

Chapter 1

Privacy as a Right: History and International Recognition

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ABSTRACT

This chapter examines not only the history of the term privacy but also its international recognition as a fully protected right. Given the wide array of definitions of privacy, it can be said that the term seeks its identity. Depending on time and space, this right has had various traits, beyond the obstacles of a strict definition. The aspects or features of the term are those that lead to the necessity of its international recognition and protection, especially in the present digital and technological environment, where its foundation is reconsidered and internationally protected in an effective way.

INTRODUCTION

The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity..... to control the extent, manner and timing of the use of those parts we choose to disclose. (Yael et al., 2005, p. 7)

The term of privacy is perceived in diverse ways in various cultures, nations and national Constitutions. It is worth mentioning that opinions greatly vary on what the right of privacy and its protection are, or to what extent this right is protected and respected by others. The fact that many countries do not have a specific word for privacy demonstrates

the varying perception of the term of privacy over time and space. For instance, privacy may be a matter of cultural sensitivity that is directly connected to personal dignity, which is formulated and protected based on specific historical and ethical backgrounds. The difficulty in defining privacy is subjective in nature, depends on the culture and is derived from the expectations of a society during a certain period of time. Furthermore, privacy has had different meanings over the years and has been influenced by political, social and technological developments. The origins of the term of privacy and its formulation and protection through various nations and legal systems will be fully examined in the present paper.

The concept of the global recognition and protection of the internationally fundamental right

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to privacy by international and regional treaties is a modern invention/notion that renders its protection effective universally. As underlined below, the global recognition of this right is associated with western culture, in particular with English and North-American culture. Moreover, the right to privacy will be examined in comparison to “autonomy” and “personal identity” in order to specify the aspects and foundation that define the borders of its inviolability.

PRIVACY AS A RIGHT

Initially, the definition of privacy and the elements included in this term need to be clarified. The concept of privacy is associated with the idea that a person should be entitled to claim sovereignty over himself and lead a life with minimum interference from others. In other words privacy enables the individual to remain in control of himself. Of all the human rights internationally, privacy is perhaps the most difficult one to define and circumscribe (Michael, 1994). Privacy has its roots deep in history. The Bible has numerous references to privacy (Hixson, 1987; Barrington, 1984). These protections mostly focused on the right to solitude. Definitions of privacy vary widely according to context and environment. In many countries, the concept has been fused with Data Protection, which interprets privacy in terms of management of personal information.

The wide array of definitions of privacy demonstrates the perception of the term in each country and justifies the rulings of the courts in those countries. The term of privacy was defined by Warren and Brandeis (Warren & Brandeis, 1890, p. 193, p. 213) as “the principle, which protects personal writings and any other productions of the intellect or of the emotions, is the right to privacy” (, 2011). According to certain views, privacy is “control over when and by whom the various parts of us can be sensed by others”

(Parker (1974), p. 281.), or “the condition of not having undocumented personal knowledge about one possessed by others” (Parent (1983), p. 269.). Additionally, privacy was included in the perception of the concept of the right to “to be let alone” (Warren and Brandeis (1890), p. 193; Meulders-Klein, M.T. (1992), p. 771) or “(privacy) is a valuable concept” (DeCew (1997), p. 81). In another point of view, privacy is “the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others” (Westin (1967), p. 7). In line with the above, Rössler supported that something counts as private life if one is able to control the access to this something by oneself (Rössler (2005), p.8). Moor claims that privacy becomes a natural expression of the need for security as societies become larger, highly interactive and less intimate (Moor, (2004), pp. 249-262). Privacy is related to anonymity and also takes the form of bodily integrity or partially intersects security including for instance the concept of appropriate use.

Privacy as a right may be considered as a right to “reasonable expectation of privacy.” This criterion varies from country to country and depends on the ethics of each society. Privacy is treated in a specific way in Greek law and culture. It is easily concluded that in the American and German legal system the right to privacy obtains “different faces” as it includes different rights. (Akrivopoulou, 2012). Otto Friedrich von Gierke and Joseph Kohler sustained that the right to privacy as a general right includes other rights, such as the right to life, freedom, honor, name or economic freedom (Akrivopoulou, 2012). Specifically, according to Ruth Gavison (Gavison, 1980), there are three elements in privacy: secrecy, anonymity and solitude. Regarding the modern conception of privacy, modern challenges of the approach of privacy should be taken into account, such as the right to informational self-determination in the technological era where personal information is

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