were not disproportionate to the legitimate aim pursued by the State²¹¹. The allegations, provided by the journalist, have to be legitimately “regarded as credible”²¹².

The sufficient factual basis means that the individual has the right to exempt itself from its responsibilities. Whether the journalist had used a certain degree of exaggeration and provocation, he cannot use dissemination of inaccurate information in the newspaper. Thereby, disseminate information whereby Michel Junot “*admits that he organised the departure of a transport of deportees to Drancy*”²¹³ constitutes an infringement of duties and responsibilities by the journalist. In the Pedersen versus Denmark, the Court points out that the indirect accusation against the chief superintendent “was an allegation of fact susceptible of proof. The applicants never endeavoured to provide any justification for their allegation, and its veracity has never been proved”. Thereby, there was no violation of the freedom of the press.

In the same way, in Stângu and Scutelnicu versus Romania, the condemnation of journalist concerning defamatory allegation against civil servant is not an infringement of the article 10 because the journalist has a duty to provide a “sound factual basis”.

In this case, the applicants did try to provide the truth of these allegations. In this case, the reasons identified by the Court are relevant in that the applicants failed to provide evidence before the domestic courts²¹⁴.

The Court imposes to journalist, an obligation to provide a sufficient factual basis. In case of lack of basis, the Court held that the interference by the State is justified.

²⁰⁹ ECtHR(GC), Pedersen and Baadsgaard v. Denmark, 17 December 2004.

²¹⁰ Ibidem., §76.

²¹¹ Ibidem, §94.

²¹² ECtHR, Colombani and others v. France, 25 June 2002, §65.

²¹³ ECtHR, Radio France and Others, 30 March 2004, §38.

²¹⁴ François, 2006 (1), p. 2954.

Paragraph 2. The protection of rights of others

The Court establishes certain restrictions. As regard to the Convention, the interference of the State can be justify, in order to protect the protection of reputation or rights of others. Thereby, the Court grants particular protection to the individuals in case of presumption of innocence (A) and private life (B)

A. The presumption of innocence

Whether the Court emphasizes the right to receive the information for the public, it emits boundaries concerning the question of the presumption of innocence. Guaranteed in Article 6, the violation of the presumption of innocence can be defined as the affirmation of the individual's guilt, which is subject to an instruction or information, before the judgment is pronounced²¹⁵. The main issue is whether the presumption of innocence is binding on journalists in light of the ECtHR case law. In other words, the Court has to deal with, on one hand, the guarantee of justifiable to enjoy the right to a fair trial and, on the other hand, the duty of journalists to recount judiciary cases.

The Court examines whether the publication has harmful consequences under the interests of the proper administration of justice²¹⁶.

Thus, the publication of indictments and pleadings, while the criminal investigation is still pending, constitutes an infringement to the presumption of innocence²¹⁷. The Court condemned the media coverage of trials, which violates the conduct of the trial²¹⁸.

Originally, the presumption of innocence was forsaken by the Court arguing as a defence, the presence of a debate of general interest. The new trend of the Court is to ensure the effectiveness of the right to presumption of innocence. The presumption of innocence must be understood as being part of the right to reputation and rights of

²¹⁵ Lemmens, 2004, p.427.

²¹⁶ ECtHR, Worm v. Austria, 29 August 1997, §50.

²¹⁷ ECtHR, Tourancheau and July v. France, 21 November 2005.

²¹⁸ Decaus and Tavernier, quoted in Zoller, 2008, p. 216.

others. In *Petrina versus Romania*²¹⁹, the Court gives precedence to the right of the reputation and rights of others.

By its *Ruokanen versus Finland* judgment²²⁰, the Court confirms its tendency to provide, increasingly, protection to the individual. Thus, in its judgment, the Court recognized the primacy of the presumption of innocence on freedom of expression.

In this case, an article was published regarding the revelation made by a student of rape suffered by a baseball team during a party to celebrate the end of the Finnish championship. In parallel, a judicial investigation was opened but, in the absence of identification by the victim of potential culprits, was immediately abandoned. Condemns for defamation, the editor and the journalist argue, before the Court, that there has been an infringement of freedom of expression.

The Court determines whether there is a fair balance between the right of the reputation and the right of perpetrators of the crime namely if the conditions concerning the respect of their reputation are met. It underlines that the article has been published before the criminal investigation starts.

Thus, the allegation of rape was presented as a fact although the beginning of the criminal investigation however the article 6 paragraph 2 requires that *“everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”*²²¹.

Thereby, the Court concludes that the penalties, although they might be viewed as restrictive measure, were proportionate in regard to the competing interests and did not produce *“ a “chilling effect” on media freedom seen in terms of investigative journalism and the right of the public to be informed of matters of public concern”*²²².

Consequently, the Court underscores the importance of presumption of innocence and considers that *“the right to reputation of third parties is of equal importance especially where serious accusations of sexual misconduct are concerned”*²²³.

²¹⁹ ECtHR, *Petrina v. Romania*, 14 october 2008.

²²⁰ François, 2014(2), p.5 ; Lavric, 2010, p.1.

²²¹ ECtHR, *Ruokanen and others v. Finland*, 6 April 2010, §48.

²²² *Ibidem.*, § 51.

²²³ *Ibidem.*

The Court points out that some restrictions of the freedom of press are “necessary in democratic society.”

Thereby, the Court seeks to protect, step by step, the rights of others previously somewhat neglected. The emergence of new media has led to special attention from the Court of Strasbourg, which tends to protect the privacy of the individual, taking into account the quality of the information.

B. The protection of private life

As highlighted by the parliamentary assembly of the CoE, in its resolution 1165, the privacy has “ *become a highly lucrative commodity for certain sectors of the media.*”²²⁴ Thus, whether the Court provides a valuation of the press, it limits the press depending on the quality of the information. Therefore, the Court distinguishes the investigative press and the tabloid press, press for purely mercantile purposes. In this matter, the Court is particularly cautious about the recognition of an infringement of press freedom when it comes to facts not under a general public interest. Thus, the consideration of the public's right to information depends on “*the interest that the public may have to know the information*”²²⁵.

The Court provides this argument in the famous Van Hannover versus Germany²²⁶. The private life of a princess is not a matter of public interest. It follows a distinction between information and entertainment. Thus, the disclosure of information concerning the relationship between Princess Caroline and a French actor or his accidental fall at the Beach Club is not essential information. Thereby, the Court stated that “*the sole purpose of which was to satisfy the curiosity of a particular readership regarding the*

²²⁴ PA/Res (1165) 1998, §6.

²²⁵ Loiseau, 2014, p.150.

²²⁶ ECtHR, Von Hannover versus Germany, 24 June 2004.

*details of the applicant's private life, cannot be deemed to contribute to any debate of general interest to society despite the applicant being known to the public*²²⁷.

This position on the part of the Court is not new. Indeed, it has, in the past, refusing to consider that press "people" and concluded, for several cases, that the application was inadmissible. Thus, it judged that the request for the journalist to reveal the conviction for adultery relationship, between an aristocrat and banker, was inadmissible, finding that the information did not contribute to any debate of general interest, despite the notoriety of individuals²²⁸.

In the same way, it held inadmissible an application concerning the society Prisma press. In this case, an article described the holidays of an actress with her friend in Tunisia. The Court confirmed, in the present case, that the publication was only intended to satisfy the "unhealthy" curiosity of a certain public²²⁹. Subsequently, the Court in two applications in 2003²³⁰, considered that the application by the society Prisma press, which has violated the right to privacy, is inadmissible.

In the same sense, the Court considered in its Tammer versus Estonia²³¹, that the remarks about the marital life of a politician are not compatible with Article 10. This judgment can be link with case concerning Austria²³², in which the Court held that knowing the extra marital affair of the politician's wife with another politician is only intended to provide gossips. Similarly, there is no interest for the public to know the personal notes of a judge for a hearing before the parliamentary committee. Such a document falls within the personal level²³³.

The Court attaches a particular attention to the quality of information and the press. However, the Court uses an *in concreto* approach, and tends to issue limits to matter of

²²⁷ Ibidem., §65.

²²⁸ ECtHR(dec), Jaime Company Diez de Revenga and Juan Luis Lopez-Galiacho Perona v. Spain, 12 December 2000.

²²⁹ ECtHR(dec.), Société Prisma Presse v. France, 1 July 2002.

²³⁰ ECtHR(dec.), Société Prisma Presse v. France, 1 July 2003 ; ECtHR(dec), Bou Gibert and El Hogar y la moda SA, 13 May 2003.

²³¹ ECtHR, Tammer v.Estonia, 6 February 2001.

²³² ECtHR, Standard Verlags GmbH v. Austria (no.2), 4 June 2009.

²³³ ECtHR, Leempoel v. SA.ED.Cine Revue v. Belgium, 9 November 2006.

public interest, since the press discloses photography, which can offend an individual. Thus, the decision of the French domestic court, to confirm the injunction to publish a statement in a newspaper, concerning the consent of the family of Prefect Erignac, is justified for the ECtHR.

In this case, the picture of the Prefect killed in the street was disclosed.

Indeed, the Court provides special protection to the family of the victim by stating, “ *its publication in a widely distributed magazine intensified the trauma suffered by the relatives as a result of the murder, so that they had legitimate reason to consider that their right to respect for their private life had been infringed*”²³⁴. Without regaining the domestic Court’s argument basis on the dignity²³⁵, the Court, according to the professor Marguénaud, refuses to promote a press whose aim would be to publish shocking images.

Whether the approach is justified, some observations can be made. Initially, the victim was a State representative, a public man killed in a public place. Thereby, there is a distinction between this present case and a case concerning the publication of pictures stolen and taken in private place²³⁶. In addition, in matter of history and current events, does the interest of the public prevail?

The response seems to be positive because, as underlined by *Association nationale des journalistes reporters- photographes et cinéastes*, this image is the heart of current events. However, the observation is qualified by the violence of the image. In this case, the Court puts forward the feelings of a family, torn apart by death of such violence²³⁷. This approach may harm the interests of democratic society by establishing a prior agreement of the family on the news-spread image.

This censorship would be the “*end of the myth of the fundamental value of the right to information as the foundation of our democracies and lead to privatization*”²³⁸.

²³⁴ ECtHR, *Hachette Filipacchi Associates v. France*, 14 June 2007, § 59.

²³⁵ Gridel, 2001, p. 872.

²³⁶ TGI Paris, 13 January 1997.

²³⁷ Mallet- Poujol, 1999, p.67.

²³⁸ http://www.lemonde.fr/actualite-medias/article/2007/09/14/recours-de-paris-match-dans-l-affaire-erignac_955226_3236.html.

Even though the concept of general interest is indefinable, by the dynamic interpretation of the ECtHR, the general interest has been developed in the area of freedom of the press. It appears certain criteria that permit to identify the notion. Whether the Court gives to it a function that tends to protect the Press and the public's right to know, it emits some limits since the right of others is affected.

Nevertheless, the Court has to deal with the emergence of the new means of communication, which entail an undermining of privacy. Thereby, the Court provides a new function of the general interest in the resolution of conflicts of rights.

Part II. The mutation of the notion: the general interest as an alternative dispute resolution between right to private life and freedom of the press

The emergence, by the ECtHR, of the concept of privacy and freedom of the press entails dispute between these two rights. Thereby, the general interest appears as an alternative dispute resolution (chapter I) and by the evolution, the ECHR tries to provide a specific jurisprudence to State parties to the Convention (chapter II).

Chapter I. The appearance of a single test, an evolving jurisprudence based on the notion of contribution to a debate of general interest

Due to the conflict between freedom of expression and the right to private life (section I), the Court provides an evolving jurisprudence in order to resolve the dispute between two equal and important rights (section II).

Section I. The adjustment of the right to private life in the light of the current society

The emergence of new means of communication entails a revisited right to private life by the Court (paragraph 1), which is followed by domestic courts (paragraph 2).

Paragraph 1. A revisited right to private life by the ECtHR

The Court extended the concept of right to privacy in recent years. It gives more protection to individuals (A) however the privacy for public figure seems limited (B).

A. The extensive conception of the right to private life

In their legendary article²³⁹, Warren and Brandeis demonstrated that the industrial exploitation of discoveries and inventions, at that time, had led to violations of the right to privacy which can be defined as “the right to be let alone”²⁴⁰. The article 8 ensures this protection, nevertheless, it can be noticed that the literal reading of the provision does not take into account the emergence of new technologies.

It remains to the Court to develop concepts to contribute to the effectiveness of these rights by dynamic interpretation²⁴¹. Thereby, the Court extends the scope of privacy according to “ *ideas, ethics of the time, cultures, values and, above all, aims pursued*”²⁴². In this respect, the professor Sudre claims that the delimitation of privacy is complex because the ECtHR tends to provide a progressive interpretation in the light of present-day conditions²⁴³.

The private life is subjective concept. Reputation, honour, image, familial and sexual relation of individuals come within the concept. The concept takes into account emotion of individual being, his emotional feelings. Nevertheless, no definition has been provided has been provided either by the Court or by the Parliamentary Assembly of the Coe²⁴⁴.

The Privacy involves personal autonomy, freedom of privacy that concerns external and internal forum of the individual²⁴⁵. According to the Court, the right to respect for private life has two components.

First of all, the Court encompasses the physical and moral integrity²⁴⁶. It involves the right to live in private from prying eyes. This element is connected to intimacy.

²³⁹ Warren and Brandeis, 1890, pp. 193-220.

²⁴⁰ Ibidem.

²⁴¹ Sudre, 2001, p.335 et seq.,

²⁴² Meulders-Klein, 2005, p.304.

²⁴³ ECtHR, Rees v. UK, 27 October 1986, §47.

²⁴⁴ PA/Rec (582) 1970.

²⁴⁵ Alland and Rials, 2003,p.780.

²⁴⁶ ECtHR, Botta v. Italy, 24 February 1998.

The individual has the right to conduct his private life without external interference²⁴⁷. The intimacy of individuals is, gradually, ensured by the Court, which reasserts “*the right to live primarily, away from unwanted attention*”²⁴⁸.

Proclaimed by the Commission as “*the right to live free of foreign eyes*”,²⁴⁹ the right to privacy tends to be reinforced, as soon as, the individual is victim of interferences by public authorities or private individuals.

Thus, the State must refrain from interfering in people’s privacy, but have, also, the positive obligation to take adequate measures in order to ensure the effectiveness of this right²⁵⁰.

Secondly, the Court ensures the right of the individual to freely pursue its own development and fulfilment of his personality²⁵¹. Thus, the Court gives to the individual the “*opportunity of developing relationships with the outside world*”²⁵² and provides a “social dimension” to the privacy²⁵³.

Thereby, whether the individual assumes that his privacy is not protected when it is in the public place, the Court recognized a “legitimate expectation” of protection for his private life²⁵⁴ even through there is a “spatial exceeded privacy”²⁵⁵.

The image falls within the scope of the article 8²⁵⁶. The Court provides protection to public figures’ privacy and stresses “*there is therefore a zone of interaction of a person with others, even in a public context*”²⁵⁷.

The individual should provide, beforehand, his agreement and has the right to object to the disclosure, the capture and reproduction by others.

²⁴⁷ ECtHR, *Modinos v. Cyprus*, 22 April 1993.

²⁴⁸ ECtHR, *Sidrabas and Dziautas v. Lithuania*, 27 July 2004, §43.

²⁴⁹ ECtHR(com), *X v. Iceland*, 12 May 1976.

²⁵⁰ *Sudre*, 1995, p.363.

²⁵¹ *Sudre*, 2011, p. 521.

²⁵² ECtHR, *Niemietz v. Germany*, 16 December 1992, §29.

²⁵³ ECtHR, *Mikulić v. Croatia*, 7 February 2002, § 53.

²⁵⁴ ECtHR, *Von Hannover v. Germany*, 24 June 2004, § 51.

²⁵⁵ *Ruet*, 2003, p.3

²⁵⁶ ECtHR, *Shussel v. Austria*, 21 February 2002.

²⁵⁷ ECtHR, *Von Hannover v. Germany*, 24 June 2004, §51 ; ECtHR, *P.G. and J.H. v. UK*, 25 September 2001, § 56 ; ECtHR, *Peck v. UK*, 28 January 2003, § 57.

Nevertheless, the private sphere is more extensive for a particular than for individual acting in "a public context"²⁵⁸.

Thereby, the question arises whether this broad approach of privacy can be applied to public figures and politicians, who, by nature, receive less protection.

B. The right to privacy and public figures in ECtHR Case law

Whether recent cases law has been examined in the light of the article 8, it is mainly under the article 10, the Court rules private matters concerning public figures. Whether the Court has already enshrined the right²⁵⁹, it drew a distinction between reporting facts about politician and reporting fact about the private life of an individual who had not official function²⁶⁰. Thereby, the Court ensures a protection of his private life and, as underlined by academics, provides a "*significant extension of right to privacy*"²⁶¹.

The main issue was whether the decision whereby law prescribed the interference and had a legitimate aim was justified as necessary in democratic society.

In accordance with the ruling in Von Hannover versus Germany, the Court stated that the goal of the publication was to "*satisfy the curiosity of a particular readership*" and due to these circumstances, there should be a "narrower interpretation" of freedom of expression. It is interesting to note that the Court, after underlining that there is "*any debate of general interest to society*", takes into account the "*climate of continual harassment which induces in the person concerned a very strong sense of intrusion*"²⁶².

The Court reiterates the distinction in Alkaya versus Turkey²⁶³. The Court emphasized, in that judgment, that the purpose of the disclosure of the public figures' address was to satisfy public curiosity. The Court concludes that whether there is an interest for the

²⁵⁸ ECtHR, Sciacca v. Italy, 11 January 2005.

²⁵⁹ ECtHR, Shussel v. Austria, 21 February 2002.

²⁶⁰ ECtHR, Observer and Guardian v. UK, 26 November 1991.

²⁶¹ Rozenberg, 2004, p. 198.

²⁶² ECtHR, MGN limited v. UK, 18 January 2011, §143.

²⁶³ ECtHR, Alkaya v. Turkey, 9 October 2012.

public to know the information, the disclosure of the address of the applicant, without his consent, constitutes an infringement of the article 8.

These two cases provide limits to the concept of general interest.

The Mosley versus United Kingdom judgment sums up this approach. Indeed, the Court states that the requirements of article 8 prevail “ *where the information at stake is of a private and intimate nature and there is no public interest in its dissemination*”²⁶⁴.

However, in general, the Court recognized the public's right to know some aspects of the private lives of public figures²⁶⁵. Thus, the conviction of the wife of a politician is therefore of public interest²⁶⁶, as well as, the publication of information on the private life of the communication director of a candidate to the presidential election²⁶⁷.

Whether these last two decisions can leave dubious about the limits of privacy for people who are not public, because of their link to the politics, a particular attention is, therefore, given to private information, which are connected to the politician.

Thereby, the private life is, by principle, restricted²⁶⁸.

The Court attempts to limit the private information of the individual, such as, for instance, extramarital affairs maintained by a politician²⁶⁹.

For the Court, it seems that limit the freedom of the press in favour of an act of a politician official function, would be contrary to Article 10²⁷⁰. Similarly, when public information appears from phone conversation, the Court provides more weight to the press while the information is private within the Convention, in principle²⁷¹. Therefore, the public's right may relate to private aspects of political personality.

In Porubova versus Russia, the homosexual affair cannot be dissociated from the article itself, which concerns “ *the alleged misappropriation of funds in a regional budget* ”²⁷².

²⁶⁴ ECtHR, Mosley v. UK, 10 May 2011, §131.

²⁶⁵ ECtHR, Iltalehti and Karhuvaara v. Finland, 6 April 2010, §45; ECtHR, Saaristo and others v. Finland, 12 october 2010.

²⁶⁶ ECtHR, Iltalehti and Karhuvaara v. Finland , 6 April 2010.

²⁶⁷ ECtHR, Saaristo and others v. Finland, 12 october 2010.

²⁶⁸ ECtHR, Lingens v. Austria, ECHR, 8 July 1986.

²⁶⁹ ECtHR, Standard Verlags GmbH c. Autriche (no.2), 4 June 2009, § 52.

²⁷⁰ ECtHR, Malisiewicz- Gasior v. Poland, 6 April 2006, §66., no 43797/98.

²⁷¹ ECtHR, A. v. France, 23 November 2011.

²⁷² ECtHR, Porubova v. Russia, 8 October 2009, §44.

The Court emphasises that “ *the right of the public to be informed, which is an essential right in a democratic society, can even extend to aspects of the private life of public figures, particularly where politicians are concerned*”²⁷³. Thereby, there is a public interest to know the homosexual affair between two politicians and this information is accessory to the article²⁷⁴. The public figures’ private life is strictly restricted.

The emergence of information, increasingly based on the intimate aspect of the individual, seems sometimes excessive. Nevertheless, the Strasbourg Court provides to domestic court, solutions concerning the question how far the media is allowed to interfere in the private life of people who, consciously, have become public figures.

Paragraph 2. An adjusted right to privacy by France and United Kingdom

The concept of private life is different in France (A) and in the UK (B), however, States parties to the Convention follow the ECtHR case law.

A. The scope of privacy right in France

Whereas the private life is a secret sphere where the individual can exclude others to peaceful enjoyment of his private life, the outlines of the concept varies according to the quality and the place of the individual within society²⁷⁵.

It will be necessary to study the concept of private lives of public figures, since the French vision tends to be closer that of the ECtHR, pointing out, finally, that the individual, became a public figure, does not have the same limits of the field privacy as a private individual.

The ‘ loi de 1881 ’ confirms the freedom of the press but entails the disappearance of the right to privacy from the statute. The “ loi du 17 juillet 1970 ” inserts the right to

²⁷³ Ibidem.

²⁷⁴ Ibidem, §45.

²⁷⁵ Agostinelli, 1994, p. 92.

privacy within the article 9 into the civil code. Whether the French domestic Court protects, as well as possible, freedom of expression, the right to privacy tends to be also protected.

It is in the famous case of Rachel, popular actress of yesteryear, who was represented on his deathbed, the French Court enjoined us to keep in mind that “ *however famous an artist is or, however important a person’s role in society may be, they have a right to their private life, which is distinct from their public life. Home life remains separate from the political stage and the artistic stage*”²⁷⁶.

In this regard, it is accepted physical intimacy of an individual even though he is a public person. Thus, the disclosure of the address of a famous singer is a violation of privacy²⁷⁷.

However, the right to privacy of a public figure is limited. He abdicated his right to image when it is in the context of his public duties and official²⁷⁸.

It should be noted that the individual must, previously, authorize the use of photographs. The French Court of Appeal had stated that this authority is presumed existing once it involves a person of public life and expose themselves to the gaze of others²⁷⁹. However, case law has evolved to protect privacy when there are abuses "more and more frequent in everyone's right to peace and quiet"²⁸⁰.

It will consistently held the view that "*any person, whatever his/her celebrity notoriety, whatever his/her rank, hi/her birth, his/her fortune, his/her current and future functions, has the right to respect for private life and is based to obtain protection by setting itself the limits of what can be disclosed by the media*"²⁸¹.

However, limits cannot be assessed as strictly as in cases concerning the private life of a citizen²⁸². Therefore, it appears that the trial courts, narrows privacy of individuals

²⁷⁶ Ibidem., p.94.

²⁷⁷ TGI Nanterre, Jean Ferrat, Sarl Productions Alléluia, Gérard Meys, Sarl Teme v. Sté I-France, 23 January 2002.

²⁷⁸ Bigot, 1999(2), p.91.

²⁷⁹ CA Paris, Bardot v. Société de Presse Dassault, 27 February 1967.

²⁸⁰ TGI Paris, Rainier III v. FEP, 2 June 1976.

²⁸¹ CA Paris, Ici Paris v. Vartan, 16 February 1974 ; TGI Nanterre, Paradis v. Prisma presse, 10 December 1997.

²⁸² TGI Nanterre, Grimaldi v. Edi, 8 January 1997.

based on their reputation. Facts that, at first glance, appear from privacy may fall within the scope of current event. For instance, private life is restricted in what concerned of the estate of a famous painter as it is a current event²⁸³.

Concerning the sentimental life of public figures, the domestic court considers that the divorce of a princess was a legitimate subject of information and that the publication of photographs accompanying the article was justified because they illustrate the crisis of a couple. Therefore, the absence of authorization of the publication was justified because it was a relevant connection with the topic²⁸⁴.

Whether this French case law appears very close to the ECtHR approach, previously studied, the domestic court expresses some limits.

Thereby, the evocation of an adulterous affair between an actress and a president of the French Republic is considered an infringement of privacy and cannot be the subject of legitimate public information²⁸⁵. It is interesting to note that the domestic Court made a similar decision for that of the ECHR judgment in its standard a few years later. In addition, it should be noted that the domestic court had, prior to the first *Von Hannover* versus Germany, noted that the individual also benefits from its privacy in public places²⁸⁶.

Thereby, the photography publication of a footballer and his pregnant girlfriend, during the Open Tennis of Monte-Carlo, which is a public sphere, is contrary to Article 9, even if, the pregnancy was apparent from the model²⁸⁷. Subsequently reaffirmed, however, it must be stated that the domestic Court had in February 2004, some months before the celebrated *Van Hannover*, held that the article about the pregnancy of Princess Caroline illustrated by photos taken during official representation, was necessary for the public due to the fact that it was important to bring to public knowledge about the future birth of a princess since the birth can have political consequences.

²⁸³ CA Paris, *Picasso v. Calmann-Levy*, 6 July 1965.

²⁸⁴ Quoted in *Sénamaud*, 2015(1), p.3.

²⁸⁵ TGI Nanterre, *Teissier v. Marianne*, 12 December 2000.

²⁸⁶ *Sénamaud*, 2015(1), p. 2.

²⁸⁷ Civ.Div, *Société Hachette Filipacchi Associés v. F. Barthez*, 10 March 2004.

Thereby, to summarise, the intimacy of politician, or of individual who have a dynastic consequence within country, can be legitimate on behalf of the public interest²⁸⁸.

Nevertheless, the domestic court, recently, has provided an increasing protection of private life of Head of State. Indeed, in the *Couderc and Hachette Filipacchi versus France*²⁸⁹, which is pending before the Grand Chamber, the French jurisdiction considered that the disclosure of photographs revealing the paternity of Prince Albert of Monaco was an infringement of the private life.

Taking into consideration the ECtHR jurisprudence based on the consent of the person concerned, the event relevant and contributing to the public interest, the Supreme Court reaffirmed the decision of the Court of Appeal that there is no factual news or debate of general interest when the facts were made.

The professor Lepage²⁹⁰ emphasizes, in this regard, that the domestic court provides a rigorous solution from previous²⁹¹.

B. The scope of privacy right in the United Kingdom

There is no right to privacy in United Kingdom. The HRA came into force, in UK, in October 2000. It entails the incorporation of the right to respect the private life guaranteed in the article 8 of the Convention.

Whether the domestic court incorporates it, judges seem reluctant to incorporate the privacy in UK law. It is either the civil court to judge or, at least to the Press Complaints Commission (PCC), which is non-judicial bodies, to ascertain complaints against journalist.

The PCC is a commission, which has to consider complaints quickly and without hearing. Following the death of Princess Diana, the PCC has revised its clause 3 and has incorporated a text similar to that of Article 8 of the ECHR. This right is violated

²⁸⁸ Civ. Div, *Grimaldi v. Society HFA*, 19 February 2004.

²⁸⁹ Civ. Div, *Society Hachette Filipacchi association v. Albert Grimaldi*, 27 February 2007.

²⁹⁰ Lepage, 2007(2), p.37.

²⁹¹ Lepage, Marino and Bigot, 2006, pp. 2702-2710.

when a person is photographed without their consent in a place where she expects to benefit from the protection of privacy. However, it is also about knowing when is the private life of a personality.

The PCC states that the infringement is justified to privacy if there is an overriding public interest in the information. Two cases need to be analysed.

Initially, in several newspapers, press has published articles about Earl Spencer's wife in a clinic for alcohol problem. The Committee emphasizes that the fact that the applicant is given an interview about her health condition, does not allow the newspapers to publish the photographs²⁹². Conversely, the PCC considered that the publication of an article, about a gay couple that used a surrogate mother, is not an infringement of privacy²⁹³.

In the present case, had been published the name of the child and the photograph of the house that clearly show the name of the street where they lived. Thus, if the first decision seems correlated with the protective approach of France²⁹⁴, the second decision seems to contradict these decisions²⁹⁵.

Concerning civil court, the study will be focus on the breach of confidence, which is closer, in substance, of privacy. Thereby, the disclosure of personal information such as, for instance, the personal relation between married couple or lover is included in this action²⁹⁶. In 1995, Laws J stated that the publication of intimate pictures taken in private and confidential place, without authorization, could be analysed as an infringement of the privacy²⁹⁷. However, if it seems to be closer to the privacy, the fact remains that restrictive conditions are put in charge of the applicant and appear difficult to fulfil. There must be a confidential relationship between the two individuals and must have a confidential nature. Nevertheless, in some case, a third party may well publish

²⁹² PCC, *Spencer v. News of the World*, 1995.

²⁹³ PCC, *William Zachs v. Sunday Mail*, 31 August 1997.

²⁹⁴ CA Paris, *Deneuve v. Société Presse Office*, 14 May 1975.

²⁹⁵ TGI Nanterre, *Jean Ferrat, Sarl Productions Alléluia, Gérard Meys, Sarl Teme v. Sté I-France*, 23 January 2002.

²⁹⁶ Barendt, 1999, p.117.

²⁹⁷ Civ. Div, *Hellewell v. Chief constable of derbyshire*, 13 January 1995, §807.

confidential information provided by the applicant and it seems difficult to distinguish confidentiality and privacy²⁹⁸.

The Kaye versus Robertson case law, is indicative of the willingness of British judges to establish a right to privacy²⁹⁹. In this case, journalists had interfered in a hospital to take pictures of a famous artist injured in a car accident. Lawyers for Kaye to obtain the prohibition of the publication of the photos brought an action against the journalists.

Nevertheless, the Court of Appeal will not focus the case under the privacy. Indeed, the domestic court refuse to resolve a case, under the basis of the privacy, preferring based this approach under the breach of confidence such as, for instance in the A v. B plc case law³⁰⁰. The Court concluded that the public has “ *an interest in reading about the private life of a figure who for many readers was a ‘role model’* ”³⁰¹.

There is a refusal to recognize, explicitly, the right to privacy. Indeed, the breach of confidence is still the action which fill the notorious gap between the English law and the right to privacy as understand within Article 8.

In this matter, the Campbell decision given by the House of Lords is significant because it appears that “ *a fairly sizeable distance has opened up between English law and Strasbourg* ” on matter of legitimate concern to the public and appropriate balance between right to privacy and press freedom³⁰².

In this case, Naomi Campbell brought an action against the publication in newspaper of an article and photography concerning her treatment for drug addiction.

She complained in an action both breaches of confidence, engaging section 6 of HRA, and under data protection act 1998. She wins the case. As pointed out by judge Nicholls, in Campbell versus MGN Ltd³⁰³, “ *the time has come to recognise that the values enshrined in article 8 and 10 are now part of the cause of action for breach of confidence* ”. However, the decision provides some doubts.

First of all, the majority of House of Lord found liability in confidence nevertheless, as pointed out by professor Phillipson, the ‘ *circumstances imposing an obligation of*

²⁹⁸ Barendt, 1999, p.117.

²⁹⁹ Civ. Div, Kaye v. Robertson, 16 March 1990.

³⁰⁰ CA, A v. B plc, 11 March 2002.

³⁰¹ Barendt, 2006, p.13.

³⁰² Phillipson, 2006, pp. 184-229.

³⁰³ HL, Campbell v. MGN Ltd, 6 May 2004.

*confidentiality is not provide because there was not relationship between the photographer and the model*³⁰⁴. Furthermore, the tendency to recall the ‘ new style breach of confidence’ or ‘ tort of misuse of private information’ entails some criticism. Indeed, the applicant must show before the English court that he has ‘a reasonable expectation of privacy’ in the information disclosed by the respondent.

Secondly, as underline by the doctrine, it is possible to state that whether the information is ‘ obviously private’³⁰⁵, the applicant has to be protected. In the other case, judges will examine if the disclosure was offensive. This view of the domestic court can be criticized due to the lack of indication of the meaning of the term. Thereby, whether the ECtHR provides a very broad scope of the private life, the domestic Court ultimately restricts this right, taking into account information “*that relates to a specific aspect of private life*”³⁰⁶.

Sedley LJ expressed the first strong judicial view in the Douglas case law³⁰⁷, which is the first ‘privacy’ case law after the HRA come into force. In this case, the *Hello* magazine had discloses wedding pictures of a couple famous, even, that they had sold at this event magazine *Ok!*. The Court of Appeal, in its paragraph 109, said that if it is true that the complainants had consented to the publication, they could put a veto on the photos published by *OK!*, which was not the case for the magazine *Hello*, there remained a minor right to privacy of individuals. Thus, the Court refused the injunction application by the magazine *OK* to avoid prosecution for damages to the plaintiffs because hello even if they sold their rights have a limited right to privacy³⁰⁸.

In this case, recalling the important ECtHR case law³⁰⁹, the Court of Appeal recognises that “*publication of the unauthorised photographs would infringe their privacy*”³¹⁰.

³⁰⁴ Philipson, 2006,p. 206.

³⁰⁵ HL, *Campbell v. MGN Ltd*, 6 May 2004.

³⁰⁶ Phillipson, 2006, p.207.

³⁰⁷ Civ. Div, *Douglas v. Hello !Ltd*, 2001.

³⁰⁸ Rozenberg, 2004 ,p. 267 .

³⁰⁹ ECtHR, *Von Hannover v. Germany*, 24 June 2004; ECtHR, *MGN Limited v. UK*, 18 January 2011.

³¹⁰ ECtHR, *MGN Limited v. UK*, 18 January 2011, § 253.

Thereby, the English courts tend to incorporate the European vision of privacy within its jurisdiction and The Court tends to confirm the domestic court decision.

Recently, the ECtHR upheld the High Court of Justice's decision. In this case, Max Mosley accused the UK for not protecting his right to privacy with the media. British justice knows protect the privacy of public figures facing freedom of expression in the media and any additional measure could constitute a form of censorship, according to the ECHR. Mosley accuses the UK of failing to protect his right to privacy in the face of revelations in the press, not having forced it to warn of the next information about the publication.

The publishing society was sentenced to pay damages and interests, without forcing the newspaper to warn Max Mosley before the publication of new articles. The ECtHR confirmed the decision³¹¹.

The absorption of the article 8 and 10 has entailed new form of breach of confidence and demonstrated the influence of the ECtHR.

The private life varies from one State to another, and it seems, more and more, difficult to resolve the conflict between the press and privacy. Thereby, the Court provides a new dispute resolution of conflict of rights.

Section II. The debate of general interest, the heart of the new dispute resolution of conflicts of rights

In order to resolve the dispute between article 10 and article 8, the Court provided a new resolution in its ruling on Von Hannover versus Germany (no2)³¹² and Axel Springer Ag versus Germany³¹³ (paragraph 1) and demonstrated the new function of the general interest in the ECHR case law (paragraph 2).

³¹¹ ECtHR, Mosley v. UK, 10 May 2011.

³¹² ECtHR(GC), Von Hannover v. Germany (no.2), 7 February 2012.

³¹³ ECtHR(GC) Axel Springer AS v. Germany, 7 February 2012.

Paragraph 1. The dispute resolution through the debate of General Interest

The Court has to deal with the conflict of rights (A) and provides a rule for reconciling article 8 and article 10 (B).

A. The conflict between freedom of expression and right to respect for private life

The Court has to act as “*an arbiter of state violation of Convention provisions*”³¹⁴.

On the one hand, the article 10 guarantees freedom of expression as it has been, previously, studied. This right remains one of the most important in the democratic society. However, the second paragraph establishes conditions for such derogation, including the protection of reputation. The right to reputation is a component of the article 8 as regard to the ECHR jurisprudence.

Thereby, it is important to point out that the Court has adopted three-step analysis for determining whether the interference is justified³¹⁵. Thus, once the Court considered the case falls into the categories laid out in the article 8 first paragraphs, it will determine whether the interference by the State is justified. The balancing test is used, mainly, in case of the unauthorized publication of private acts of someone. It is important to stress that the Court affords a “*margin of appreciation*” of States and examines only whether “*the domestic authorities struck a fair balance*”³¹⁶ between rights³¹⁷. As it has been studied previously, the Court provided an important value to freedom of the press and undermined the individual privacy. Thereby, for instance, in *Lingens versus Austria*, the ECtHR approach was simplistic when it concluded that as the politician leader was a public figure, the article 8 could not be applied³¹⁸.

Some commentators acknowledge that dispute “*arises from conflict between the exercise of two liberties, equally fundamental, the liberty to communicate and*

³¹⁴ Bratic, 2013, p.344.

³¹⁵ Sudre, 2011, p. 597.

³¹⁶ ECtHR (GC) *Axel Springer AS v. Germany*, 7 February 2012, §84.

³¹⁷ Bratic, 2013, p. 349.

³¹⁸ ECtHR, *Lingens v. Austria*, 8 July 1986.

individual liberty”³¹⁹. However, as regard to the heart of the Convention, these rights are equal and, thereby, the Court cannot privilege a right over another rights, without plausible explanation.

It is important to, accurately, analyse the conflict of law. Interest is considered as a limitation of rights and duties. At the onset of the conflict, the Court draws a resolution “*in terms of the classical 'balance of interests' and therefore of proportionality*”³²⁰.

The term interest is recurrent in the ECtHR jurisprudence and encompasses all the objects in conflict. Thereby, the interest refers to the public interest and the private interest.

Generally, the Court considers that the preservation of freedom of the press, based on the preservation of the public debate, is a general interest³²¹. Consequently, the private interest is the interest of the person whose privacy, or, reputation has been diminished.

Nevertheless, there is an exceptional case at issue two general interests. Indeed, in the *Stoll versus Switzerland*, the Court did not identify a conflict of law but a conflict between two interest which are “both public in nature”³²².

It is important to notice that there are two kinds of conflicts.

Firstly, the conflict, on the basis of Article 8, is straightforward because the focus is on the failure of the domestic court to take essential steps as part of interpersonal conflicts. In other terms, the Court refrains from taking some measures in order to ensure the right to private life of the individual, such as in *Von Hannover versus Germany (no1)*. Thereby, this conflict will be examined from the standpoint of positive obligations of the State. By the positive obligation, the State must take appropriate action to protect individual and will have to prevent potential violation of the article 8.

The responsibility of the State will be at stake, if the legislation does not provide the necessary guarantees against intrusion into the privacy of the individual.

³¹⁹ Rozenberg, 2004, p.120.

³²⁰ Afroukh, 2014, p.52.

³²¹ ECtHR, *Bergens Tidende and others v. Norway*, 2 May 2000.

³²² ECtHR (GC), *Stöll v. Switzerland*, 10 December 2007, §116.

There are two assumptions that entail the responsibility of the State. Firstly, the violation of privacy because of the inaction of the State, that is the most common³²³. Secondly, assuming that the violation was due to the State because it provides the means to infringe the guaranteed rights of the individual³²⁴.

Secondly, indirect conflicts, meanwhile, do not reveal, immediately, "*the presence of a conflict between individual rights*"³²⁵. This is, therefore, conflict of rights because the State, through its intervention, limits right in order to ensure another right. That attaches the public interest to an individual right³²⁶. The general interest is no longer seen as a traditional value, such as the public order clause, but as "*the mask of which are adorned one or more fundamental rights*"³²⁷.

This perception demonstrates the malleability of the concept and appears in the context of Article 10.

In Von Hannover versus Germany (no1), the Court espoused as primary reasoning the concept of "debate of general interest" employed before in Lingens versus Austria³²⁸. Whereas the case law contributes to the emergence of increasing protection of private life, ECtHR did not establish a clear balance between the two articles and espouse a case-by-case balancing process.

This practice entails some difficulties for States themselves. In order to respond to the States calls, the Court has to provide a clear rule for reconciling the articles.

B. An evolving jurisprudence, a model for resolution of the conflicts

By these two judgments of 7 February 2012, the Court reiterates the necessity of balancing between Article 8 and Article 10 of the Convention. This approach made by

³²³ Sudre, 2011, p.304.

³²⁴ ECtHR, VgT Verein Gegen Tierfabriken v. Switzerland, 28 June 2001 ; ECtHR, Sciacca v. Italy, 11 January 2005.

³²⁵ Afroukh, 2014, p.66.

³²⁶ Ibidem.

³²⁷ Ibidem, p.68.

³²⁸ ECtHR, Lingens v. Austria, 8 July 1986.

the Court, in these cases, is educational in the sense that ECHR set a framework for resolving conflicts between these two articles³²⁹.

The Axel Springer AS versus Germany case law is about the violation of Article 10³³⁰.

In this case, the applicant company's daily newspaper was sentenced for disclosing the arrest and the conviction of a popular actor in Germany. The article included three photographs. In Von Hannover versus Germany (no 2)³³¹, The princess brought an action, within the article 8, due to the refusal by the German courts to grant an injunction against publication of photos of Von Hannover spouses.

In its two judgments, the freedom of expression and the right to private life are involved. It should be recalled that these cases concerned Germany, which had, previously, been convicted of disclosing pictures of the princess. The domestic courts, asking ultimately for the Court to direct them in the assessment of this conflict. The Court will respond to this call by these two cases law.

Indeed, the Court provides a method of conflict resolution.

First, it reaffirms the place of Article 8. Thus, in Axel Springer AS versus Germany, the ECtHR held that the place of protection of reputation is not a general restriction pattern but a right protected³³². Furthermore, in Von Hannover versus Germany (no2), the Court emphasizes the concept of privacy, by basing its reasoning on the State inaction. Subsequently, the Court reiterates the place and role of the press in society³³³.

As underlined by professor Afrouk, the judge has provided a close scrutiny, concerning the interference between fundamental freedom and private life, and built a pedagogical work aimed at States in order to identify rights in conflict³³⁴.

After concentrating its reasoning on Article 8, the judge stressed the impact of the photo on private life³³⁵.

³²⁹ Afroukh, 2012,p. 650.

³³⁰ ECtHR(GC) Axel Springer AS v. Germany, 7 February 2012.

³³¹ ECtHR(GC), Von Hannover versus Germany (no.2), 7 February 2012.

³³² ECtHR(GC) Axel Springer AS v. Germany, 7 February 2012,§77.

³³³ Ibidem, §78 to 81.

³³⁴ Afroukh, 2012,p.653.

³³⁵ ECtHR(GC) Axel Springer AS v. Germany, 7 February 2012,§100.

Therefore, the Court attempts to strike a fair balance between rights. It thus recalls that “*in cases such as the present one, which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the article, or under Article 10 by the publisher*”³³⁶.

Thereby, by this unprecedented formula, ECtHR emphasises the principle of equal respect of these rights³³⁷.

Secondly, the establishment of a manual of the resolution shall resolve the right. In other words, the Court provides methodology³³⁸. It establishes that the first criterion is the debate of general interest, which is, historically, recognized by the Court and has a particular impact on ECtHR jurisprudence. Theoretically, the Court try to encourage domestic court to go through the debate of general interest and to take into account other criteria³³⁹.

In these three cases law, the Court unified the European supervision, however, in practise, it provides strong weight to the debate of general interest in it eagerness to strike a fair balance³⁴⁰.

Paragraph 2. The debate of general interest, the key factor of resolution of conflict

By the recent ECHR cases law, the function of the general interest has been developed positively and tends to be a key factor to ensure the transparency of private life (A) and to justify the illustration of an article by the incorporation of photographs (B).

³³⁶ Ibidem. §87; ECtHR (GC), Von Hannover versus Germany (no.2), 7 February 2012, §106.

³³⁷ ECtHR, Hachette Filipacchi Associés (« Ici Paris ») v. France, 23 July 2009, §41.

³³⁸ ECtHR (GC), Von Hannover versus Germany (no.2), 7 February 2012, § 89 to 93; ECtHR (GC) Axel Springer AS v. Germany, 7 February 2012, §108 to 113.

³³⁹ Bratic, 2013, p.360.

³⁴⁰ Afroukh, 2012, p.654.

A. The use of debate of general interest, the emergence of the transparency of private life

In its two judgments, the ECtHR provides five criteria to resolve the conflict of law. The debate of general interest is included as the most important in this reasoning. Indeed, ECtHR granted to the notion a considerable weight, while reiterating the absence of any definition and its practical approach in *Von Hannover versus Germany* (no2).

Whether at first view, the notion seems to be undermined by the incorporation of others criterion, in practice, the Court bases its analysis on this notion. Indeed, for instance in *Von Hannover versus Germany* (no 3)³⁴¹, it should be noted that the main development operated by the Court is based on the debate of general interest. The court develops this criterion in paragraph 48 to 51, and, seems evasive about the careful analysis of others criteria. Regarding other criteria, its seem all connected to the notion, such as, for instance, the link between the article which contribute to a debate of general interest and the photograph, or, the second criterion concerning the quality of the person in the case. In this regard, the Court stated that "*the criterion regarding how well-know the person is and the subject of the report, is related to the criterion of general interest*"³⁴².

Therefore, the release of private information may be justified when the debate of general interest comes into play. Nevertheless, this notion is flexible and the ECtHR grants to it smooth appreciation.

Indeed, it will be, for the Court, on the one hand, to determine the character itself of debate, namely, whether it is covered a public interest, and, on the other hand, the degree of contribution to the discussion of the private elements of the individual³⁴³.

Theses judgments demonstrate that the Court provides jurisprudence in favour of freedom of the press, since it considers that the publication of data privacy is part, in "some extent" of the contribution of a debate general interest³⁴⁴.

³⁴¹ ECtHR, *Von Hannover v. Germany* (no 3), 19 September 2013.

³⁴² ECtHR, *Lillo-Stenberg and Sæther v. Norway*, 16 January 2014, §37.

³⁴³ Loiseau, 2014, p. 151.

³⁴⁴ ECtHR(GC), *Von Hannover v. Germany* (no.2), 7 February 2012.

The reduction of the scope of private life entails the emergence of priority to the public information. Therefore, the Court confirms that there is transparency for privacy increasingly enhanced. Thus, the marriage of a public figure comprises a public side, and the published article is part of general interest since marriage is not exclusive to the details of the private life³⁴⁵. This transparency is, especially, noticeable, through case against the politicians.

It appears from the ECtHR judgments concerning Finland³⁴⁶ that the conditions in which a politician meets a woman and the way in which this relation has been developed has an interest for the public because it raises the issue of the politician honesty. In the same sense, the Court underlines that, in Principality of Monaco, the birth of Prince's child is important because of the hereditary throne³⁴⁷. Moreover, the attitude of the Prince could be indicative of his personality and his ability to perform his functions adequately³⁴⁸.

However, the Court considers that the passages relating to the particularly intimate life of politician is part of intimacy. In this way, the broadcast of a political is inappropriate³⁴⁹.

This transparency of political life is also present in France and in United Kingdom. Thereby, in France, the homosexuality of a politician can be a debate of general interest³⁵⁰.

In UK, the Chris Huhne case started with an ordinary story about licence driver and has become so large that the minister was forced to resign³⁵¹.

³⁴⁵ ECtHR, Lillo-Stenberg and Sæther v. Norway, 16 January 2014.

³⁴⁶ ECtHR, Ruunusen v. Finland, 14 January 2014 ; ECtHR, Ojala and Etukeno Oy v. Finland, 14 January 2014.

³⁴⁷ ECtHR, Couderc and Hachette Filipacchi Associés v. France, 12 June 2014.

³⁴⁸ ECtHR, Ruunusen v. Finland, 14 January 2014, § 14.

³⁴⁹ ECtHR, Khmel v. Russia, 12 december 2013.

³⁵⁰ CA Paris, Editions Jacob-Duvernet v. Steeve B. and Bruno B., RG, 19 December 2013.

³⁵¹ http://www.lemonde.fr/europe/article/2013/03/11/un-ex-ministre-britannique-condamne-a-8-mois-de-prison-apres-un-exces-de-vitesse_1846376_3214.html

B. The impact of the picture in the debate of general interest, the actual link between the article and the photography

The Court recalls that freedom of expression includes the publication of photos. In order to determine whether the image should be about invasion of privacy, it takes into account how the information, or, photo was obtained.

Sensitive to the climate of continual harassment when photo is captured³⁵², the Court takes into account different factors. The person may rely on “ ‘*legitimate expectation*’ of protection of and respect for his or her private life”³⁵³.

Recently, the Court made its evolving jurisprudence. The criteria include the contribution of general interest by photographs. Indeed, the Court devotes a particular attention to the link between the article and the photograph. Thereby, the Court considers that the photograph of the Princess Caroline, who was on holiday, is in connection with the article about the status of health of Prince Rainier. The publication of photos did not satisfy the public's curiosity because it illustrated the public debate report.

The Court provides a distinction between the photo, whose principal intention is to satisfy public curiosity, and photo, which illustrates the report “*contributing to a debate about questions of interest to the public*”³⁵⁴.

However the border is thin between the two pictures. Indeed, the informative value of the photo can be seen in the context of the published article.

Thus, the Court considered in *Von Hannover versus Germany* (no3), that the article about the trend, of public figures, to rent their residences entails a reflection of the readers, and can be a debate of general interest. The picture accompanying cannot be considered as “an excuse to publish”, and, thereby, there is a ‘purely artificial link ‘ between them³⁵⁵. Afterwards, the Court considers photography “ *in light of the accompanying article*”. The picture that, at first view, is a photo of privacy scene, such

³⁵² ECtHR, *Von Hannover v. Germany*, 24 June 2004, §59.

³⁵³ ECtHR(GC), *Von Hannover versus Germany* (no.2), 7 February 2012, §97.

³⁵⁴ *Ibidem*.§ 75.

³⁵⁵ ECtHR, *Von Hannover versus Germany* (no 3), 19 September 2013, §52.

as picture of princess with her husband during their holidays, can contribute to a debate of general interest "*at least to some extent.*"

However, in principle, an article, which is part of public interest, does not permit the journalist to publish personal and intimate photographs.

Furthermore, the impact of the photo is substantial. The Court held, in Axel Springer AS judgment, that “ *the Court notes, moreover, that the Regional Court imposed an injunction on publication of the photos accompanying the impugned articles and that the applicant company did not challenge that injunction. It therefore considers that the form of the articles in question did not constitute a ground for banning their publication. Furthermore, the Government did not show that publication of the articles had resulted in serious consequences for X* ”³⁵⁶.

The Court uses an *in concreto* approach and rules according to the means, used by the photographer. However this approach has generated some criticism from doctrine and the Court has to face a new private photography-publishing trend provided by a third party³⁵⁷.

Chapter II. The consequences of the evolving jurisprudence

Academics are divided in their opinions on the evolving jurisprudence of the ECtHR (section I) and, this demonstrates that there are, currently, two main issues to which the Court will have to address in the next cases it handles (section II).

Section I. The divided opinion on the ECtHR Case law

Whether theoretically, the new approach of the Court is positive (paragraph 1), in practise the academics denounce some doubts concerning the real function of the notion which entails a weakening of the privacy (paragraph 2).

³⁵⁶ Ibidem., §108.

³⁵⁷ ECtHR, Couderc and Hachette Filipacchi Associés v. France, 12 June 2014.

Paragraph 1. A method of resolving conflicts theoretically adequate

This method permits to provide a guideline concerning the conflicts of rights (A) to domestic court, which incorporate it progressively (B).

A. The positive contribution of the European approach

The Court offered a “ *proactive approach* ”³⁵⁸, aimed at providing a more visible jurisprudence. Indeed, the doctrine has emphasized in the past that “ *the Court’s legal reasoning suffers from a lack of clarity, consistency and transparency* ”³⁵⁹.

With its new approach, the Court abandoned its obscure jurisprudence and proceeded to a reframing of the freedom of the press³⁶⁰.

With this clarification, it refuses to give preponderant weight to conflicts of rights and, therefore, reaffirms the place of privacy and press within the Convention.

The Court undertook a systematization of its methods in order to strike a balance between these rights. The judge, explicitly, stated that the criteria emerges from its jurisprudence and permits the conflicts between the freedom of speech and the right to the respect for private life to be settled. Among the relevant criteria, the Court takes into account the debate of general interest, “*the role or function of the person concerned and the nature of the activities that are the subject of the report, prior conduct of the person concerned, Method of obtaining the information and its veracity, content, form and consequences of the publication and the severity of the sanction imposed*”³⁶¹.

Authors welcomed the implementation of this grid based on criteria other than solely the debate of general interest, which was predominant in the past. As stressed by professor Bratic, the Court could have used the other criteria only “ *to the extent that they describe what constitutes a ‘debate of general interest’* ” but it rejected this

³⁵⁸ Blay-Grabarczyck, 2014, p.239.

³⁵⁹ Smet, 2010, p.387.

³⁶⁰ Blay-Grabarczyck, 2014, p.239.

³⁶¹ ECtHR(GC), Von Hannover v. Germany (no.2), 7 February 2012, §108 to 114.

approach, encouraging domestic courts to take into account other considerations³⁶². It is important to notice that, previously, The Court has not provided an adequate educational approach and it was difficult for the domestic court to rule in this field. As a result, the ECtHR admits criteria other than the debate of general interest. According to Lady Justice Arden it is clearly “ *not enough for them to say that if the matter appeals to the court of public opinion, it is something which it is in the public interest to publish*”³⁶³.

Moreover, the Court highlights clear principles on the responsibility of journalists. In the context of violation of Article 8, the Court, carefully, reviews the circumstances of the *shooting*. In the context of an allegation of violation of freedom of speech, the Court will verify the methods for obtaining information, their veracity, and the severity of the sanction imposed on journalists and publishers³⁶⁴.

Lastly, the final and far from least important aspect, is the emergence of interaction between the ECtHR and the domestic courts because the national judges will have to take into account this criteria. It is for the national courts to apply and interpret the provisions of domestic law in the light of the Convention³⁶⁵.

The role of the Court will be limited and will be to check that the contracting State has applied the guideline correctly. In this connection, in its judgment of 7th February 2012, the Court emphasised that “*the Federal Court of Justice assessed the information value of the photo in question in the light of the accompanying article cannot be criticised under the Convention*”³⁶⁶, with reference to *Tonsberg versus Norway*³⁶⁷. The ECtHR adopted the same approach in its subsequent decision and examined whether the domestic court fail to comply with its obligation under the articles of the Convention.

³⁶² Bratic, 2013, p.360.

³⁶³ Arden, 2012,p.82.

³⁶⁴ ECtHR (GC), *Von Hannover v. Germany* (no.2), 7 February 2012, §98-113.

³⁶⁵ *Ibidem*, §12.

³⁶⁶ *Ibidem*,§13.

³⁶⁷ ECtHR, *Tønsberg Blad AS and Marit Haukom v. Norway*, 1 March 2003.

Thereby, the Court recognises the margin of appreciation of States and takes into consideration, implicitly, the diversity of national approaches.

B. The reception by the French and UK courts

French courts take into account ECtHR case law but seek to issue a strict interpretation of the debate of general interest. Due to the number of French case law³⁶⁸, two cases should be studied.

The domestic Court addresses a restrictive approach to freedom of the press once it publishes photographs on the relationship between the Head of State and an actress³⁶⁹. In the present case, the actress brought an action for private life infringement. The article did not concern the conduct of French policy but there was, inside, an inset concerning the *Elysée* security measures. In that case, under the undoubted influence of the ECHR case law, the domestic Court concluded that the article was intended to satisfy the curiosity of readers and the press had contributed to an upheaval of her life and sense of exasperation that she feels now due to the media harassment, which is the subject³⁷⁰.

Thus, the Court made full reference to European jurisprudence but its approach was stricter. In fact, in that judgment, the ECtHR might have emphasized that the publication would make a reflection on the part of readers and discern a contribution to a debate of general interest. However, in this case, this criterion does not justify such an infringement. The French court therefore seems much less indulgent towards the press³⁷¹. It is unfortunate that the Court did not develop the issue of the security of the President since it has created a debate in France. Thereby, there was a violation of her private life.

Finally, it will be interesting in the coming years to analyse the judgment of the Court concerning the revelations by the media, the content of recordings of conversations made by Liliane Bettencourt's butler. In its judgment of 15 January 2015, the domestic

³⁶⁸ TGI Paris, 26 February 2013.

³⁶⁹ TGI Nanterre, 27 March 2014.

³⁷⁰ Ibidem., §37.

³⁷¹ Lepage, 2014(2), p.43 et seq.

court appreciated the intimacy of her private life, in accordance with the Penal Code, and, in view of Article 10. It considers that the use of such processes is a "manifestly unlawful", and it cannot be justified on behalf of freedom of the press and its contribution to the debate of general interest³⁷². To reach this conclusion, the court takes into account the content, hiding, location and duration records.

The Court, on the basis of the processes, which entails an infringement of the articles of the 'Code Pénal', condemned the breach of her intimacy, recalling that, even these journalists had recognised that this investigation was morally and criminally reprehensible. According to Professor Lepage, the message is clear. It condemns these documents and not the revelation of this legitimate information³⁷³. Thereby, it concluded that the defect could not compensate for potential "contribution that such information could make to a debate of general interest".

Mediapart has filed an application before the ECtHR and it will be interesting to see if the Court will follow the reasoning of the French court.

Contrary to France, the UK courts have not “ *very enthusiastically embraced Europeanization in this context*”³⁷⁴. The House of Lords takes into account the ECtHR cases law³⁷⁵. Although it remains loyal to its liberal approach to privacy³⁷⁶, a judgement of a 8 January 2013 demonstrates the efforts, made by the domestic court, to enrich the judgments of the Court in this matter.

In *Edward Rocknroll versus News Group Newspapers* case³⁷⁷, the High Court provided a thorough analysis based, mainly, on the ECtHR judgments of 7th February 2012. It is interesting to study this case, also because the domestic court must give a decision, concerning application for injunction related to the publication of photography already existing on social networks.

³⁷² TGI Nanterre, 27 March 2014.

³⁷³ Lepage, 2014(2), p. 41.

³⁷⁴ Ibidem.

³⁷⁵ HC, *Trimingham and Associated Newspapers limited*, 26 April 2012.

³⁷⁶ HC, *Steve Mac Claren and News Groups Newspapers limited*, 18 August 2012; *Jonathan Spelman and Express Newspapers*, 16 February 2011.

³⁷⁷ HC, *Edward Rocknroll and News Group Newspapers*, 8 January 2013.

In this case, the claimant sought to restrain the publication and the content of photography under article 8 and pointed out that, in regard to Von Hannover versus Germany (no.1), “*neither the Photographs nor their contents would, if published, contribute anything of substance to any debate of general interest in a democratic society*”³⁷⁸ in the sense of ECtHR case law.

Mr Justice Briggs recalls the right to privacy as regard to the Convention and after balancing the article 8 and 10, stated that “*nonetheless, the possibility that this factor may be decisive does not excuse the court from an intense focus upon the facts, or from the application of the proportionality test (Axel Springer AG v Germany), in which additional factors [...] were all matters to be taken into account, in addition to the contribution which the publication might make to genuine public debate. The relevance of those considerations was repeated in very similar terms in Von Hannover v Germany (No 2)*”³⁷⁹. By recalling the two cases, the judge emphasised the “*genuine public debate*” and regarding the Facebook picture. Namely, it has to rule whether the fact that the picture was already in Facebook entails that the photograph was itself a matter of genuine public debate. Reaching his conclusion under an objective and subjective grounds, the judge rejected this approach.

First of all, in the objective grounds, he seeks to specify the subject matter, which the defendant wishes to publish. He concludes “*nothing in the conduct of the claimant, which the Photographs portray, gives rise to any matter of genuine public debate*”³⁸⁰.

Thereafter, the subjective reason to reach that the publication does not contribute to any debate is the timing in which the defendant threatens to publish pictures. Indeed, the claimant is known due to his recent marriage with a famous actress. Thereby “*Far from pointing to any desire on the part of the defendant to contribute to a public debate, that desire to publish [...] tends to confirm the impression [...] that the defendant's wish is simply to satisfy the interest of its readership in the private peccadilloes of the rich and*

³⁷⁸ Ibidem, §9.

³⁷⁹ Ibidem, §31.

³⁸⁰ Ibidem., §33.

*famous or [...] of those associated with them, rather than to contribute, as watchdogs, to public debate”*³⁸¹.

This case law demonstrates the implementation of the ECtHR case law and the willingness to comply with the European vision of privacy.

Paragraph 2. The resolution of the dispute based on the general interest, a questionable practice

According to academics, the Court has a tendency to exploit the notion in favour of freedom of the press (A) and, thereby, undermines the concept of privacy (B).

A. The tendency of the instrumentalisation of the general interest in favour of journalistic freedom

Whether the Court tried to rationalise these elements, by the emergence of the educational approach, this attempt appears difficult because of its case-by-case appreciation. The notion has a predominant role.

In this respect, a parallel can be drawn between these cases and the Boultif versus Switzerland case³⁸². As highlighted by professor Afroukh, there is an overweight of the offence severity criterion, even though the Court strikes the balance between the two rights. The Court provides the same approach in the studied matter³⁸³.

Thereby, the lack of clarity of this broad notion is questionable because it is connected to other criteria, such as the criteria of the past behaviour of the individual. The notion has a central role in the analysis of the Court. Indeed, in these cases, the Court has

³⁸¹ Ibidem., §35.

³⁸² ECtHR, Boultif v. Switzerland, 2 August 2001.

³⁸³ Afroukh, 2012, p.654.

shown great flexibility in the qualification of general interest. How can qualifying the legal proceedings of an actor be seen as a debate of general interest?

As stated before, through debate of general interest, the State margin of manoeuvre is reduced. The difficulty results in the fact that, the Court interprets of concept general interest “rather widely”³⁸⁴. This phrase demonstrates the impact of the notion. The lack of clarity is due to a subjective approach by the Court³⁸⁵. In this regard, the Court had, in the past, recognized that the imperative of debate of general interest always prevailed out of respect for the grieving family when it was a question of the health of a Head of State³⁸⁶. However, how to appreciate the fact that the media uses the disease of Prince Rainier to justify publication of photographs of his daughter in holiday? How can the Court qualify the holiday picture as a matter of public interest?

As confirmed by the professor Blay-Grabarczyk, the Court made an “instrumentalisation” of the concept and it seems that, by wanting to do too much, the Court provides a wide variety of decisions³⁸⁷. How considered that disclosure of an article and photograph of a model in a rehabilitation clinic is an infringement of privacy³⁸⁸ while an article concerning the use of prohibited substances by an actor fall within the debate of general interest³⁸⁹? That seems to be in contradiction with the idea that aspects of the private life of a person can contribute to a debate of general interest for the society as a whole and thereby, the freedom of expression has to be interpreted narrowly³⁹⁰.

However, as rightly pointed out by the doctrine, it is difficult to imagine that in three years the editorial quality and the processing of information from the tabloids

³⁸⁴ ECtHR, *Couderc and Hachette Filipacchi Associés v. France*, 12 June 2014, §59.

³⁸⁵ Blay-Grabarczyk, 2014, pp.237-252.

³⁸⁶ Picheral, 2014, p.762 et seq.

³⁸⁷ Blay-Grabarczyk, 2014, p.242.

³⁸⁸ ECtHR, *MGN Limited v. UK*, 18 January 2011.

³⁸⁹ ECtHR (GC) *Axel Springer AS v. Germany*, 7 February 2012.

³⁹⁰ ECtHR, *Hachette Filipacchi Associés (« Paris ») v. France*, 23 July 2009, §40.

improved³⁹¹. In this sense, the Couderc Hachette Filipacchi versus France judgement was the subject of some questions.

Indeed, one can question the category in which Paris Match is part, since that the media publishes private images of a prince reigning with his son, in private sphere. Certainly, the article can be justified on the basis of the future dynasty but the publication of a photograph of a man with his son is it really necessary for the debate of general interest or will it just help to achieve best sale of the newspapers? Within the meaning of some commentators, these revelations did not provide any contribution of general interest³⁹².

The ECtHR case law demonstrates the predominance of this criterion, which is devoid of any definition. The Court seems particularly flexible with the quality of the article. It recognises that an article “referred to entertaining” may be part of a debate of general interest nevertheless, in its precedent case law³⁹³, the Court emphasised that the term of entertainment was contrary to the debate of general interest.

The exploitation of this concept generates a visible press freedom in the judgments of the Court, or at least a lessening of privacy.

B. The consequences of the instrumentalisation, the undermining of right to private life

The frequent use of the concept demonstrates the will to "*ensure the prevalence of one of the conflicting rights thanks to its assimilation with a general interest.*"³⁹⁴

In the case law, it is noted that there is a trend to enhance the freedom of the press at the expense of privacy.

The solutions given by the Court demonstrate a new jurisprudential movement in favour of freedom of speech. Thereby, as professor Renucci announced in his writing, there is a

³⁹¹ Blay-Grabarczyk, 2014,p.243.

³⁹² De Bellescize, 2014, p. 499.

³⁹³ ECtHR(dec), Société Prisma Presse v. France, 1 July 2003 ; ECtHR, Standard Verlags GmbH v. Autriche (no.2), 4 June 2009.

³⁹⁴ Gonzalez, 2014, pp.226-247.

risk of "holistic analysis"³⁹⁵ that would undermine the privacy of public figures³⁹⁶. In its judgment in *Von Hannover versus Germany* (No. 2), the Court validates the argument of the German court, which, while recognizing that the photographs do not concern an event of public interest, stated that the picture is part of the debate because of its connection with the article. In other words, the photographs helped to characterize a debate of general interest, which is the illness of Prince Rainier. Nevertheless, according to professor Renucci, whether the journalist has just to include some sentences to indicate that a fact contribute to a debate of general interest, the privacy of these people would disappear definitively.

Thereby, the Court stated that the conditions in which a former minister met and had a relationship with his woman is relevant to general public discussion from the moment that it raises the question of honesty and lack of judgment³⁹⁷. There is, therefore, on the one hand, the risk of "holistic analysis" that would lead to the absence of protection of public figures and, on the other hand, a new approach that would facilitate the development of gutter press that, perpetually, abuses with impunity and, post photos or articles relating to the privacy of individuals³⁹⁸. Thereby, there is a danger of using this blurred notion in order to give it a broad meaning. The notion is emptied of its legal substance because the journalist will have just to present this information as contributing to the general interest³⁹⁹. Thereby, in *Von Hannover versus Germany* (no2), the photograph and the article provide more information on the absence of the princess to her father's bedside than the prince itself and the impact of the illness on the monarchy. The Court issues a sharp decline in its jurisprudence, such as *Petrina versus Romania*, in which privacy prevailed notwithstanding that the debate was, undoubtedly, of general interest⁴⁰⁰.

³⁹⁵ Translated from French, the professor uses the term « analyse globalisante ».

³⁹⁶ Marguénaud, 2012 (2), pp.279 et seq. ; Renucci, 2012, p. 1040.

³⁹⁷ Fleuriot, 2014,p.567.

³⁹⁸ Renucci, 2012,p. 1040.

³⁹⁹ Ibidem, p.1043.

⁴⁰⁰ Blay- Grabarczyk, 2012, p.249.

In this regard, the case law concerning the Prince Albert of Monaco has raised many comments. Indeed, after acknowledging that some information was within the private sphere, the Court emphasized that such information was beyond intimate, due to the status of Prince. It was difficult to conceive “ *how the private life of one person, in this instance the Prince, can act as a bar to the claims of another person, his son, seeking to assert his existence and have his identity recognised*”⁴⁰¹. Thereby, should everyone forgo his privacy when he has intimate relations with a person if the person discloses this intimate information without consent? The Court found that “ *the judgment against the applicants made no distinction between information which formed part of a debate of general interest and that which merely concerned details of the Prince’s private life*”⁴⁰².

As the doctrine dictates, this amounts to saying that the debate of general interest includes privacy⁴⁰³.

These cases ended the valorisation of the private life, initiated by the Court in 2004, and reveals the lack of consistency of the principle of fair balance because, the balance between them, is weighted in favour of freedom of press.

The vagueness of this jurisprudence proves that there are still some issues on which the Court will have to answer.

Section II. The subject matter itself on the basis of the debate of general interest, the current main issues

The new function of general interest entails some issues about the substance itself of the subject matter (paragraph 1), but, also, raises the question of who decides whether the topic is part of general interest (paragraph 2).

⁴⁰¹ ECtHR, *Couderc and Hachette Filipacchi Associés v. France*, 12 June 2014, §74.

⁴⁰² Ibidem.

⁴⁰³ De Bellescize, 2014, pp. 500-503.

Paragraph 1. From substantial point of view

Due to the use of the blurred notion, the issues related to the temporal aspect of the publication (A) and the subject matter itself (B) needs to be clarified by the Court.

A. The publication and its frame time

The issue of the time frame is difficult to solve. Indeed, how to consider the debate of general interest in terms of time. Whether the debate begins with the publication itself, in this case, the journalist would be the source of the information. Conversely, does the information have to be previously known in order to guarantee the role of the press, which is "to contribute to the debate of general interest"?

The Court had to deal with an article relating to stories on surgical experiences by women⁴⁰⁴. After publishing an article about the opening of the doctor's clinic, the newspaper published an article consisting of testimonials by the women who had undergone cosmetic surgery at his clinic.

The Court held that « *Nor is the Court able to agree that the fact that the articles were not published as part of an ongoing general debate on the issues attached to cosmetic surgery, but were specifically focused on the standard of treatment provided at a single clinic, means that the articles did not relate to matters of general public interest.* »⁴⁰⁵. Thereby, the Court pointed out « *that the articles concerned allegations of unacceptable health care provided at a private cosmetic surgery clinic in Bergen by Dr R. who, according to the evidence, had been responsible for carrying out over 8,000 operations in a period of some ten years, and as such raised matters of consumer protection of direct concern to the local and national public.* »⁴⁰⁶. For these reasons, the Court held that there has been an infringement of article 10 and underlined that the temporary criterion must be taken into account.

⁴⁰⁴ ECtHR, *Bergens tidende and others v Norway*, 2 August 2000.

⁴⁰⁵ *Ibidem.*, §51.

⁴⁰⁶ *Ibidem.*

As a result, the Court confirms the weight of its criterion in *Tammer versus Estonia*⁴⁰⁷. In this case, the Court stated that « *the use of the impugned terms in relation to Ms Laanaru's private life was justified by considerations of public concern or that they bore on a matter of general importance. In particular, it has not been substantiated that her private life was among the issues that affected the public in April 1996. The applicant's remarks could therefore scarcely be regarded as serving the public interest* »⁴⁰⁸

In opposition, in *Leempoel case law*⁴⁰⁹, the Court accepts that the public previously knew the information and, hence, there was no debate on general interest. The public due to the live broadcast of the audience already knew the feeling of a judge before the Commission of inquiry is, according to the Court.⁴¹⁰

Concerning the publication of a book relating to the Health of a President after his death, the Court emphasized that the limitation of the diffusion of elements inherent to privacy is only justified if it is limited in time⁴¹¹. Thereby, nine months after his decease, the public interest on the debate related to the history of the " septennat " in France exceeds the protection of medical life.⁴¹² In this case law, it should be noted that the Court did not provide specific features on the temporal nature of the subject matter.

In *Couderc Hachette Filipacchi versus France*, this issue reappears. The article was published a few days after the Prince Albert had become sovereign in law.

The *Von Hannover versus Germany (no2)* judgment set the criterion that the information has to contribute to the debate of general interest. Nevertheless, this criterion implies that it must, already, exist before the publication but how can the press

⁴⁰⁷ ECtHR, *Tammer v. Estonia*, 6 February 2001.

⁴⁰⁸ Ibidem. §68.

⁴⁰⁹ ECtHR, *Leempoel v. SA.ED.Cine Revue v. Belgium*, 9 November 2006.

⁴¹⁰ Ibidem., §73 and 76.

⁴¹¹ ECtHR, *Editions Plon v. France*, 18 may 2004; Fricero, 2004, pp.2539-2540.

⁴¹² ECtHR, *Editions Plon v. France*, 18 may 2004, §53 "Selon la Cour, plus la date du décès s'éloignait, plus cet élément perdait de son poids. Parallèlement, plus le temps passait, plus l'intérêt public du débat lié à l'histoire des deux septennats accomplis par le président Mitterrand l'emportait sur les impératifs de la protection des droits de celui-ci au regard du secret médical".

contribute to a debate if it does not exist previously? Does the subject matter have to contribute to a debate of general interest if there is no debate of general interest?

Think for instance of the case of ongoing debate about discrimination in a State where this thematic is not widespread.

However, an article has been published in which a black person explains the way in which a nurse at the hospital threatens him. In this piece of article, there is a subject matter, which is the discrimination in this State.

How can be a contribution of the general interest if that debate does not exist previously? Does the journalist have a strong protection in regard to the article 10 of the Convention? Does he have his power because he raises an issue?

In this case, he introduces the debate.

Suppose the nurse brought an action before the European Court of Human Rights and she states that this piece of the article does not contribute to a debate of general interest. Nevertheless, in this case, it raises the debate.

Thereby, this issue entails some reflection about the purpose and the role of freedom of press.

Its role is to inform the public because it is the watchdog of the democracy but what does this notion mean? Can the press only contribute to the debate? In this case, does it mean that a simple example cannot denounce a systemic issue? The press is a “public watchdog”, its role is to provide the information to the public.

Thereby, the main issue in which the Grand Chamber will, probably answer in the *Couderc Filipacchi versus France*, will be to know if the journalist is only authorized to provide information already and, in this sense, contribute to the debate, or, otherwise, to create the debate.

As the Court underlined in *Bergens Tidende and others versus Norway*⁴¹³, the article must be seen in the context of the publication. Thereby, the second main issue is related on the nature and the context of the publication.

⁴¹³ ECtHR, *Bergens Tidende v. Norway*, 2 August 2000, §51.

B. The substance itself of the subject matter

The second main issue is about the character of the debate of general interest. In other words, does the subject matter have to be mainly or exclusively based on the debate of general interest?

In *Van Hannover versus Germany* (no2)⁴¹⁴, the article was entitled ““Prince Rainier – not home alone”. The Court held that there is a contribution to the debate of general interest. In *Von Hannover versus Germany* (no3)⁴¹⁵, the item in question explains that the “people” are used to renting their holiday houses and inform about the price of these houses.

In this case, the Court emphasized that this article contributed to a debate of general interest and thereby this article is an item of the freedom of information and the role of the press in general.

In its judgment that will be made soon⁴¹⁶, the Court demonstrates, once again, that it is difficult to answer the question of the substance of the subject matter.

Prima facie, this information seems useful for the public, mainly for the Monegasque population. Nevertheless, the Constitution of Monaco excludes illegitimate children from succession to the throne. In addition, the article, as underlined by the French government, provides « *the core message of the article* »⁴¹⁷ which is « *the existence of a son born outside marriage of whom the public had previously been unaware* »⁴¹⁸. Nevertheless, the mother of the child recognized the impossibility of access to the throne.

Additionally, under the article, the Government underlines that, in this article, there are only 8 lines concerning the succession of the throne. Thereby, 482 lines tell the private

⁴¹⁴ ECtHR (GC), *Von Hannover v. Germany* (no2), 7 February 2012.

⁴¹⁵ ECtHR, *Von Hannover versus Germany* (no 3), 19 September 2013.

⁴¹⁶ ECtHR, *Couderc and Hachette Filipacchi Associés v. France*, 12 June 2014.

⁴¹⁷ *Ibidem.*, §59.

⁴¹⁸ *Ibidem.*

story between the Prince Albert and Miss Coste. The previously answer⁴¹⁹ by the Court is unclear because it depends on the context the Court is dealing with and the value of the information that is devolved by journalist features.

Thereby, for instance, there is an article about the French hospital health care. In this case, the patient gave an interview concerning the quality of the healthcare in the hospital. This article is entitled “*I am still alive.... Faithfully*”.

In this article, he explains his cancer, namely how he receives his care but, also, intimate facts such as his relation with his wife or how the feelings of the children were. The article itself was speaking about the current quality of health care.

The main question, in this case, will be focus on the subject matter itself.

As regards the interview, it is private intimacy. Thereby, does the subject matter have to be taken as regard to the nature itself of the subject matter or as regard to the context in which it is published?

These interrogations entails to the main issue which is what does it mean to read an article as a whole?

In other words, the Court has to deal with its notion and to read the article, word for word, or has to give essence to the article as a whole and, thereby, to give a broader context.

In the Bigende Tigende versus Norway, the context in which the article was published let prevail the debate of general interest over the professional interest of the doctor. In Couderc Filipacchi versus France, the private interest of the Prince and the right for the public, especially for the State population to have its information, are at stake.

Thereby, whether or not the prince is elected, the fact remains that as Head of the State, the politician private life is reduced compared to ordinary person.

⁴¹⁹ ECtHR (GC), Von Hannover v. Germany (no2), 7 February 2012.

Thus, at the time of the fact at issue, Prince Albert did have legitimate children. Concerning the Constitution of Monaco, the article 10⁴²⁰ was amended by sovereign ordinance of 29 May 2002, whereby in case of the Prince's death, the devolution shall be in favour of the direct and legitimate descendant of the Reigning Prince. Even there are a lot of intimate details in the piece, the underline subject matter cannot be the Court issue itself.

The Grand Chamber judgement, in view of the issues posed by judges itself during the audience, implies some enlightenment concerning these substantial issues.

Whether the issue relating on the debate of the general interest requires the implementation of particular approach because the Court judge these cases by *in concreto* approach which entails institutional issues.

Paragraph 2. From institutional point of view

Whether the main issue can be focus on the substance itself of the subject matter, the role played by the Court is not less important because it decides if the subject matter is a debate of general interest (A), however, the Court will have to provide clarifications (B).

A. The undermining principle of subsidiarity

The individual, after exhaustion of domestic remedies, may bring an action before the ECtHR. The ambition of the Court is to intervene, alternatively, in order to ensure direct application of the Convention. The State contracting has to apply the ECtHR jurisprudence and to implement some measures to ensure its effectiveness. The recent development of the Court permits it to examine whether the domestic court has duly balance the conflicting rights, respecting its guideline. The margin of appreciation is, a

⁴²⁰ Grinda, 2009,p. 204.

priori, wider. In other words, it circumscribes the field of discretion of national authorities within the limits of compliance with criteria⁴²¹.

The court has to demonstrate that it takes into account criteria and underline that it perceives the fact whether it is debate of general interest or not that the Court will not substitute that judgment except for strong reason.

However, this perception seems weakened, reflected in the dissenting opinion of the judge Lopez Guerra in Axel Springer AS versus Germany. It condemns the lack of coherence of the Court's decision which, after indicating that the Court requires “ *strong reasons to substitute its view for that of the domestic courts*”⁴²², provided an additional assessment, examine anew the case and the decision of German courts, for leading, at the end, to an opposite solution. He highlights the fact that, by this behaviour, the Court set itself up as a “ *fourth instance* ” because it repeats “ *anew assessments duly performed by the domestic courts* ” in order to bring about an opposite solution⁴²³.

However, can one criticize the decision of the Court, which goes against a domestic decision knowing that the State has assigned these skills?

This practice seems to be legitimate. Jean Paul Costa rejects the idea of “*fourth instance*” and claims that the Court's function is to correct the misinterpretation of State contracting⁴²⁴. Admittedly, the Court provides, in theory, predefined criteria and substitute its appreciation only for strong Reasons. The court limited the discretion whether the domestic court does not implement these criteria, mainly the debate of general interest.

In this regard, it seems that when it comes in the subject of general interest, the Court provides just an assessment of whether the domestic court's view of this issue is just a reasonable assessment. Thereby, is it reasonable to conclude that this issue was or was

⁴²¹ Callejon-Sereni, 2014, p.274.

⁴²² ECtHR (GC) Axel Springer AS v. Germany, 7 February 2012, Dissenting opinion of judge López Guerra, p. 38 ; Pellonpää, 2012, p.527.

⁴²³ Pellonpää, 2012, p.526.

⁴²⁴ Costa, 2010, p.1364.

not matter of public interest, looking to features and photography for instance? Is it reasonable to come to this conclusion?

It is obvious that, in many cases, this probability is going to be an issue when the Court will find that the subject matter come in this category, because of the context, the story and tradition.

Is the subject matter in general interest is created in the same way in France and in UK? The practise seems to provide a negative answer as regard to different approaches of these countries. Thereby, the Court should take into account these differences.

About this matter, there is a paradox between the theories and the practise and academics provide a legitimate criticism. Indeed, there is a paradox between the way the case law is framed and the real way in practise.

Thereby, the main question, at the end, is who decides? Is it the domestic court in accordance with the ECtHR case law or the Court? One thing is certain, by the inclusion of subjective appreciation by the Court, it tends toward “spectacular value” of freedom of speech.

B. The recommendations concerning the future of the debate of general interest

First, the Court will have to re-examine the notion of the debate of general interest, because of its importance in the balancing, when broadcasting images containing personal information whose purpose is to entertain the public are at stake. It is true that, at this point, the Court must exercise caution that the press does not use the term to justify that the information is legitimate while, in practice, it is not.

In providing these guidelines, the Court try to help the State party, however, by taking a broader view of the concept, States get lost. The Court will have to demonstrate more sensitivity about the use of the concept.

Secondly, the Court will have to bring some clarification regarding the term "contribute" which implies that the debate exists beforehand. However, whether it analyses the meaning *stricto sensu* of the term, it would significantly weaken the role of

the press. The Court has regularly, affirmed the ‘vital role’ of the press as a public watchdog. Admittedly, the Court did not interpret strictly this term, nevertheless, the Court needs to be positioned to that point and recall that the role of the press, ultimately, is to enable the dissemination of information, which have a legitimate interest for the public.

It is sensitive issue because the Court will have to deal with different approaches of contracting States. As Lady Justice Arden points out “*where there is room for a doubt as to whether a matter is in the public interest, it is wise for the Strasbourg court to have regard to whether the national courts considered that the publication in question engaged the public interest*”⁴²⁵. For instance, German courts, in *Axel Springer versus Germany*, focus its reasoning on the privacy rights and that “*might strike an observer from other contracting state as quite surprising*”⁴²⁶. Thereby, it is interesting to see that, in *Couderc Hachette Filipacchi versus France*, the French and German courts did not have the same approach of what subject is a matter of public interest. Whether the Court recognize the importance of the plurality of approach, the Grand Chamber will, maybe, meet to the expectation of French authority, delivered during the public hearing in *Couderc Filipacchi* case law, concerning the notion of general interest.

Finally, the Court resists to this temptation to answer to the needs of the audience nevertheless, in regard to the increasing emergence of new means of communication, such as social network and internet, the Court will have to deal with a time of intrusions into privacy are becoming more frequent and provide some parameters for the media echo which, in addition, to determine the concept of general interest.

⁴²⁵ Arden, p.77.

⁴²⁶ Ibidem.

CONCLUSION

The concept and function of the general interest have evolved. Its initial function, which contributed to the enhancement of freedom of the press, has turned into an essential tool in reconciling privacy and freedom of press.

Thereby, Does the Court contribute to a metamorphosis of the general interest?

Certainly, there is a transformation of the general interest, even though the aim of the concept remains similar, considering that the action of the press is to contribute to the public good, namely to receive information.

The concept has evolved in response to the emergence of contemporary society. Indeed whether there is a metamorphosis or not, is it because of a new conception of the press and of privacy?

As a symbol of the democratic society, the press has evolved according to the current consumerist culture. Indeed, marketing is emerging in the world of press and competitions between newspapers are no longer based on the quality of information, but on its commercial contribution⁴²⁷.

Thus, the print media is becoming, increasingly, commercial. The details of the human being take precedence over the question of the debate of general interest. The development of information is reversed. The journalist takes pretext on this debate to legitimise his article, based on the elements of the privacy of individuals in order to satisfy the audience. This gutter press appears free, however, it makes a certain voyeurism, which only purpose is to entertain the audience, without considering the consequences of these actions. No doubts about the effectiveness of the purpose and the role of the press because profit seems to prevail over the quality of information.

⁴²⁷ Lemmens, 2004, p.81.

Our democracy will not be placed only in the hands of the market because the press still fulfil its mission of “ public watchdog”⁴²⁸. It should, nowadays, distinguish between different forms of journalism and journalists whose purposes are different.

Nevertheless, are the media the only ones to blame for revealing a new form of press? It seems that it is a system to which all politicians, the public and the press participate all together.

Whoever becomes known cannot keep secret his private life. Long gone are the days when the politician exposed his public life, while preserving its intimate sphere.

The establishment of new communication tools has led to the development of new vision of private life, where the individual is, constantly, exposed to the media.

Under the evolution of marketing, the politician must perform in the media by connecting the elements of private and public life. Thereby, is it the public figure who is at the origin of this transformation of privacy? Whether they did not cause the issue, they use, nowadays, their private life for electoral purposes.

In the end, the press meets the expectations of the public who “ tweets”, comments and influence that perception⁴²⁹. For instance, in France, discussion about the current president is more about his sentimental life than his policies.

The Court has to deal with this sensitive aspect of the society and it takes into consideration the evolution of the media. While some authors stress the endangerment of the notion of general interest, it appears that this metamorphosis seems to be in connection with the fact that the Court has to adapt its jurisprudence in the light of the evolution of the press and privacy. The disclosure of private data is justified although it feeds into the public debate.

The public interest is “ *what it comes down to is not what is of interest to the public but what does the public, legitimately, have the right to know* ”⁴³⁰.

⁴²⁸ Lemmens, 2004, p. 7.

⁴²⁹ Vincent, 2014, p.6.

⁴³⁰ Ibidem.

Undeniably the Court seems to orient its jurisprudence toward freedom of the press. Thereby, the frivolity of Sacha Guitry's “ *is your private life being invaded? That's because there's nothing to say about your work*” cannot be applied to public figures⁴³¹.

Finally the Court seems to work for a transformation of the public interest because of the metamorphosis of the perception of the press and privacy. The Court is attempting to accomplish its mission of adapting the rights enshrined in the Convention in the light of the contemporary society.

However, the notion is a key factor in the Court reasoning. The use of the notion by the Court entails uncertainties within contracting States. Even though the Court provides a guideline, it uses this notion at the expense of other criteria. The Court expresses its view of the notion without taking into account the fact that the concept grows up differently in contracting States due to the own view of the press and privacy. Thereby, the Court will have to take into account the different national views.

Obviously, the notion and function of general interest will not cease most of doctrinal debates in the coming years.

⁴³¹ Ibidem.

BIBLIOGRAPHY

I. Articles in journals

Afroukh Mustapha, « À la recherche d'un équilibre entre droits à la liberté d'expression et au respect de la vie privée », pp.650-655, in *JCP G*, no. 22, 2012.

Afroukh Mustapha, « De l'importance du débat d'intérêt général », p.1026, in *JCP G*, no. 40, 2013.

Afroukh Mustapha, « Protection limitée des prénoms d'une personnalité publique contre la liberté d'expression », p.267, in *JCP G*, no. 9, 2015.

Antoine Aurélien, « Quand Noami Campbell fait la une... du droit de la convention européenne des droits de l'homme », pp.1003-1021, in *RTDH*, no. 88, 2011.

Bachelet olivier, « La liberté d'expression et le procès en diffamation : la forme l'emporte sur le fond », pp.152-177, in *RTDH*, no. 49, 2002.

Barendt Eric, « La protection de la vie privée en Angleterre », pp.115-120, in *Legicom*, no. 20, vol.4, 1999.

Barendt Eric, « Freedom of Expression in the United Kingdom Under the Human Rights Acts 1998 », pp. 851-866, in *Indiana Law Journal*, Vol.84, 2009.

Blay-Grabarczyk Katarzyna, « Précision des critères de résolution de conflit entre liberté d'expression et protection de la vie privée », pp. 293-293, in *JCP G*, no. 10, 2012.

Blay-Grabarczyk Katarzyna, « Conciliation de la protection des droits d'autrui et de la liberté de la presse : la quête d'un équilibre introuvable », pp.237-252, in *RTDH*, no. 97, 2014.

Bratic Catherine, « A comparative approach to understanding developments in privacy rights in the European Court of Human Rights », pp. 341-368, in *Columbia Journal of European Law*, Vol.19.2, 2013.

Bezanson Randall, « The right to Privacy Revisited : Privacy, News and Social Change, 1890-1990 », pp. 1133-1175, in *California Law Review*, Vol.80, no. 5, 1992.

Bigot Christophe, « Protection des droits et liberté d'information », p. 235 et seq., in *Recueil Dalloz*, no. 24, 1998.

Bigot Christophe, « L'affaire dite du Canard enchaîné devant la Cour européenne des droits de l'homme », pp. 682- 694, in *RTDH*, no. 39, 1999 (1).

Bigot Christophe, « Les exigences de l'information et la protection de la vie privée », pp. 83- 93, in *Légipresse*, no.126, 1999 (2).

Bigot Christophe, « La portée de la rénovation de la théorie de la bonne foi sous l'emprise de l'intérêt général », pp.26-30, in *Légipresse*, no. 290, 2012.

Bigot Christophe, « Jurisprudence de la Cour EDH en matière de liberté d'expression, juillet 2012-juillet 2013 », p. 508-512, in *Légipresse*, no. 308, 2013.

Brossollet Luc, « Commentaire sur l'arrêt de Cassation de la première chambre civile de la Cour de cassation du 31 octobre 201 », pp. 36-37, in *Légipresse*, no. 301, 2013.

Burgaud Fabrice, « Liberté d'expression et respect de la vie privée : quel équilibre au regard de la Convention européenne ? », p.939 et seq., in *Recueil Dalloz*, no. 16, 2015.

Caron Christophe, « Précisions sur l'exception de droit à l'information du public », p.272-273, in *Recueil Dalloz*, no. 26, 2000.

Cohen-Jonathan Gérard, « L'apologie de Pétain devant la Cour européenne des droits de l'homme », pp.366-382, in *RTDH*, no. 38, 1999.

Costa Jean-Paul, « Le principe de subsidiarité et la protection européenne des droits de l'homme », pp. 1364-1368, in *Recueil Dalloz*, no. 22, 2010.

D'Antin Olivier and Brossolet Luc, « Le domaine de la vie privée et sa délimitation jurisprudentielle », pp. 9-19, in *Legicom*, no. 20, 1999.

De Bellescize Diane, « Protection de la vie privée : que reste-t-il de la vie privée des personnages publics ? », pp. 496- 503, in *Constitutions*, no. 4, 2014.

Delany Hilary and Murphy Cliodhina, « Towards common principles relating to the protection of privacy rights ? – An analysis of recent developments in England and France and before the european Court of Human Rights », pp. 568- 578, in *European Human Rights law Review*, vol.12, 2007.

De Frontbressin Patrick, « L'arrêt Goodwin : le devoir de se taire, corollaire du droit d'informer ? », pp. 444-452, in *RTDH*, no. 27, 1996.

De Frontbressin Patrick, « La libre circulation de l'information « bien périssable », et le principe de proportionnalité », pp.699-708, in *RTDH*, no. 51, 2002.

Derieux Emmanuel, « La CEDH condamne la France pour violation de la liberté d'expression », pp.1027- 1035, in *JCP G*, no. 28, 2007.

Derieux Emmanuel, « L'autolimitation prétorienne », in *Lamy Droit des Médias et de la Communication*, Etude 241, 2015

Dreyer Emmanuel, « Observations sur quelques applications récentes de l'article 10 de la Convention européenne », pp.616-640, in *RTDH*, no. 71, 2007.

Droin Nathalie, « Diffamation et débat d'intérêt général : la bonne foi plie, mais ne rompt pas », p. 931 et seq., in *Recueil Dalloz*, no. 16, 2015.

Dupeux Jean-Yves, « Droit de la Presse, Janvier 2008 - Décembre 2008 », pp.1779-1789, in *Recueil Dalloz*, no.26,2009.

Dupuis Michel, « Droit au secret et droit d'informer » in *Lamy Droit des Médias et de la Communication*, Etude 120, 2015.

Francillon Jacques, « Condamnation pour violation du secret de l'enquête ou de l'instruction. Atteinte à la liberté d'expression : violation de l'article 10,§1, de la Convention européenne des droits de l'homme », p.563 et seq., in *RSC*, no. 3, 2007.

Fleuriot Caroline, « Vie sexuelle d'un homme politique et liberté d'expression », p. 567, in *Dalloz Actualité*, no. 22, 2014.

François Lyn, « Le conflit entre la liberté d'expression et la protection de la réputation ou des droits d'autrui, la recherche d'un « juste équilibre » par le juge européen », p. 2953 et seq., in *Recueil Dalloz*, no. 42, 2006 (1).

François Lyn, « La protection de la réputation ou des droits d'autrui et la liberté d'expression, étude de la jurisprudence de la Cour européenne des droits de l'homme (1ere partie) », pp. 41-46, in *Légipresse*, no. 230, 2006 (2).

François Lyn, « La protection de la réputation ou des droits d'autrui et la liberté d'expression, étude de la jurisprudence de la Cour européenne des droits de l'homme (2° partie) », pp. 52-56, in *Légipresse*, no. 231, 2006 (3).

François Lyn, « Le délit français de recel de violation de secret de l'instruction ou professionnel et la Convention européenne des droits de l'homme », pp.2-8, in *Gazette du Palais*, no. 212, 2007 (1).

François Lyn, « Droit au respect de la vie privée et liberté d'expression à propos de l'arrêt Hachette Filipacchi associés c/ France de la CEDH du 14 juin 2007 », pp.2-9, in *Gazette du Palais*, no. 249, 2007 (2).

François Lyn, « La liberté d'expression de l'avocat confrontée à son obligation de respect du secret professionnel », p. 667 et seq., in *Recueil Dalloz*, no. 10, 2012 (1).

François Lyn, « La supériorité du droit de libre critique journalistique sur le droit à la réputation des personnes morales », p.36-39, in *Légipresse*, no. 290, 2012 (2).

François Lyn, « Le secret des sources journalistiques face aux services de renseignements », pp.725-744, in *RTDH*, no. 95, 2013.

François Lyn, « Le débat d'intérêt général dans la jurisprudence de la Cour de Strasbourg (1ere partie) », pp.1-6, in *Légipresse*, no. 317, 2014 (1).

François Lyn, « Le débat d'intérêt général dans la jurisprudence de la Cour de Strasbourg (2^e partie) », pp.1-6, in *Légipresse*, no. 318, 2014 (2).

François Lyn, « Le « droit de citation » en matière de presse et la Cour EDH », pp.673-681, in *Légipresse*, no.322, 2014 (3).

Fricero Nathalie, « L'affaire Plon ou l'interdiction européenne du secret éternel », pp.2539-2540, in *Recueil Dalloz*, no. 35, 2004.

Galland Yannick, « Les obligations des journalistes dans la jurisprudence de la Cour européenne des droits de l'homme », pp. 853-875, in *RTDH*, no.52, 2002.

Guedj Alexis, « La presse “people” face à la Cour européenne des droits de l’homme », p. 137-142, in *Légipresse*, no. 217, 2004.

Gil Guilhem, « La réforme du droit anglais de la diffamation », p.407-412, in *Légipresse*, no. 307, 2013.

Gridel Jean-Pierre, « L’actualité et l’utilisation de l’image des personnes impliquées dans un événement relevant de l’information légitime », pp.1199-2002, in *Recueil Dalloz*, no. 15, 2001(1).

Gridel Jean-Pierre, « Retour sur l’image du préfet assassiné : dignité de la personne humaine et liberté de l’information d’actualité », p. 872 et seq., in *Recueil Dalloz*, no. 11, 2001 (2).

Gridel Jean-Pierre, « L’actualité et l’utilisation de l’image des personnes impliquées dans un événement relevant de l’information légitime », p.1199, in *Recueil Dalloz*, 2001(3).

Gridel Jean-Pierre, « Protection de la vie privée : rupture ou continuité ? », pp.4-7, in *Gazette du Palais*, no. 139, 2007.

Halpérin Jean-Louis, « Anecdote monégasque ou européanisation de la privacy ? », pp.342-345, in *Recueil Dalloz*, no. 5, 2005.

Hauser Jean, « Fortune cachée », p.359, in *RTD Civ.*, no. 2, 1999.

Hauser Jean, « Droit à l’image, vie privée, cadavre et nécessités de l’information », p. 291 et seq., in *RTD Civ.*, no. 2, 2000.

Hauser Jean, « Vie privée et nécessités de l’information (suite) », p.239 et seq., in *RTD Civ.*, no. 2, 2001.

Hauser Jean, « Protection de la vie privée et la liberté d'expression : la vie privée des people, une peau de chagrin ? », p.79, in *RTD Civ.*, no. 1, 2010.

Hottelier Michel, « La liberté de la presse entre confidentialité et provocation: mode d'emploi pour faire chuter une liberté de son piédestal », pp. 573-586, in *RTDH*, no. 71, 2007.

Lambert Pierre, « La liberté de la presse et la réputation de l'homme politique », pp. 383-394, in *RTDH*, no. 11, 1992.

Lambert Pierre, « Les restrictions à la liberté de la presse et la marge d'appréciation des états au sens de la jurisprudence de Strasbourg », pp.144-156, in *RTDH*, no. 26, 1996 (1).

Lambert Pierre, « La liberté d'expression et la réputation de l'homme politique », pp.373-384, in *RTDH*, no. 11, 1996 (2).

Larralde Jean-Manuel, « L'article 10 de la Convention européenne des droits de l'homme et la liberté de la presse », pp.39-62, in *RTDH*, no. 69, 2007.

Lavric Sabine, « Liberté d'expression: la Cour européenne fait primer le droit à la présomption d'innocence » in *Dalloz Actualité*, no. 13, 2010.

Lavric Sabine, « Publication d'éléments de la vie privée de « personnalités » : critères de conventionalité », p. 357, in *Dalloz Actualité*, 2012.

Lepage Agathe, « Droits de la personnalité : panorama 2004-2005 », p. 2643 et seq., in *Recueil Dalloz*, no. 38, 2005.

Lepage Agathe, « Droits de la personnalité : panorama 2006-2007 », p. 2771 et seq., in *Recueil Dalloz*, no 39, 2007(1).

Lepage Agathe, « La vie privée d'un prince », pp. 36-38, in *Communication Commerce Electronique*, no. 7, 2007 (2).

Lepage Agathe, « Violation de l'article 10 de la Convention Européenne des droits de l'homme », pp. 37- 43, in *Communication Commerce Electronique*, no. 5, 2009.

Lepage Agathe, « Von Hannover c/ Allemagne devant la Cour européenne des droits de l'homme : jamais deux sans trois », pp. 35-37, in *Communication Commerce Electronique*, no. 13, 2011.

Lepage Agathe, « France/ Angleterre : 0-1, ou quand un magazine français fait fi de l'entente cordiale », pp. 40-42, in *Communication Commerce Electronique*, no. 11, 2012.

Lepage Agathe, « Le critère de l'intérêt général dans le contentieux des atteintes à la vie privée » in *Communication Commerce Electronique*, no. 12, 2013 (1).

Lepage Agathe, « Sur les mesures prises en référé dans l'affaire des photographies de la Duchesse de Cambridge », pp. 36-38, in *Communication Commerce Electronique*, no. 10, 2013 (2).

Lepage Agathe, « « Belle et Bête », entre roman d'amour et sujet d'intérêt général », p.59 et seq., in *Communication Commerce Electronique*, no. 5, 2013.

Lepage Agathe, « Condamnation de la France pour violation de l'article 10 de la Convention européenne des droits de l'homme », pp. 37-40, in *Communication Commerce Electronique*, no. 7-8, 2014 (1).

Lepage Agathe, « L'actrice, le Président de la République et les paparazzis », pp. 38-41, in *Communication Commerce Electronique*, no. 5, 2014 (2).

Lepage Agathe, « Affaire Bettencourt c/ Mediapart : suite et fin ? », pp. 33-38, in *Communication Commerce Electronique*, no. 3, 2015 (1).

Lepage Agathe, « Quand un démenti ministériel est démenti par la presse « people », pp. 35-38, in *Communication Commerce Electronique*, no. 4, 2015 (2).

Lepage Agathe, Marino Laure and Bigot Christophe, « Droits de la personnalité -juillet 2005/juillet 2006 », pp. 2702-2710, in *Recueil Dalloz*, no.39, 2006.

Levinet Michel, « Convention européenne des droits de l'homme », in *Jurisclasseur*, Fasc.6522, 2011.

Loiseau Grégoire, « Dans l'intimité de Marianne : la vie privée des personnalités politiques », pp. 147-153, in *Légipresse*, no. 314, 2014.

Mallet - Poujol Nathalie, « Vie privée et droit à l'image : les franchises de l'histoire », pp.51-68, in *Legicom*, 1999/4, no. 20, 1999.

Marguénaud Jean-Pierre, « Pan sur le bec ! la nouvelle Cour européenne des droits de l'homme vole au secours de journalistes condamnés pour avoir révélé le montant des revenus d'une personne menant une vie publique », p.909, in *RTD Civ.*, no. 4, 1999.

Marguénaud Jean-Pierre, « L'extension au droit à la réputation de la protection de l'article 8 de la Convention Européenne des droits de l'homme », p. 801, in *RTD Civ.*, no. 4, 2004 (1).

Marguénaud Jean-Pierre, « La princesse et les paparazzi », pp.802-804, in *RTD Civ.*, no. 4, 2004 (2).

Marguénaud Jean-Pierre, « De l'extrême relativité des « devoirs et responsabilités » des journalistes d'investigation », pp. 2506-2510, in *Recueil Dalloz*, no. 35, 2007.

Marguénaud Jean-Pierre, « L'extension du droit à la liberté d'expression de l'avocat par la médiatisation du contexte », pp.260-262, in *RSC*, no. 1, 2012 (1).

Marguénaud Jean-Pierre, « La résolution des conflits entre le droit à la liberté d'expression et les droits à l'image et à la réputation », pp.279 et seq., in *RTD Civ.*, no. 2, 2012 (2).

Massias Florence, « Liberté de presse et droits de l'homme », p. 631 et seq., in *RSC*, no. 3, 1999.

Michalski Cédric, « Liberté d'expression et débat d'intérêt général », p.19 et seq., in *AJ Pénal*, no. 1, 2013.

Mc Harg, Aileen, « Reconciling Human Rights and the public interest : Conceptual Problems and Doctrinal Uncertainty in the jurisprudence of the European Court of Human Rights », pp. 671-696, in *The Modern Law Review*, Vol. 62, 1999.

Monfort Jean-Yves, « L'apparition en jurisprudence du critère du ' débat d'intérêt général » dans le droit de la diffamation », pp.21-25, in *Légipresse*, no. 290, 2012.

Nohlen Nicolas, « Von Hannover v. Germany : ECHR decision on balance between privacy rights of public figures and freedom of the press », pp. 196-201, in *American Journal of International Law*, Vol. 100, no. 1, 2006.

Picheral Caroline, « Liberté de la presse et limites renouvelées du droit des personnalités publiques », p.762 et seq., in *JCP G*, no.36 ,2014.

Piot Philippe, « Entre Strasbourg et Paris, il y a désormais davantage qu'un TGV », pp. 18-20, in *Gazette du Palais*, no. 38, 2013.

Piot Philippe, « La paternité d'un souverain relève du débat d'intérêt général », pp. 14-15, in *Gazette du Palais*, no. 275, 2014.

Piot Philippe, « Le débat d'intérêt général et la justification de la révélation de l'homosexualité d'un responsable politique », pp. 16-18, in *Gazette du Palais*, no. 169, 2015.

Ravanas Jacques, « Le plein exercice du droit au respect de la vie privée », p.474, in *Recueil Dalloz*, no. 34, 1998.

Ravanas Jacques, « Liberté d'expression et protection des droits de la personnalité », p. 459 et seq., in *Recueil Dalloz*, no. 30, 2000.

Renucci Jean-François, « La liberté d'expression n'est pas sans limites », p. 2538, in *Recueil Dalloz*, no. 35, 2004.

Renucci Jean-François, « La CEDH et l'affaire « Von Hannover (no 2) » : un recul fort contestable du droit au respect de la vie privée », pp.1040-1043, in *Recueil Dalloz*, no. 16, 2012.

Rome Félix, « Vie privée, dame publique », p.2377, in *Recueil Dalloz*, no. 36, 2012.

Ruet Céline, « Expression par l'image et CEDH : confrontation des approches interne et européenne », pp. 1-6, in *Légipresse*, no.198, 2003.

Sénamaud Michel, « Personnalités publiques ou occupant une fonction publique » in *Lamy Droit des Médias et de la Communication*, Etude 209, 2015 (1).

Sénamaud Michel, « Le prisme de l'intérêt général » in *Lamy Droit des Médias et de la Communication*, Etude 239, 2015 (2).

Smet Stijn, « Freedom of expression and the right to reputation : Human Rights in Conflict », pp.182-231, in *American University International Law Review*, Vol.26, 2010.

Spielmann Dean, « Du principe de proportionnalité dans la mise en oeuvre de la responsabilité du journaliste », pp. 210-274, in *RTDH*, no.49, 2002.

Sudre Frédéric, « Les "obligations positives" dans la jurisprudence européenne des droits de l'homme », pp.363- 385, in *RTDH*, no. 23,1995.

Sudre Frédéric, « À propos du dynamisme interprétatif de la Cour européenne des droits de l'homme », p.335 et seq., in *JCP G*, no. 28, 2001.

Sudre Frédéric, « Droit de la Convention européenne des droits de l'homme », p.161 et seq., in *JCP G*, no.38, 2004.

Tellement Geneviève, « Constitution de partie civile et liberté d'expression », pp. 1088-1107, in *RTDH*, no. 48, 2001.

Terré François, « L'information ? Des libertés aux droits subjectifs » in *Légipresse*, no.119, 1995.

Toussaint Philippe « le secret des sources du journaliste », pp.452-457, in *RTDH*, no. 27, 1996.

Voorhoof Dirk, « Freedom of expression under the european human rights system, From Sunday Times (no 1) v. U.K (1979) to Hachette Filipacchi Associés ('' Ici Paris'') v. France (2009) » pp.3-49, in *Inter-America and European Human rights Journal*, Vol.3, 2009.

Warren Samuel and Brandeis Louis, « The right to privacy », pp. 193-220, in *Harvard Law Review*, Vol.IV, no. 5, 1890.

Waschmann Patrick, « Secrets petits et grands : sur deux arrêts de la Cour européenne des droits de l'homme (Société Plon v. France du 18 Mai 2004 et Von Hannover v. Germany du 24 juin 2004) », pp.3-8, in *L'Europe des Libertés*, no. 14, 2004.

Webb Sarah, Jones Russell and Walker, « A new right of privacy following the House of Lords decision in Naomi Campbell-v-MGN Limited ? », pp.30-40, in *Hertfordshire Journal*, Vol.2, 2004

Wilhelm Pascal « Le droit à l'information sur les actualités sportives : les divergences entre la CJUE et le CSA », pp.11-13, in *La Revue européenne des medias*, no. 25, 2013

White Alan R., « The notion of interest », pp.319-327, in *Philosophical Quaterly*, Vol.14, 1964.

II. Articles in Edited books

Afroukh Mustapha, « La pertinence discutable du critère exclusif du mode de conflit de droits », pp.37-83, in Sudre Frédéric (dir.), *Les conflits de droits dans la jurisprudence de la Cour européenne des droits de l'homme*, Droit et justice, no.109, Bruxelles : Bruylant, 2014.

Auvret Josiane, « L'évolution de la liberté de communication », pp. 21-40, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Auvret-Finck Josiane and Auvret Patrick, « Concrétisation et aménagement de la liberté d'expression sur internet en droit européen », pp. 99-118, in Libertés, justice, tolérance in *Mélange en hommage au doyen Gérard Cohen –Jonathan*, Vol.1, Bruxelles : Bruylant, 2004.

Baranger Valérie, « L'intérêt général : itinéraire d'une idée », pp.9-25, in Colloquium *Les métamorphoses de l'intérêt général*, 19 and 20 April 2011, La Roche-sur-Yon : Presse universitaire de l'ICES, 2013.

Barendt Eric, « Privacy and freedom of speech », pp. 11-32, in Kenyon Andrew.T and Richardson Megan, *New dimensions in privacy law, international and comparative perspectives*, Cambridge : Cambridge University Press, 2006.

Bigot Christophe, « Le journaliste saisi par le droit », pp.341-359, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Bioy Xavier, « Rapport introductif. Le concept de dignité », pp.13-51, in Burgorgue-Larsen Laurence (dir.), *Actes de la journée d'études du 23 mai 2008, La dignité saisie par les juges en Europe*, Bruxelles : Bruylant, 2010.

Burgorgue - Larsen Laurence, « L'appréhension constitutionnelle de la vie privée en Europe. Analyse croisée des systèmes constitutionnels allemand, espagnol et français », pp. 69- 87 in Sudre Frédéric (dir.), *Le droit au respect de la vie privée au sens de la Convention européenne des droits de l'homme*, Droit et Justice, pp.119-155, no. 63, Bruxelles : Bruylant, 2005.

Callejon-Sereni Lucille , « La pesée concrète des intérêts en conflit », pp.248- 278, in Sudre Frédéric (dir.), *Les conflits de droits dans la jurisprudence de la Cour européenne des droits de l'homme*, Droit et Justice, no. 109, Bruxelles : Bruylant, 2014.

Cepeda Espinosa Manuel José, « Privacy », pp.966-988, in Rosenfield Michel and Saja Andras, *the oxford handbook of comparative Constitutional law*, Oxford : Oxford University press, 2012.

Charaudeau Patrick, « Informer de quoi ? L'événement comme miroir social du monde », pp. 77-84, in *Les médias et l'information*, Bruxelles : De Boeck Supérieur, 2011.

Derieux Emmanuel, « Un public en action Du droit de réponse ... à l'internaute donneur et receveur d'informations », pp.234-270, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Dhommeaux Jean, « L'intérêt général dans la jurisprudence de la Cour européenne des droits de l'homme », pp. 25-83, in Colloquium *Les métamorphoses de l'intérêt général*, 19 and 20 April 2011, La Roche-sur-Yon : Presse universitaire de l'ICES, 2013.

Flauss, Jean- François, « La Cour européenne des droits de l'homme et la liberté d'expression », pp. 97-136, in Zoller Elizabeth (dir), *La liberté d'expression aux Etats-Unis et en Europe La liberté d'expression aux Etats- Unis et en Europe*, Paris : Pedone, 2008.

Fourment François, « Le secret des sources », pp. 317-321, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Gonzalez Gérard, « La valorisation apparente de certains intérêts », pp.226-247, in Sudre Frédéric (dir.), *Les conflits de droits dans la jurisprudence de la Cour européenne des droits de l'homme*, Droit et justice, no. 109, Bruxelles : Bruylant, 2014.

Kaminski Ireneusz C, « Interdits et tolérances politiques », pp. 105-129, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Lady Justice Arden, « Media Intrusion and human rights : striking the balance », pp.69-87, in *Freedom of Expression, essays in honour of Nicolas Bratza*, Netherland : Wolf Legal Publisher, 2012.

Lepage Agathe, « La sanction des abus de la liberté d'expression », pp.195-210, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Levinet Michel, « Le droit au respect de l'image », pp.179-192, in Sudre Frédéric (dir.), *Le droit au respect de la vie privée au sens de la Convention européenne des droits de l'homme*, Droit et Justice, no. 63, Bruxelles : Bruylant, 2005.

Meulders-Klein Marie-Thérèse, « l'irrésistible ascension de la « vie privée » au sein des droits de l'homme », pp.305-337, in Sudre Frédéric (dir.), *Le droit au respect de la vie privée au sens de la Convention européenne des droits de l'homme*, Droit et Justice, no.63, Bruxelles : Bruylant, 2005.

Monfort Jean-Yves, « L'interactivité : donneurs et receveurs d'informations. Introduction », pp. 226-228, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Pellonpää Matti, « The principle of subsidiarity and margin of appreciation », pp.519-541, in *Freedom of Expression, essays in honour of Nicolas Bratza*, Netherland, Wolf Legal Publisher, 2012

Phillipson Gavin, « The 'right' of privacy in England and Strasbourg compared », pp.184-229, in Kenyon Andrew.T and Richardson Megan, *New dimensions in privacy law, international and comparative perspectives*, Cambridge : Cambridge University Press, 2006.

Richardson Megan and Hitchens Lesley, « Celebrity privacy and benefits of simple history », pp. 250-269, in Kenyon Andrew.T and Richardson Megan, *New dimensions in privacy law, international and comparative perspectives*, Cambridge : Cambridge University Press, 2006.

Ruet Céline, « La protection de l'image et de la vie privée vue par la jurisprudence française et la jurisprudence européenne », pp. 281-310, in Auvret Patrick (dir.), *Les médias et l'Europe, Le contenu de l'information : entre errance et uniformisation*, Bruxelles : Larcier, 2009.

Sainte Rose Jerry, « L'intérêt général et le juge », pp.18-23, in Colloquium *L'intérêt général, norme constitutionnelle*, 6 octobre 2006, Paris : Cahiers Constitutionnels Paris I, 2007.

Schahmanèche Aurélia, « La combinaison des critères du mode de conflit et de l'objet du conflit », pp. 85-155, in Sudre Frédéric (dir.), *Les conflits de droits dans la jurisprudence de la Cour européenne des droits de l'homme*, Droit et Justice, no. 109, Bruxelles : Bruylant, 2014.

Symon Denis, « L'intérêt général national vu par les droits européens », pp.36-42, in Colloquium *L'intérêt général, norme constitutionnelle*, 6 octobre 2006, Paris : Cahiers Constitutionnels Paris I, 2007.

Spielmann Dean and Cariolou Leto, « The right to protection of reputation under the European Convention on Human Rights », pp. 571-596, in Spielmann Dean, Tsirli Marialena and Voyatzis Panayotis (ed.), *The European Convention on Human Rights, a living instrument*, Liber Amicorum Christos Rozakis, Bruylant : Brussels, 2011.

Sudre Frédéric, « Les aléas de la notion de vie privée dans la jurisprudence de la Cour européenne des droits de l'homme », pp.687-705, in *Mélanges en hommage à L-E. Pettiti*, Bruxelles : Bruylant, 1998.

Walker Robert, « When is there a public interest in private life ? », pp. 61-69, in *Freedom of Expression, essays in honour of Nicolas Bratza*, Netherland : Wolf Legal Publisher, 2012.

Wachsmann Patrick, « Le droit au secret de la vie privée », pp.119-155, in Sudre Frédéric (dir), *Le droit au respect de la vie privée au sens de la Convention européenne des droits de l'homme*, Droit et Justice, no. 63, Bruxelles : Bruylant, 2005.

III. Books and Theses

Agostinelli Xavier, *Le droit à l'information face à la protection civile de la vie privée*, Aix-en-Provence : Librairie de l'Université d'Aix-en-Provence, 1994.

Alland Denis and Rials Stéphane, *Dictionnaire de la culture juridique*, Paris : PUF, 2003.

Aristotle (ed. Kenny Anthony), *Eudemian Ethics*, Book VII, Oxford : Oxford World's Classics, 2011.

Aristotle (ed. Saunders Trevor), *The Politics*, London : Penguin, 1981.

Clayton Richard QC and Tomlinson Hugh QC, *Privacy and Freedom of Expression*, Oxford : Oxford University Press, 2010.

Cornu Gérard, *Vocabulaire juridique*, Paris : PUF, 2000.

Decaux Emmanuel, Imbert Pierre-Henry and Pettiti Louis-Edmond (dir.), *La convention européenne des droits de l'homme, Commentaire article par article*, Paris : Economica, 1999.

Docquir Pierre- François (dir.), *Variables et variations de la liberté d'expression en Europe et aux Etats-Unis*, Droit et Justice, no. 72, Bruxelles : Bruylant, 2007.

Fenwich Helen and Philippson Gavin, *Media Freedom under the Human Rights Act*, Oxford : Oxford University Press, 2006.

Grinda Georges, *La principauté de Monaco, L'Etat, son statut international, ses institutions*, Paris : Pedone, 2009.

Hayek Friedrich, *The confusion of language in political thought*, London : The institute of economic affairs, 1968.

Institut de droit européen des droits de l'homme, *Le dialogue des juges*, Montpellier : Cahiers de l'IDEDH, no. 11, 2007.

Jacquemont Florence, *Le standard européen de société démocratique*, Montpellier : Thèse Faculté de Montpellier, no. 4, 2006.

Lemmens Koen, *La presse et la protection juridique de l'individu, Attention aux chiens de garde !*, Bruxelles : Larcier, 2004.

Locke John (ed.Yolton John), *An essay concerning Human understanding*, Book III, London : Everyman's library, 1974

Milo Dario, *Defamation and freedom of speech*, Oxford : Oxford University Press, 2008.

Morange Jean, *La liberté d'expression*, Paris : PUF, Que sais-je ? , 1993.

Moscovici Serge, *Psychologie sociale des relations avec autrui*, Paris : Nathan, 1994.

Renucci Jean-François, *Droit européen des droits de l'homme : contentieux européen*, Paris : L.G.D.J, 2010.

Rigaux François, *La protection de la vie privée et des autres biens de la personnalité*, Bruxelles- paris : Bruylant and L.G.D.J., 1990.

Rozenberg Joshua, *Privacy and the Press*, Oxford : Oxford University Press, 2004.

Sudre, Frédéric, *Droit européen et international des droits de l'homme*, Paris : PUF, 2011.

Tugendhat Michael QC and Christie Iain, *The law of Privacy and the Media*, Oxford : Oxford University Press, 2002.

Tugendhat Michael QC and Christie Iain, *The law of Privacy and the Media, second cumulative supplement*, Oxford : Oxford University Press, 2002.

Zucca Lorenzo, *Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA*, Oxford : Oxford University Press, 2007.

IV. International Treaties

Declaration of Human and Civic Rights, France, 1789.

European Convention on Human Rights, Conseil of Europe, Rome, 1950.

International Covenant on Civil and Political Rights, General Assembly of the United

Nations, New York, 1966.

Universal Declaration of Human Rights, General Assembly of the United Nations, Paris, 1948.

V. Legal Acts

Recommendations

Recommendation, CM/ Rec (2003) 13, The provision of information through the media in relation to criminal proceedings, Committee of Ministers, Council of Europe.

Recommendation, PA/ Rec (2011) 1950, The protection of journalists' sources, Parliamentary Assembly, Council of Europe.

Recommendation, PA/ Rec (582) 1970, Mass communication media and human rights, Parliamentary Assembly, Council of Europe.

Recommendation, CM/ Rec (2014) 7, The protection of whistleblowers, Committee of Ministers, Council of Europe.

Resolutions

AGNU/ Res 59(I), 1946, Calling of an international conference on freedom of information, 14 December 1946, General Assembly of the United Nations.

Resolution, CM/ Res (74) 26, The right of reply- Position of the individual in relation to the press, Committee of Ministers , Council of Europe.

Resolution, PA/Res (1165) 1998, Right to privacy, Parliamentary Assembly, Council of Europe.

Resolution, PA/ Res (1854) 2011, Ensuring protection against attacks on a person's honour and reputation, Parliamentary Assembly, Council of Europe.

Directives

Directive 95/46/EC, The protection of individuals with regard to the processing of personal data and on the free movement of such data, 24 October 1995, European Parliament and Council of European Union.

Directive 2010/13/EU, The coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), 10 March 2010, European Parliament and Council of European Union.

French legislation

Law of 29 July 1881, Freedom of the Press.

Law of 17 July 1970, The guarantee of individual rights of citizens.

United Kingdom legislation

Human Rights Act 1998 of 8 November 1998, Parliament of the United Kingdom, 1998, C42.

Defamation Act of 25 April 2013, Parliament of the United Kingdom, 2013, C.26.

VI. Internet Sites

<https://www.courdecassation.fr>

<http://dictionary.cambridge.org/fr>

<https://www.gov.uk>

<http://www.echr.coe.int>

www.legislation.gov.uk

<http://www.lemonde.fr>

<http://www.theguardian.com/uk>

<http://www.oxforddictionaries.com>

VII. Other documents

Conseil d'Etat, *Réflexions sur l'intérêt général*, Report [online], France, 1998.

Cour de Cassation, *Droits de la personnalité et droit de savoir du public*, Report [online], France, 2010.

Glanville Jo, *Free Speech is not for sale*, Report [online], London, 2012.

Higham Nick, « Privacy and the press in Britain : Journalist at BBC News; has been the BBC's media correspondent from 1988 to 2006 », pp. 11-19, in *Public Life/ Private life : what are the boundaries for European journalists?*, Bruxelles : Coll. Journalism in Europe, International Alliances of journalists, 2014.

Information commissioner's office (ICO), *The public interest test, Freedom of information Act*, Report [online], United Kingdom, 2013.

Mendel Toby, « Le droit du public de savoir et la liberté de se distraire : l'information vue sous l'angle du consommateur », pp. 33-47, in Conseil de l'Europe - Division Media, *conférence sur la liberté d'expression et le droit au respect de la vie privée (rapports)*, DH-MM(2000)7, Strasbourg, 2000.

Mendel Toby, Puddephatt Andrew, Wagner Ben, Hawtin Dixie and Torres Natalia,

« tensions between freedom of expression and privacy », pp.97-101, in *Global survey on Internet privacy and freedom of expression*, UNESCO Series on Internet Freedom, éd.UNESCO, 2013.

Pinto Timothy, Defamation Act 2013, Report [online], London : Taylor Wessing Analysis, 2013.

Spearman Richard, *Developments in Privacy law : What a difference a year makes*, report on Super-Injunctions, Anonymised injunctions and open justices, 25 April 2012.

Tulkens Françoise, « La liberté d'expression et d'information dans une société démocratique et le droit au respect de la vie privée au regard de la Convention européenne des droits de l'homme : regards croisés sur les articles 8 et 10 de la Convention dans la jurisprudence de la Cour européenne des Droits de l'Homme », pp. 17-33, in Conseil de l'Europe - Division Media, *conférence sur la liberté d'expression et le droit au respect de la vie privée (rapports)*, DH-MM(2000)7, Strasbourg, 2000.

Vincent Catherine, « Privacy of the powerful versus public interest – France swings between the two », pp.5-11, in *Public Life/ Private life : what are the boundaries for European journalists?*, International Alliances of journalists, Bruxelles : Coll. Journalism in Europe, 2014.

ANNEX

List of Judgments and Decisions

I. Regional Courts

1. List of European Court of Human Rights Case law

ECtHR (dec.), Abeberry v. France, 21 September 2004, application no. 58729/00.

ECtHR, A. v. France, 23 November 2011, application no. 14838/89.

ECtHR, Airey v. Ireland of 9 October 1979, application no. 6289/73.

ECtHR, Alkaya v. Turkey ,9 October 2012, application no. 42811/06.

ECtHR, Avgi Publishing and Press Agency SA & Karis v. Greece, 5 June 2008, application no.15909/06.

ECtHR (GC) Axel Springer AS v. Germany, 7 February 2012, application no. 39954/08.

ECtHR, Bergens Tidende and others v. Norway, 2 May 2000, application no. 26132/95.

ECtHR, Bladet Tromso and Stensaas v. Norway, 20 May 1999, application no. 21980/93.

ECtHR, Bodrožić et Vujin c. Serbia, 23 June 2009, application no. 38435/05.

ECtHR, Botta v. Italy, 24 February 1998, application no. 21439/93.

ECtHR (dec), Bou Gibert and El Hogar y la moda SA, 13 May 2003, application no 14929/02.

ECtHR, Boultif v.Switzerland, 2 August 2001, application no. 54273/00.

ECtHR, Brasilier v France, 11 April 2006, application no. 71343/01.

ECtHR, Brosa v. Germany, 17April 2014, application no. 5709/09.

ECtHR, Brunet-Lecomte and SARL Lyon Mag v. France, 20 November 2008, application no. 13327/04.

ECtHR, Campos Dãmaso v. Portugal, 24 April 2008, application no. 17107/05.

ECtHR, Castell v. Spain, 23 April 1992, application no. 11798/85.

ECtHR, Chauvy and others v. France, 29 June 2004, application no. 64915/01.

ECtHR, Chalabi v. France, 18 September 2008, application no. 35916/04.

ECtHR, Colaço Mestre and SIC- Sociedade Independente de Comunicação, SA v. Portugal, 26 April 2007, application nos. 11182/03 and 1139/03.

ECtHR, Colombani and others v. France, 25 June 2002, application no 51279/99.

ECtHR, Couderc and Hachette Filipacchi Associés v. France, 12 June 2014, application no. 40454/07.

ECtHR(GC), Cumpana and Mazare v. Romania, 17 December 2004, application no. 33348/96.

ECtHR, Craxi v. Italy (no.2), 17 July 2003, application no. 25337/94.

ECtHR, De Haes and Gijssels v. Belgium, 27 February 1994, application no. 19983/92.

ECtHR, De Lesquen du Plessis- Casso v. France, 12 April 2012, application no. 54216/92.

ECtHR, Du Roy and Malaurie v. France, 3 October 2000, 3400/96.

ECtHR, Dupuis and others v. France, 7 June 2007, application no. 1914/02.

ECtHR, Eerikäinen and others v. Finland, 10 February 2009, application no. 3514/02.

ECtHR, Editions Plon v. France, 18 May 2004, application no. 58148/00.

ECtHR, Egeland and Hanseid v. Norway, 16 April 2009, application no. 34438/04.

ECtHR, Ernst August Von Hannover v. Germany, 19 February 2015, application no. 53649/09.

ECtHR (GC), Fressoz and Roire v. France, 21 January 1999, application no. 29183/95.

ECtHR, Giniewski v. France, 31 January 2006, application no. 64016/00.

ECtHR(GC), Goodwin v. United Kingdom, 27 March 1996, application no. 17488/90.

ECtHR, Groppera Radio AG and Others v. Switzerland, 28 March 1990, application no. 10890/84.

ECtHR, Gündüz v. Turkey, 4 December 2003, application no. 35071/97.

ECtHR, Hachette Filipacchi Associates v. France, 14 June 2007, application no. 71111/01.

ECtHR, Hachette Filipacchi Associés (« Ici Paris ») v. France, 23 July 2009, application no. 12268/03.

ECtHR, Halford v. United Kingdom, 25 June 1997, application no. 20605/92.

ECtHR (dec), Harlanova v. Latvia, 3 April 2003, application no. 57313/00.

ECtHR, Hertel v, Switzerland, 25 August 1998, application no.25181/94

ECtHR, Iltalehti and Karhuvaara v. Finland , 6 April 2010, application no. 53678/00.

ECtHR (dec), Jaime Company Diez de Revenga and Juan Luis Lopez-Galiacho Perona v. Spain, 12 December 2000, application no. 54224/00.

ECtHR, Jérusalem v. Austria, 27 February 2001, application no. 26958/95.

ECtHR(GC), Jersild v. Denmark, 23 September 1994, application no. 15890/89.

ECtHR, July and SARL Libération v. France, 14 February 2008, application no. 20893/03.

ECtHR, Krone Verlag GmbH and co.KG v. Austria, 29 November 1996, application no. 34315/96.

ECtHR, Khmel v.Russia, 12 December 2013, application no. 20383/04.

ECtHR, Leempoel v. SA.ED.Cine Revue v. Belgium, 9 November 2006, application no. 64772/01.

ECtHR, Lillo-Stenberg and Sæther v. Norway, 16 January 2014, application no. 13258/09.

ECtHR(GC), Lindon, Otchakovsky- Laurens and July v. France, 22 October 2007, applications nos 21279/02 and 36448/02.

ECtHR Lingens v. Austria, 8 July 1986, application no. 9815/82.

ECtHR, Malisiewicz- Gasior v. Poland, 6 April 2006, application no 43797/98.

ECtHR, Mamère v. France, 7 November 2006, application no. 12667/03.

ECtHR (com), Marckx v. Belgium, 13 June 1979, application no. 6833/74.

ECtHR, MGN limited v. United Kingdom, 18 January 2011, application no. 39401/04.

ECtHR, Mikulić v. Croatia, 7 February 2002, application no. 53176/99.

ECtHR, Modinos v. Cyprus, 22 April 1993, application no. 15070/89.

ECtHR, Monnat v. Switzerland, 31 January 2006, application no.73604/01.

ECtHR, Mor v. France, 15 December 2011, application no. 28198/09.

ECtHR, Mosley v. United Kingdom, 10 May 2011, application no. 48009/08.

ECtHR, Niemietz v. Germany, 16 December 1992, application no. 13710/88.

ECtHR, Nikowitz and Verlagsgruppe News GmbH v. Austria, 27 February 2007, application no. 5266/03

ECtHR(Com), Nilsen and Johnsen v. Norway, 9 September 1998, application no. 23118/93.

ECtHR (GC), Nilsen and Johnsen v. Norway, 25 November 1999, application no. 23118/93.

ECtHR, Observer and Guardian v. United Kingdom, 26 November 1991, application no. 13585/88.

ECtHR, Oberschilk v. Austria, 23 may 1991, application no. 11662/85.

ECtHR, Ojala and Etukeno Oy v. Finland, 14 January 2014, application no. 69939/10.

ECtHR, Orban and others v. France, 15 January 2009, application no. 20985/05.

ECtHR, Otegi Mondragon v. Spain, 15 March 2011, application no. 2034/07.

ECtHR, Paturel v France, 22 December 2005, application no. 54968/00.

ECtHR, Peck v. United Kingdom, 28 January 2003, application no. 44647/98.

ECtHR(GC), Pedersen and Baadsgaard v. Denmark, 17 December 2004, application no. 49017/99.

ECtHR, Petrenco v. Moldava, 30 March 2010, application no. 20928/05.

ECtHR, Perinçek v. Switzerland, 17 December 2013, application no. 27510/08.

ECtHR, Petrina v. Romania, 14 october 2008, application no. 78060/01.

ECtHR, Pfeifer v. Austria, 15 November 2007, application no. 12556/03.

ECtHR, P.G. and J.H. v. United Kingdom, 25 September 2001, application no. 44787/98.

ECtHR, Polanco Torres and Movilla Polanco v. Spain, 21 September 2010, application no. 34147/06.

ECtHR, Porubova v. Russia, 8 October 2009, application no. 8237/03.

ECtHR, Prager and Oberschilk v. Austria, 28 April 1995, application no. 15974/90.

ECtHR, Radio France and Others v. France, 30 March 2004, application no. 53984/00.

ECtHR, Radio Twist A.S v. Slovakia, 19 December 2006, application no. 62202/00.

ECtHR, Reklos and Davourlis v. Greece, 15 January 2009, application no. 1234/05.

ECtHR, Rees v. United Kingdom, 17 October 1986, application no. 9532/81.

ECtHR, Roemen and Schmit v. Luxembourg, 25 February 2003, application no. 51772/99.

ECtHR, Ruokanen and others v. Finland, 6 April 2010, application no 45130/06.

ECtHR, Ruunusen v. Finland, 14 January 2014, no. 73579/10

ECtHR, Saether v. Norway, 16 January 2014, application no. 13258/09.

ECtHR, Saaristo and others v. Finland, 12 October 2010, application no. 184/06.

ECtHR, Sapan v. Turkey, 8 June 2010, application no. 44102/04.

ECtHR, Sciaccia v. Italy, 11 January 2005, application no. 50774/99.

ECtHR, Scharsach and News Verlagsgesellschaft v. Austria, 13 November 2003, application no. 39394/98.

ECtHR, Schwabe v. Austria, 28 August 1992, application no.13704/88.

ECtHR, Shüssel v. Austria, 21 February 2002, application no. 42409/98.

ECtHR, Sidrabas and Dziautas v. Lithuania, 27 July 2004, application nos. 55430/00 and 59330/00.

ECtHR (dec.), Société Prisma Presse v. France, 1 July 2002, application no. 66910/01.

ECtHR, Standard Verlags GmbH c. Autriche (no.2), 4 June 2009, application no. 21277/05.

ECtHR, Sunday Times v. United Kingdom, 26 April 1979, application no. 6538/74.

ECtHR, Sunday times v. United Kingdom, 26 April 1987, application no. 6538/74.

ECtHR (GC), Sürek v. Turkey (no.1), 8 July 1999, application no. 26682/95.

ECtHR (dec), Société Prisma Presse v. France, 1 July 2003, application no. 71612/01.

ECtHR (GC), Stöll v. Switzerland, 10 December 2007, application no. 69698/01.

ECtHR, Tammer v.Estonia, 6 February 2001, application no. 41205/98.

ECtHR, Tanasoica v. Romania, 16 June 2012, application no. 3490/03.

ECtHR,Telegraaf Nederland Landelijke Media B.V and others v. Netherland, 22 November 2012, application no. 39315/06.

ECtHR, Thoma v.Luxembourg, 29 March 2001, application no. 38432/97.

ECtHR, Thorgeir Thorgeison v. Iceland, 25 June 1992, application no.13778/88.

ECtHR (com), Tyrer v. United Kingdom, 25 April 1978, application no. 5856/72.

ECtHR, Tourancheau and July v. France, 21 November 2005, application no. 53886/00.

ECtHR,Tønsberg Blad AS and Marit Haukom v. Norway, 1 March 2003, application no. 510/04.

ECtHR, Ukrainian Media Group v. Ukraine, 29 March 2005, application no. 72713/01.

ECtHR (dec), Verdens Gang and Kari Aarstad AASE v. Norway, 16 October 2001, application no. 45710/99.

ECtHR, Verlagsgruppe News GmbH v. Austria (no.2), 14 December 2006, application no. 42435/02.

ECtHR, Verlagsgruppe News GmbH and Bobi v. Austria, 4 December 2012, application no. 59631/09.

ECtHR, VgT Verein Gegen Tierfabriken v. Switzerland, 28 June 2001, application no. 24699/94.

ECtHR, Von Hannover v. Germany, 24 June 2004, application no. 59320/00.

ECtHR (GC), Von Hannover v. Germany (no.2), 7 February 2012, application nos 40660/08 and 60641/08.

ECtHR, Von Hannover versus Germany (no 3), 19 September 2013, application no. 872/10.

ECtHR, White v. Sweden, 19 September 2006, application no. 42435/02.

ECtHR, Worm v. Austria, 29 August 1997, application no. 83/1996/702/894.

ECtHR(com), X v. Iceland, 12 May 1976, application no. .6825/1975.

2. List of Court of Justice of the European Union case law

CJEU, Sky Österreich GmbH v. Österreichischer Rundfun, 12 June 2012, C-283/11.

CJEU, Sky Österreich GmbH v. Österreichischer Rundfunk, 22 January 2013, C-283/11.

CJEU, UEFA v. Commission, 18 July 2013, C 201/11 P.

II. Domestic Courts

1. French Case law

Tribunal de Grande Instance

Nanterre, Jean Ferrat, Sarl Productions Alléluia, Gérard Meys, Sarl Teme / Sté I-France, 23 January 2002.

Nanterre, Gayet v. la Société Mondadori magazines France, 27 March 2014, no. 14 /02736.

Nanterre, Grimaldi v. Edi, 8 January 1997.

Nanterre, Paradis v. Prisma presse, 10 December 1997.

Nanterre, S. Grimaldi et D. Ducruet v. Society Point de vue, 10 August 1997.

Nanterre, Teissier v. Marianne, 12 December 2000.

Paris, FZ v. Xy, 13 January 1997, no. 97-84621.

Paris, Rainier III v. FEP, 2 June 1976.

Paris, Strauss- Kahn v. Iacub, 26 February 2013, no.13/51631.

Court of Appeal

Paris, Picasso v. Calmann-Levy, 6 July 1965.

Paris, Bardot v. Société de Presse Marcel Dassault, 27 February 1967.

Paris, Deneuve v. Société Presse Office, 14 May 1975.

Paris, Editions Jacob-Duvernay v. Steeve B. and Bruno B., 19 December 2013, no. 13/23969.

Paris, Ici Paris v. Vartan, 16 February 1974.

Court of Cassation

- Civil Division

Grimaldi v. Society HFA, 19 February 2004, no. 02-11-122.

Robert, 3 February 2011, nos. 091031, 0910302 and 0910303.

Société Hachette Filipacchi Associés v. F. Barthez, 10 March 2004, no. 01-15-322.

Société Hachette Filipacchi Associés and a. v. Albert Grimaldi, 27 February 2007, no. 06-10.393.

Society Hachette Filipacchi Associés v. M.X, 16 May 2006, no. 04-10.359.
Society Hachette Filipacchi Associés v. Y, 19 February 2004, bull. civ. II, no. 72.
Society Group Express- Expansion and others v. Y and others, 24 October 2006, no. 04-16.706.

- Criminal Division

Executive Life, 11 March 2008, no. 06-84.712.
Cazals, 12 May 2009, no. 08-85.732.
Morel, 10 November 2009, no. 08-86.295.

2. United Kingdom Case law

Information Tribunal

Informational Tribunal, Guardian Newspapers Ltd and Heather Brooke v the Information Commissioner and the British Broadcasting Corporation, 8 January 2007, EA/2006/0011- 0013.

Press Complaints Commission

Spencer v. News of the World, 3 April 1995, PCC Report no. 29.
William Zachs v. Sunday Mail, 31 August 1997, PCC Report no.38.

Court of Appeal (Civil Division)

A v. B plc, 11 March 2002, [2002] EWCA civ. 337.
Douglas v. Hello ! Ltd, 21 December 2000, [2001] 2 WLR 992.
Hellewell v. Chief constable of derbyshire, 13 January 1995, [1995] 1 WLR 804.
Kaye v. Robertson, 16 March 1990, [1990] EWCA Civ 21.

High Court of Justice

Edward Rocknroll and News Group Newspapers, 8 January 2013, [2013] EWHC 24 (CH).

Jonathan Spelman and Express Newspapers, 16 February 2011, [2011] EWHC 355(QB).

Mosley v. News Group Newspapers Ltd, 24 July 2008, [2008] EWHC 1777 (QB).

Steve Mac Claren and News Groups Newspapers limited, 18 August 2012, [2012] EWHC 2466 (QB).

Trimingham and Associated Newspapers limited, 26 April 2012, [2012] EWHC 1296 (QB).

House of Lords

Campbell v. MGN Ltd , 6 May 2004, [2004] UKHL 22.

Reynold v. Times Newspapers, 28 October 1999, [1999] UKHL 45.