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## **RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE AND PUBLIC SERVICE: PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS**

**Abstract.** The article studies the application of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to respect for private and family life, to the professional activities of civil servants. To summarize and analyze the practice of the European Court of Human Rights in this domain, a dialectical method of cognition was used, as well as such scientific methods as logical, formal legal and other methods, provided that in general the systematic approach was observed.

The two approaches to the analysis of interference with private and family life in connection with professional activities: one is based on reasons and the other one – on consequences, were studied. It was concluded that restricting this right in relation to civil servants is admissible if there is a relevant law, a legitimate goal, the need for a democratic society. The correlation of the right to respect for private and family life of civil servants and the right to freely express your opinion guaranteed to everyone was analyzed. It was concluded that it is necessary to search in each case for a fair balance of these rights, taking into account both the interests of society and individuals.

**Key words:** civil servant; private life; family life; right to respect for private and family life; European Court of Human Rights.

**Introduction.** Timely and efficient solution of problems in public administration is unthinkable without the creation of the necessary organizational and legal conditions for people who ensure its operations also predetermining the need for them to comply with certain behavioral requirements in professional and leisure-time activities, including those established under existing anti-corruption mechanisms. The prohibitions and restrictions established for civil servants are considered as important legal instruments to combat corruption [1, p.219].

The introduction of such prohibitions and restrictions may imply, for example, the publication of information related, in fact, to private and family life of a civil servant. In the meantime, the inviolability of private and family life is guaranteed to everyone by the most important international acts on human rights protection [2, Art.12; 3, p.69; 4, Art.17; 5, Art.8] in the interpretation of the relevant supervisory authorities (for example, the European Court of Human Rights), allowing interference only in cases provided for by them.

The requirements for civil servants involving interference with their private and family life are usually considered from this perspective. In other words, a civil servant, holding a certain office, must bear some burdens, which also suggest increased attention to their private and family life.

Considering the above, the study of existing approaches and the identification of criteria for the correlation of public and private interests in the sphere of ensuring the necessary standards of behavior for civil servants with respect for private and family life seems to be very relevant and practically significant. The rulings of the European Court of Human Rights (hereinafter – the ECtHR, the European Court, the Court), which should be applied within the existing international obligations of states, can render significant assistance in solving this problem.

It should be noted though that, taking into account the practice of the European Court of Human Rights, the term “civil servant” will be used in this research in the broad sense that does not always comply with national legislation. For example, according to the Russian law, there is a difference between the concepts of “a person doing public service”, “a person holding a public office”, “a person holding a municipal office”, “a person doing municipal service” [6, Art.1,10; 7, Art.1,10]. The European Court also uses the term “public service” in its rulings in cases related to judges [8;9;10;11;12], and municipal employees [13].

**Methods.** To summarize and analyze the practice of the European Court of Human Rights in this domain, a dialectical method of cognition was used, as well as such scientific methods as logical, formal legal and other methods, provided that in general the systematic approach was observed.

**Results.** In the documents of the Parliamentary Assembly of the Council of Europe, the right to privacy is defined as “the right to live one’s own life with a minimum of interference” [14, p.2], supplemented, taking into account the use of new communication technologies, by the right to protect personal data [15, p.5]. Private life in accordance with Article 8 of the ECHR in its interpretation by the ECtHR includes three key elements: physical, psychological or moral integrity, privacy, identity [16, §70]. Family life is protected as an independent category or as an element of private life, depending on the presence or absence of real “close personal ties” necessary to establish its existence [16, §247].

These positions regarding the understanding of private and family life in the practice of the ECtHR are not final, but, on the contrary, are constantly supplemented with new elements, making the concept in question more and more meaningful.

The first element of private life – physical, psychological, or moral integrity – involves, among other aspects, the attribution of professional or business activity to private life [16, § 130–134]. Since most of the people in the process of professional activity have significant opportunities to develop relations with the outside world [16, §130], the ECtHR has repeatedly drawn attention to the fact that attributing the concept of “private life” only to the “inner circle” and the complete exclusion of the outside world from this circle would be too restrictive [12, §96]. Moreover, professional life is often closely associated with private life, especially if factors related to private life in the strict sense of the word are considered as qualification criteria for a particular profession [17, §37].

Considering the above, in relation to the private and family life of civil servants, two approaches are used to assess the interference with the implementation of this right in the practice of the ECtHR: one is based on reasons and the other one is based on consequences with the possibility of combining them.

Within the first approach, focus is made on the qualifying criteria for the function in question, reasons encroaching upon the individual’s freedom of choice in the field of private life [12, §103], the need to assess “professional suitability” taking into account the real impact of private life circumstances on the implementation of professional activities [8, §77].

Thus, using this approach, interference with private life was ascertained in cases of transferring a civil servant to a lower position not because of qualifications, but because of his religious views and the appearance of his wife [17], early termination of powers not so much due to improper performance of professional duties, but in connection with personal contacts, clothing style, make-up, relationships with family members [8, §43].

The second approach does not imply a “classical” assessment of interference with private life in terms of a person’s behavior outside the office, his relations with relatives, friends, and other similar circumstances. It focuses solely on his professional activities, and measures taken against a person are evaluated in terms of negative effects: for the “inner circle” (for example, due to loss of earnings), for the opportunities to “establish and develop relationships with others”, for reputation [12, §107].

It was used, for example, when assessing the early termination of judicial powers due to a violation by a judge of the oath (mainly, it was a question of procedural violations) [9;11], “administrative powers” of the head or deputy head of the judicial body due to the reorganization of the judicial system [10], shortcomings allowed as the head of the court [12].

In general, the studied approach involves the comparison of a person’s life before and after the application of an appropriate measure (for example, dismissal from office) by an authorized state body, as well as the achievement of a certain minimum threshold or threshold of seriousness, taking into account the circumstances of the particular case and the justification presented by the applicant [12, §133–134].

The right to respect for private and family life in relation to civil servants may be limited in accordance with the General Rules 2 of Article 8 of the ECHR, that is, in accordance with the law, in order to achieve one or more legitimate goals (interests of national security and public order, the economic well-being of a country, the prevention of disorder or crime, the protection of health or morality, or the protection of the rights and freedoms of others), if necessary in a democratic society to achieve these legitimate goals.

In this regard, the introduction of certain restrictions for civil servants is interpreted by the ECtHR as a need to protect public order, protect the rights and freedoms of others [8, §56], since this may involve damage to the image or reputation of the authority body.

On the contrary, a violation of these conditions was found by the ECtHR, for example, in the judgment in the case of *Oleksandr Volkov v. Ukraine*. As a justification, it was pointed out that there were no guidelines or practice establishing a consistent and restrictive interpretation of the breach of oath notion, proper procedural safeguards (limitation periods, the scale of sanctions for disciplinary offenses, the possibility of appealing against a decision) [9, §180–185].

In modern society, considering the level of digital technologies development, the adoption of which transforms the content and forms of implementation of the most functions of the contemporary state [18, p.97], and in connection with the use of anti-corruption mechanisms, the problem of building certain boundaries of interference with the private and family life of a civil servant in case of the publication and public discussion of information about him is of particular importance. Attempts to determine such criteria have been undertaken in the scientific literature [19, p.169–173; 20, p.424–428], and are reflected in the practice of the ECtHR.

The right to freedom of expression guaranteed by Article 10 of the ECHR “shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” (paragraph 1) [5].

All human rights are interrelated. «The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others [3, p.72].

The rights guaranteed by Articles 8 and 10 of the ECHR have their absolute equivalence, and therefore focus should be made on finding a fair balance between them in relation to each specific case.

Here, the approach of the ECtHR may differ from the traditional approach to determining such a balance established in its practice. Depending on which article of the Convention is used by the applicant, the Court proceeds from the presumption in favor of the right to privacy or the right to freedom of expression, while the state must show that interference with this right is necessary in a democratic society to protect the rights and freedoms of others. If it did not succeed to do that, the Court considers that the Convention was violated [21, p.58].

States, while fulfilling their international obligations, are given wide discretion in establishing an equitable balance of these rights. However, the ECtHR also developed certain criteria to assess the ratio established by the state. They include: contribution to the discussion of issues of common interest; how famous the person in question is; content of materials; previous behavior of the person in question; methods of obtaining information and its reliability; content, form and consequences of published information; the severity of the punishment [22, §34]. Considering the specific circumstances of the case, the author’s reason to rely on official communications, the fact of publication of the information contained in the article and its confidentiality may also be taken into account [22, §34].

These criteria, serving as general principles, are applied by the ECtHR when seeking a fair balance of these rights. But, discussing the applicability of these criteria to situations when certain information regarding the private and family life of civil servants is published, we would like to focus on two key aspects: assessing the degree of person’s publicity and contribution to the discussion of the issue of common interest.

First of all, the degree of person’s publicity and his qualification as a public figure matters. This circumstance influences the protection provided, since in relation to public figures the ECtHR recognizes the need to tolerate a greater degree of public scrutiny [23, §47].

According to the PACE definition, “public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain” [15, p.7].

Given this definition, it can be said that civil servants should be considered public figures in this sense. And this approach is expressed in the practice of the ECtHR, which pays attention to the fact that “exercising a public function or aspiring to political office necessarily exposes an individual to the attention of his or her fellow citizens, including in areas that come within one’s private life” [24, §120]. Moreover, in decisions on cases involving the protection of civil servants’ reputation, it clearly indicates the need for a broader framework of acceptable criticism of civil servants, as well as of political figures acting in official function compared to private individuals [25, §47; 26, §80].

It should be borne in mind that the ECtHR has made certain reservations in this sense. In its ruling in the case of *Janowski v. Poland*, the ECtHR directly pointed out the need to distinguish between politicians and civil servants. Therefore, when it comes to criticizing the latter’s actions, “it cannot be treated on an equal footing” as in relation to politicians [13, §33].

This approach, which involves taking into account the specific functions that are performed by a civil servant as part of official duties, may well be applied in terms of finding a balance between respect for private and family life and freedom of expression. Based on this, he can be protected to a greater extent than other entities related to public figures. On the other hand, one should keep in mind that even public figures have the right to a reasonable or legitimate expectation of privacy [27, §97]. However, the need for a test of “reasonable expectation of privacy” is called into question due to the difficulties that arise in this case in practice [28, p.129–137].

In addition, we would like to draw attention to one more aspect, which also relates to the correlation of the studied rights. Interference with the right to freedom of expression, as in the case of the right to respect for private and family life, is possible only in cases provided for by the ECHR in their interpretation by the ECtHR. Such permissible objectives of the interference, in accordance with paragraph 2 Art. 10 ECHR include “maintaining the authority and impartiality of the judiciary”, included in the relevant ECHR rule “in order to develop the attitude of European citizens to court of rights as an appropriate and impartial body designed to resolve legal issues without pressure from the public opinions”[29].

It is important for the civil service that the concept of “court” in this case is actually autonomous, since the justice system can be interpreted in the broadest sense. For example, according to the Court, prosecutors are also part of the judicial machinery or the justice system, since they are called upon to facilitate the administration of justice [30, §60]. But this, of course, does not mean the absolutization of the prohibition of any statements regarding civil servants that can be attributed to the justice system, other criteria of admissibility of interference with the exercise of this right are evaluated, for example, “public interest may outweigh the task of maintaining the authority of justice ”[29].

Considering the above, another decisive factor in the establishment of a balance between the protection of privacy and freedom of expression should be the contribution that is made to the discussion of general interest.

As rightly noted in the scientific literature, it is necessary to distinguish between public interest and the interest of society, analyzing the contribution to the democratic debate, preventing the misrepresentation of society, disclosing crimes or serious misconduct [31, p.11].

We should not speak exclusively about the desire of society to receive information about the private life of others or sensational information, to show painful curiosity in other people’s affairs [32, §101,103].

Thus, when determining a fair balance of the right to respect for private and family life and freedom of expression, not any public interest in the private life of a person should be taken into account, but only the one that is legitimate and actually pursues the goal of protecting public interests.

For instance, if we are speaking about combining other gainful employment by a municipal servant with the performance of their official functions [33, §78], abuse of public funds [34, §59], the functioning of the judicial system [32, §43], this information will be of legitimate public interest. Moreover, certain aspects that are interesting for public discussion can be found even if the relevant information also relates to the intimate aspects of private life. For example, if the question arises whether a person was dishonest and lacking judgement in this respect [23, §49].

**Conclusion.** Being a civil servant, which is interpreted by the European Court of Human Rights in a much broader sense than in Russian legislation, involves the fulfillment of certain duties, following prohibitions and restrictions that have a certain impact on the inviolability of private and family life.

The private and family life of a civil servant in the practice of the European Court of Human Rights has received protection primarily as part of such an element as physical, psychological or moral integrity, based on the analysis of either the reasons connected with the conduct of a person or the consequences that have occurred for himself or his close circle, not excluding their interconnected assessment, considering the conditions for the admissibility of interference in compliance with paragraph 2 Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The protection of the private and family life of a civil servant also presupposes following the right to freedom of expression, which is why the need to establish a fair balance between them taking into account the interests of society and a particular person, and the wider range of acceptable criticism of a civil servant in comparison with private individuals, is of key importance.

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**ЖЕКЕ ЖӘНЕ ОТБАСЫЛЫҚ ӨМІРДІ ҚҰРМЕТТЕУ ҚҰҚЫГЫ ЖӘНЕ МЕМЛЕКЕТТІК ҚЫЗМЕТ:  
АДАМ ҚҰҚЫҚТАРЫ ЖӨНІНДЕГІ ЕУРОПАЛЫҚ СОТ ТӘЖІРИБЕСІ**

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**ПРАВО НА УВАЖЕНИЕ ЧАСТНОЙ И СЕМЕЙНОЙ ЖИЗНИ И ГОСУДАРСТВЕННАЯ СЛУЖБА:  
ПРАКТИКА ЕВРОПЕЙСКОГО СУДА ПО ПРАВАМ ЧЕЛОВЕКА**

**Аннотация.** В статье исследована проблема применения статьи 8 Конвенции о защите прав человека и основных свобод, гарантирующей право на уважение частной и семейной жизни, к профессиональной деятельности государственных служащих.

В современном обществе с учетом уровня развития цифровых технологий и в рамках применения антикоррупционных механизмов особую значимость проблема защиты права на уважение частной и семейной жизни приобретает в отношении государственных служащих, обязанных в силу своего статуса соблюдать определенные запреты и ограничения, в том числе предполагающие и повышенное внимание к их личной жизни. В этой связи исследование существующих подходов и выявление критериев соотношения публичных и частных интересов в сфере обеспечения необходимых стандартов поведения государственных служащих при обеспечении им уважения частной и семейной жизни является весьма актуальным и практически значимым. Существенную помощь в выявлении таких подходов и критериев могут оказать правовые позиции Европейского суда по правам человека, подлежащие применению в рамках существующих международных обязательств государств. Для обобщения и анализа практики Европейского суда по правам человека были использованы диалектический метод познания, а также такие научные методы, как логический, формально-юридический и иные при соблюдении в целом системного подхода.

Автором оговорено, что в практике Европейского суда по правам человека термин «государственный служащий» применяется в широком смысле, не всегда соответствующем национальному законодательству, включая в свое содержание и судей, и муниципальных служащих.

Отмечено, что в соответствии со сложившейся к настоящему времени практикой Европейского суда по правам человека понятие частной жизни трактуется очень широко, включая самые разные аспекты обеспечения неприкосновенности лица, конфиденциальности сведений о нем и его жизни, выражения им своей идентичности, в том числе и в отношениях с другими людьми. В рамках обеспечения неприкосновенности лица к его частной жизни отнесена и профессиональная деятельность, предоставляющая большинству людей значительные возможности развивать отношения с внешним миром. Также факторы, связанные с личной жизнью, могут рассматриваться в качестве квалификационных критериев для конкретной профессии.

В статье рассмотрено использование двух подходов Европейского суда по правам человека к анализу вмешательства в частную и семейную жизнь в связи с осуществлением служебной деятельности: основанного на причинах и основанного на последствиях. Отмечена возможность их сочетания. В рамках первого

подхода внимание акцентируется на необходимости соответствия государственного служащего установленным квалификационным требованиям, предъявляемым к соответствующей должности, оценке его квалификации на основании обстоятельств, относящихся к личной жизни (внешнего вида, поведения лица во внеслужебное время, его отношений с родственниками, друзьями и иных подобных обстоятельств). Второй подход предполагает оценку исключительно профессиональной деятельности лица, а также предпринятых в отношении него дисциплинарных мер с точки зрения наличия неблагоприятных последствий для семьи, будущей профессиональной деятельности, репутации. Важное значение в связи с применением второго подхода отводится сравнению жизни лица до и после применения к нему уполномоченными органами государства соответствующих мер, а также достижению определенного минимального уровня или уровня серьезности с учетом обстоятельств конкретного дела и представленного лицом обоснования.

Сделаны выводы о допустимости ограничения права на уважение частной и семейной жизни применительно к государственным служащим в соответствии с частью 2 статьи 8 Конвенции о защите прав человека и основных свобод при наличии соответствующего закона, законной цели, необходимости в демократическом обществе. Выявлена возможность установления для должностных лиц определенных ограничений в рамках законных целей (необходимость охраны общественного порядка, защита прав и свобод других лиц) в связи с возможностью нанесения ущерба имиджу или репутации соответствующего органа власти.

Исследована проблема определения границ вмешательства в частную и семейную жизнь государственного служащего при обнародовании и публичном обсуждении соответствующих сведений о нем. В связи с этим были проанализированы вопросы соотношения права на уважение частной и семейной жизни государственных служащих и гарантируемого всем статьей 10 Конвенции о защите прав человека и основных свобод права свободно выражать свое мнение. Сделан вывод о наличии тесных взаимосвязей всех основных прав и свобод, гарантируемых Конвенцией о защите прав человека и основных свобод, равноценности права на уважение частной и семейной жизни и права свободно выражать свое мнение, в связи с чем ключевое внимание должно быть уделено поиску в каждом конкретном случае справедливого баланса между указанными правами с учетом как интересов общества, так и частных лиц.

Констатировано применение Европейским судом по правам человека презумпции в пользу права на неприкосновенность частной жизни или права на свободу выражения мнения в зависимости от статьи, в связи с нарушением которой подана жалоба, с последующей оценкой правомерности вмешательства государства в рамках предоставленной ему широкой свободы усмотрения при установлении справедливого баланса этих прав и соблюдения определенных критериев.

Акцентируется внимание на проблемах оценки степени известности соответствующего лица и вклада в обсуждение вопроса, представляющего общий интерес, в том числе с учетом признания более широких границ допустимой критики государственного служащего по сравнению с частными лицами, в рамках применения таких критериев.

**Ключевые слова:** государственный служащий; частная жизнь; семейная жизнь; право на уважение частной и семейной жизни; Европейский суд по правам человека.

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