
Protection of the Right to Respect for Private and Family Life in European Court of Human Rights

L.Yu. Fomina¹

Abstract:

The paper deals with the issue of protection of the right to respect for private and family life in European Court of Human Rights. This right is guaranteed at the level of major international law acts in the area of human rights protection: The Universal Declaration of Human Rights 1948, The International Covenant on Civil and Political Rights 1966. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 may be also referred to such acts. It's suggested that ECtHR operating under the monitoring mechanism provided by the Convention pays conspicuous attention to issues of the right to respect for private and family life guaranteed under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. To support this claim corresponding statistics is brought forward. The content of private and family life concepts in ECtHR practice is studied. The Court's understanding of invasion of private and family life on the part of the state under Part 2 Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and legal views of ECtHR are considered. Protection of human rights in the area of environmental conservation pursuant to Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and corresponding elaborated approaches are studied.

Key Words: *Private life, family life, respect, Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention on Human Rights, European Court of Human Rights*

¹ PhD (Law), Ogarev Mordovia State University, Saransk, Russian Federation, fominalilja@mail.ru

1. Introduction

1.1 Introduce the Problem

Right of protection from arbitrary interference with personal and family life is conserved with major multipurpose international law acts in effect at the relevant time in the area of human rights protection: Art. 12 of The Universal Declaration of Human Rights 1948, Art. 17 of The International Covenant on Civil and Political Rights 1966.

This right is also protected at the level of regional international organizations, i.a. Council of Europe. The Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is one of key international acts created within the framework of Council of Europe (hereinafter referred to as – the European Convention on Human Rights, European Convention, the Convention). Art. 8 of the Convention (item 1) guarantees everyone the right to respect for private and family life, “Everyone has the right to respect for his private and family life, his home and his correspondence” (the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

The European Convention established the unique mechanism of human rights and freedoms protection that foremost involves practice of European Court of Human Rights (hereinafter referred to as – ECtHR, the European Court, the Court).

According to Overview data of 1959-2014, the European Court rendered 1085 judgments on complaints about violation of Art.8 of the European Convention by State Parties to the Convention from 1959 to 2014. Most violations of Art.8 of the Convention over the specified period (with regard to time necessary for state accession to the Convention) were established against Italy (145 decrees), Russia (131 decrees), Poland (103 decrees). Given this, ECtHR adopted 17754 regulations in total over the specified period, among them 14877 involved at least one infringement of the European Convention (European Court of Human Rights, 2015).

The above states that protection of the right to respect for private and family life is significant on the part of Council of Europe member states’ citizens and holds a prominent place in ECtHR practice.

The research objective is to cover issues regarding opportunities and matters of protection of the right to respect for private and family life with the use of the European Convention monitoring mechanism. It should be mentioned the paper considers the practice of the European Court in the context of protection of private and family life with no regard to respect for home and correspondence that are also guaranteed under Art. 8 of the Convention. Meeting the objective defined statement and solution of the following tasks: to examine the notion of private and family life in the European court practice, to research European court’s legal views concerning understanding of admissibility criteria of interference to the right to respect for

private and family life, to study ecological rights protection in the context of Art. 8 of the Convention.

In the course of paper preparation scientists' works dedicated both to universal mechanisms of international law protection of human rights and human rights protection under the European Convention in general as well as rights to respect for private and family life in particular were studied.

Findings of the research develop and complement international and European law sections dedicated to human rights protection. They can be used in different kinds of legal practice, in academic activity when teaching various branches of jurisprudence.

1.2 Importance of the Problem

Modern legal science pays much attention to human rights protection, but there are few complex researches devoted to protection of the right to respect for private and family life in European Court of Human Rights.

Recently a research dedicated to the right to respect for private and family life and inviolability of home and correspondence has been undertaken (as exemplified by European Court of Human Rights practice) in Russian legal science (Gracheva, 2013). Certainly, this work contains important conclusions and practical proposals, which were considered by the author when preparing this paper. However, many theoretical and practical issues relating to the Court's legal views regarding the content and opportunities to restrict the right to respect for private and family life are still unsolved.

In the meanwhile member-states of Council of Europe made certain commitments with regard to jurisdiction of the European Court and its acts implementation. At this point one should remember that European Court's practice isn't established once for all. Pursuant to Art.32 of the Convention it recurses to evolutive interpretation of European Convention rules with regard to legal science and practice development at the certain stage of society development.

The tasks of this research were defined with regard to theoretical and practical importance of the issue selected as a subject of examination.

1.3 Background

When preparing the paper, works of scientists who significantly contributed to human rights protection general issues development at the international level, i.a. in the framework of ECtHR practice, were studied: Abashidze & Alisievich (2007), Benoit-Rohmer & Klebes (2005), Kovler (2010), Neshataeva (2013), Rozhkova (2004), de Salvia (2004), Sultanova (2012), Tumanova & Vladimirova (2007) and others.

In addition, publications dedicated to the issue of international legal and national protection of the right to private and family life inviolability were analyzed:

Belyaeva (2000), Izmaylova (2009), Kadnikov (2011), Poperina (2014), Smolkova & Dunaeva (2014) and others.

In the course of the research, works dedicated to protection of the right to respect for private and family life in ECtHR practice were used: Gracheva (2013), Kilkeli & Chefranova (2002), Nurbalaeva (2011), Nurtdinova (2011), Pevtsova (2014), Timofeev (2013), Frolova (2008), Willems (2014) and others.

Much attention is given to ECtHR decisions rendered on complaints concerning violation of Art.8 of the Convention that guarantees the right to respect for private and family life.

1.4 State Hypotheses and Their Correspondence to Research Design

To the present day there's no uniform understanding of private life in European Court of Human Rights practice. For the benefit of efficient human rights and freedoms protection ECtHR interprets this notion broadly taking into account possible addition to such interpretation when it's necessary to correlate it with the certain level of state legal institutions development at one or another period of time.

Family life can be considered both an independent category and a private life component. This concept is autonomous therefore its understanding by the European Court may differ from its understanding in national law.

The main purpose of Art. 8 of the Convention is prevention of government intervention into the exercise of guaranteed rights. However recognized freedom is far from being absolute. State can accept some restrictions if criteria stipulated in item 2 of the Contention and Court's established practice are met.

Protection of environmental rights is not directly guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. ECtHR practice embarked on a path of such protection possibility under Art. 8 of the Convention.

2. Method

To meet the set objective and to solve the research tasks dialectical method of cognition and such scientific methods as logic, technical, comparative legal subject to general approach system were used.

3. Results and Discussion

3.1 Notions of private and family life in practice of European Court of Human Rights

ECtHR many times stated that “private life” is a broad notion not subject to comprehensive definition (i.a. judgment in the case of “Smirnova v. Russia”, § 9) (European Court of Human Rights, 2003).

According to the Court, private life covers the questions of physical, psychological or moral integrity of the person as well as his physical and social individuality aspects (for example, the decision regarding complaint acceptability “Gunnarsson v. Iceland”) (European Court of Human Rights, 2005); affects the right to private life with no undesirable attention of third persons (for example, § 95 judgment in the case of “Smirnova v. Russia”) (European Court of Human Rights, 2005), person’s name or his picture (§ 50 judgment in the case of “Von Hannover v. Germany”) (European Court of Human Rights, 2004), the right to know one’s origins (judgment in the case of “Odièvre v. France”, § 29) (European Court of Human Rights, 2003), to establish and develop relations with other people, including relations in the area of professional and commercial activity (judgment in the case of “Albanese v. Italy”, § 53) (European Court of Human Rights, 2006); financial interests, for example, tax payment resulting from unfitness for military service owing to disease as in the case of “Glor v. Switzerland” (European Court of Human Rights, 2009), etc.

For example, in the case of “Konovalova v. Russia” the claimant appealed medical students’ presence during her child-birth. The European Court considered that invasion of private life took place in this case “in view of sensitive nature of the medical procedure the claimant experienced on April 24, 1999 and the fact that there were medical students and therefore they had access to confidential medical information regarding claimant’s condition” (judgment in the case of “Konovalova v. Russia”, § 41) (European Court of Human Rights, 2014).

In the case of “Petrova v. Latvia” the claimant appealed removal of her died son’s organs without his previous consent and his relatives’ consent. The European Court also considered that invasion of private life took place in this case (judgment in the case of “Petrova v. Latvia”) (European Court of Human Rights, 2014).

Practical Guide on Admissibility Criteria (item 300) includes three categories to the right to respect for private and family life: 1) a person’s physical, psychological or moral integrity, 2) his privacy, 3) his identity (Council of Europe/European Court of Human Rights, 2014).

According to item 301 of Practical Guide on Admissibility Criteria, physical, psychological or moral integrity includes, for example, medical treatment and psychiatric examination, compulsory sterilization, psychiatric health, physical integrity of pregnant women and the matter of abortion, sexual identity and orientation and a number of other issues (Council of Europe/European Court of Human Rights, 2014).

According to Practical Guide on Admissibility Criteria’s authors, the second element of private life is privacy (Item 302). Privacy includes, for example, right to picture

and photographs, reputation, information files or data of personal or public nature (for example, person's political activity records), which are collected and kept by security services or other public bodies, health records, video monitoring in public places and other aspects (Council of Europe/European Court of Human Rights, 2014). At this point it should be mentioned that "privacy" can be used along with "private life" to define private life. For example, Art. 12 of The Universal Declaration of Human Rights states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation" (Universal Declaration of Human Rights, 1948).

In this case Practical Guide on Admissibility Criteria's authors consider the first the element of the second.

The third area – identity – suggests under item 303 of Practical Guide on Admissibility Criteria the right to personal development and personal autonomy, the person's right to decide in what way and when his life ends given that he will be able to freely express his will on that matter and take corresponding measures, the right to acquire information on one's origins and one's parents' identity, ethnic background, and a number of other issues (Council of Europe/European Court of Human Rights, 2014).

It should be noted that the mentioned by Practical Guide on Admissibility Criteria has no binding effect for the European Court. However it is of certain practical interest since it generalizes practice of the Court.

As for the "family life" notion in ECtHR practice the notion of family within the meaning of Art. 8 of the Convention involves not only registered marital relations but other "family" connections, which provide that their participants live together beyond legal marriage. For example, it's provided in § 44 of judgment in the case of "Keegan v. Ireland" (European Court of Human Rights, 1994).

In addition, the European Court stated, "family life" as interpreted by Art. 8 of the Convention includes at least connections between immediate relatives, for example, grandfathers, grandmothers, and grandchildren, since such relations can play a critical part in family life" (Judgment in the case of "Marckx v. Belgium", § 45) (European Court of Human Rights, 1979).

Practical Guide on Admissibility Criteria (items 306-330) specifies the following components distinguished in European Court practice: the right to become a parent, matters regarding children, couples, other kinds of relations, financial interests (Council of Europe/European Court of Human Rights, 2014).

As noted in legal literature "in the Convention text family life, which is a component of private life, is distinguished independently, although as the analysis of judicial

practice shows sometimes it's difficult to separate these two aspects" (Tumanova & Vladimirova, 2007).

In this regard the issue of "private life" and "family life" notions correspondence in understanding of the Court is of interest. For this purpose we turn our attention to the Court's opinion expressed in Judgment in the case of "Znamenskaya v. Russia" (European Court of Human Rights, 2005).

Znamenskaya N.V. litigated the refusal of national courts to consider her application to establish her still-born child's origin from her common-law husband and not from her ex-husband, and to change the child's name. The European Court noted that "presence or absence of "family life" for the purpose of Art. 8 of the Convention is essentially a question depending on the presence of personal relations in people's life... . It is obvious that such personal relations could not develop in this case since the child was still-born and his natural father had been separated from the claimant before his birth and died shortly after... Taking into account that the claimant was supposed to develop strong relation with the fetus, which she had bore almost full duration, and that she expressed her desire for giving him a name and bury him, identification of his origin apparently influenced her "private life", the respect for which is also guaranteed by Art. 8 of the Convention (Judgment in the case of "Znamenskaya v. Russia", § 27) (European Court of Human Rights, 2005).

Thus, presence of "family life" depends on actual circumstances and presence of close relationships between corresponding persons. If there are no such relationships, it may be referred to protection of private life in the context of Art. 8 of the Convention

3.2 Criteria of Restriction of the Right to Respect for Private and Family Life

Nurtdinova's statement "the main purpose of the article under consideration is person's protection against state bodies' arbitrary interference with his private and family life" appears to be just (Nurtdinova, 2011).

Given this, interference with private and family life can be considered admissible according to item 2 Art. 8 of the European Convention on Human Rights, "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

In this regard the European Court pays attention to correspondence of state interference with the requirements of item 2 Art. 8 of the Convention, i.e. whether it is legally provided, whether it is designed to meet one or several legally acceptable goals specified therein and necessary in a democratic society to achieve these goals

(Judgment in the case of “Beldjoudi v. France”, § 68) (European Court of Human Rights, 1992).

For example, in the case of *Odièvre vs. France* the claimant appealed violation of her right to know her origins owing to the rejection of state bodies of France to provide her with data allowing her to establish identity of her natural parents and brothers, since she managed to get only such information on her relatives based on which it's impossible to carry out the above-mentioned. The European Court in its Judgment as of February 13, 2013 addressed the matter concerning the correspondence of claimant's right to know her origins subject to protection under Art. 8 of the Convention and other persons' rights (natural mother, father, other biological relatives, adoptive parents) to respect for their private and family life. In this regard the Court stated the following, “The word “each” in the wording of Art. 8 of the Convention refers to both child and mother. The right to know one's origins results from the broad interpretation of the notion of private life.... On the other hand, woman's interests regarding anonymity compliance when child-bearing under proper medical conditions for the purpose of health care should be recognized. ... The issue of child-bearing subject to anonymity also gave rise to the question of third parties' interests protection, namely, adoptive parents, child's father or other natural relatives, each of whom also has the right to respect for private and family life. ... State Parties to the Convention should be permitted to define measures, which they consider most proper for meeting such interests, by themselves.” The Court concluded that the claimant's right to respect for private and family life was not violated in this case (Judgment in the case of “*Odièvre v. France*”, § 44) (European Court of Human Rights, 2013).

In well-known case “*Nada v. Switzerland*” (European Court of Human Rights, 2012) regarding deprivation an Egypt citizen of the right to cross international boundaries, who lived in the territory of Italian enclave Campione d'Italia surrounded by Swiss canton Ticino and separated from the rest of Italy with a lake, since his name was included into the list of Sanction Committee of the United Nations Security Council along with other persons' names on suspicions of relations to the Taliban and Al Qaeda, the European Court stated there was violation of the right to respect for private and family life (Judgment, § 166). Considering the issue of grounds for restriction of the right to respect for private and family life in accordance with item 2 of the Art. 8 of the Convention, The Court stated that it had corresponding legal base and pursued a legitimate objective (Judgment, § 173-174). However when considering data on Swiss measures designed to exclude the claimant's name from UN Security Council's lists, the Court ruled that such violation didn't match the third criterion, i.e. it was not necessary in a democratic society or proportional (Judgment, §198). A criminal case initiated against the claimant was dismissed in Switzerland on May 31, 2005, and Italy requested for his name delisting in 2008, Switzerland – in 2009 (Judgment, § 187-188). On this basis the Court drew corresponding conclusions.

However, as the European Court mentions (judgment in the case of “Mosley v. the United Kingdom”, § 108-111) in the context of Art. 8 of the Convention the question may be referred to state’s certain positive obligations involving provision of the efficient exercise of the right by everyone who is under its jurisdiction. Such obligations may require adoption of positive measures focused on the provision of efficient respect for private life even in the area of relationships between individuals. In this case states have margin of appreciation regarding means that help to provide compliance with such positive commitment in the area of interaction between individuals, however it doesn’t release them from monitoring on the part of conventional agencies.

Moreover, when defining the limits of margin of appreciation it’s necessary to take into account a number of factors.

Firstly, the notion of “respect” in Art. 8 is ambiguous, especially in view of inextricably intertwined positive commitments: in the context of diversity of occurring situations and measures state members resort to, requirements resulting from this notion largely depend on specific case factual background.

Secondly, the limits of margin of appreciation also depend on the nature of the involved area of social relations. For example, if the question is particularly important rims of person’s private life, state’s margin of appreciation is narrowed.

Thirdly, another important factor for determination of the area of state’s margin of appreciation is presence or absence of consensus between member-states of Council of Europe or regarding importance of interest affected in a case or regarding the best means of its protection, in case of lacking such interest state’s margin of appreciation is usually broad.

Finally, regarding cases when measures necessary from the claimant’s point to provide state’s positive commitments under Art. 8 of the Convention influence the exercise of freedom of expression, attention should be paid to the just balance between competitive rights and interests resulting based on the provisions of Art. 8 and 10 of the Convention (European Court of Human Rights, 2011).

3.3. Protection of environmental rights in accordance with Art. 8 of the Convention by European Court of Human Rights

Within the framework of the standard practice of using Art. 8 of the Convention by the European Court, environmental rights are also subject to protection. Despite the lack of Court’s clear position regarding this issue, Kovler’s judgment expressed in Concurring Opinion of Judge Kovler with regard to the case of “Fadeyeva v. Russia” that in cases involving environmental rights the question is violation of private life and not home, appears to be fair. He considers that “the notion of “home” was included in the text of this provision with the clear intention of defining a specific area of protection that differs from “private and family life”, agrees that “environmental rights are ... of a different character from the core right not to have one’s home raided without a warrant” (European Court of Human Rights, 2005).

For example, with regard to Russia judgment in the case of “Fadeyeva v. Russia” became the key decision on the question (European Court of Human Rights, 2005), on the ground of claimant’s living in environmentally unfriendly region near Severstal JSC enterprise. The European Court considered violation of Art. 8 of the Convention in the judgment regarding the mentioned case established.

Given this, the Court protects people suffered not only from industrial pollution but also noise exposure, other types of negative environmental impact.

With regard to protection against noise exposure we give the case of “Deés v. Hungary” as an example. Under Art. 8 of the Convention the claimant complained about severe inconveniences (noise, vibration, pollution) caused by the fact that his street had become a track uncontrolled heavy traffic moves on. The Court considered that despite authorities’ efforts to limit and regulate the traffic at the mentioned street, the claimant had experienced serious inconveniences in the form of intense noise for a long period of time. Correspondingly, he was disabled to exercise rights to respect for habitation and private life guaranteed under Art. 8. Thus, according to the Court there was violation of Art. 8 (European Court of Human Rights, 2010).

It’s possible to distinguish the following provisions stated by ECtHR regarding protection of rights to favorable environment as consisted with the mentioned above judgments wherein the matters of environmental rights protection pursuant to Art. 8 of the Convention are considered.

Firstly, the European Court has no direct provision that guarantees the right to clean and quiet environment, but, if a person severely and directly suffered from noise or environmental pollution, the case can be considered in accordance with Art. 8 of the Convention. (Judgment, § 96 “Hatton and Others v. the United Kingdom”) (European Court of Human Rights, 2003).

Secondly, the basis of a complaint can be not only industrial but any other negative impact on the environment, for example, noise pollution as it was established in the case of Deés v. Hungary (European Court of Human Rights, 2010).

Thirdly, it’s necessary to meet specific criteria in order to enforce Art. 8 of the Convention (Judgment in the case of “Fadeyeva v. Russia”, § 68-70) (European Court of Human Rights, 2005), namely:

a) it’s necessary to have evidences that there’s actual infringement upon claimant’s private life, i.e. violation should directly affect claimant’s home, his family or private life;

b) infringement reached some minimal level (level of cruelty), assessment of which is relative and depends on all facts of the case, for example, on infringement intensity and duration, its financial or psychic outcomes. It’s also necessary to take

into account general ecological context. There's no grounds to enforce Art. 8 if appealed infringement is insignificant in comparison with environmental hazards common to life in any modern city.

Fourthly, when assessing evidence one should apply the general principle "beyond reasonable doubt". Such evidence results from coexistence of sufficiently potent, clear and consistent infringements and other similar uncontroverted admission of facts. It should be mentioned that in such cases the European Court practices a flexible access, considering the nature of concerned law and any difficulties in respect to evidential elements. In some cases only authorities have access to information that can confirm or dispose claimant's statements; consequently, strict application of the principle of statement without denial and peculiar probability is impossible (Judgment in the case of "Fadeyeva v. Russia", § 79) (European Court of Human Rights, 2005).

Fifthly, state is responsible for infringement upon private life or home in the context of Art. 8 of the Convention, even if it is not its direct offender. State's responsibility in cases relating to environment can be a result of its failure to regulate private industry. In such case the first task of the European Court is assessment of state's actions regarding prevention or termination of assumed encroachment on claimant's rights (Judgment in the case of "Fadeyeva v. Russia", § 89) (European Court of Human Rights, 2005).

Sixthly, in accordance with Part 2 Art. 8 of the Convention environmental rights can be limited subject to certain conditions (Judgment in the case of "Fadeyeva v. Russia", § 93-134) (European Court of Human Rights, 2005), discussed above in respect to the right to respect for private and family life in general.

4. Conclusion

Thus, protection of the right to respect for private and family life holds a prominent place in the practice of European Court of Human Rights.

The European Court interprets private life maximally broadly with regard to evolving dynamics of social life development, including various aspects covered by the concepts of physical, psychological, or moral integrity, privacy, identity. The specified aspects are distinguished in Practical Guide on Admissibility Criteria; they contribute to most effective protection of citizens' rights, but are not obligatory for the Court.

Family life can also cover the wide range of relations, concerning relations of couples, and also parents and children, other types of family relations, financial issues. This notion is an autonomous concept in the framework of the European Court practice.

Recognition and protection of family life depend on the presence of close relations between persons. If there were no and there are no such relations the question under Art. 8 of the Convention will be referred to the protection of private life.

Respect for private life supposes state's nonintervention in corresponding relations, except cases stipulated by the Convention as interpreted by the Court.

Over the course of time the European Court came to provide protection of rights in the area of environmental conservation. There's no explicit direction to the protection of environmental rights in the context of enforcement of the right to respect for private life or habitation in Court's acts. The paper's author considers sound to adhere to the position expressed in Concurring Opinion regarding one of analyzed cases according to which the question should be referred to protection of the right to respect for private life, and not home.

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