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## Constitutional Protection of Public Figures' Personal Data on the Internet

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**Abstract.** The article presents the issue of constitutional protection of public figures' personal data on the Internet. The authors claim that the use of the Internet is not always aimed at achieving legitimate goals, in some cases it leads to violation of the person's human rights. Most often, the right to protect public officials' and celebrities' personal data is violated on the Internet. Analysis of the examples of illegal use and distribution of public figures' personal data on the Internet results in the conclusion that there are three types of offenses in the field of public figures' personal data protection in information networks. The research proves that the public figures' personal data protection on the Internet is still at the stage of its formation.

**Keywords:** personal data, public figures' data on the Internet, personal inviolability, protection of rights.

Research area: constitutional law, municipal law, constitutional litigation.

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### Introduction

In the era of informatization, the Internet is becoming increasingly important in the public sphere of society and the private life of the individual. The Internet is the easiest and most popular way to instantly transfer the data of any format, regardless of distance and state borders. The Internet has become an integral part of the lives of many people from all re-

gions of the world. However, the use of the Internet is not always aimed at achieving legitimate goals; in some cases its use leads to violation of personal human rights. Most often, the right to protect the public officials' and celebrities' personal data is violated in the Internet information network.

In this case, these are not only elected, state or municipal officials who are regarded

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as public persons, but also those citizens who play a certain, quite important role in social, economic, cultural, sports, etc. life of the state, region or local community.

### Theoretical framework

Article 23 and Article 24 of the Constitution of the Russian Federation establish the right of every human to privacy, personal and family secrets, prohibition on dissemination of information on a person's private life without his/her consent. However, rapid development of information technologies contributes to the uncontrolled large-scale spread of the citizens' personal information on the Internet. News related to health and public persons' family life is sensational; it is widely discussed in classrooms and in electronic media despite the fact that the right to privacy is guaranteed by the Basic Law of the country.

### Problem Statement

The right to privacy in relation to public persons, including those persons who act as "public opinion leaders" and arouse the interest of others, should be consistent with the right to freedom of expression and the right of access to information. The Presidium of the Supreme Court of the Russian Federation specifies that at consideration of the cases on defamation and business reputation of political figures, officials of public authorities and local self-government judicial practice should be based on articles 3 and 4 of the Declaration on freedom of political discussion in the media. According to the articles, politicians who seek to gain public opinion agree to become the object of public political discussion and criticism in the media, including the Internet, as criticism of their activities ensures a transparent and responsible execution of their authority (Obzor praktiki ..., 2016).

Interest in public persons is often associated not only with their professional and social activities, but with their personal lives, even when such people prefer their private environment (on vacation, on the beach, with their family, with their friends). A line should be drawn here between the right of the public to know everything about their leader and this leader's

right to have his/her own personal living space he/she does not want to let anyone in.

### Methodology

Analytical and statistical methods of research were used. The analysis of the Russian legislation, academic literature, and judicial practice on **the constitutional protection of public persons' personal data on the Internet** is carried out. *The review was conducted on the basis of Russian and foreign literature published on this issue over the past 7 years.*

### Discussion

In 2006, in the Russian Federation, the Federal law "On personal data" was adopted to ensure the protection of the rights to the inviolability of personal life, personal and family secrets of man and citizen. According to the law, personal data implies any information directly or indirectly related to an identified or identifiable natural person (personal data subject): name, surname, and patronymic, date of birth, address and place of residence, income, property status, and education. Biometric personal data is information characterizing a person's physiological and biological characteristics, serving the basis for establishing his/her identity and used by the operator to establish the identity of the subject of personal data. There are special categories of personal data: race and nationality, political views, religious or philosophical beliefs, state of health, a person's intimate life. A person's image is also important. In its information letter the Federal Service for Supervision of Communications, Information Technology and Mass Media states that a citizen's biometric data cover fingerprints, iris of the eye, DNA tests, height, weight, and human images (photos and videos) (Lukatskii, Emel'annikov, Volkov, Tokarenko, 2019).

Processing of personal data, including biometric data, can be carried out only with the written consent of the subject of personal data. According to Article 152.1 of the Civil Code of the Russian Federation, a person's consent is not required for distribution of images taken in places open for free visiting or during public events (meetings, congresses, conferences, concerts, shows, sports competitions) and got

for a set fee. The copy of the cultural figures' open letter to the President and the Prime Minister of the Russian Federation with a proposal to create a public supervisory council in order to control morality in the media with the hyperlinks to the signatories' page containing their biography and photos which was published on the "Demagogia.ru" website in 2011 was recognized by the court as violation of this article. The actor Nikolai Burliakov, one of the signatories of this letter, thought that Nikolai Vinnik, the project manager, used his image without his consent, illegally. He, thus, filed a lawsuit in court. The defendant Nikolai Vinnik tried to prove that the plaintiff's image on the site was used in the public interest, which is confirmed by the orientation of the "Demagogia.ru" site and publicity of the plaintiff's persona, a famous theatre and movie actor. So, there was no need for the plaintiff's consent to post his photos. Despite the defendant's arguments, the court partially satisfied the claims and obliged the journalist to pay a 10 thousand rubles compensation. The higher authority confirmed this decision.

The image of the subject of personal data can be used without his/her consent in the state, public or other interest. Yet, this cannot be any interest shown by the audience. Dissemination of the person's images taken at his/her execution of official public duties will be lawful. The same concerns the public figures' social functions. Dissemination of images that give details of the individuals' private lives without their consent is prohibited. However, the photos of public persons on vacation, outside the public space, are often taken in an environment of intrusive harassment, arousing a feeling of invading privacy and even persecution in them. This problem has affected all countries without exception, the countries taking steps to prevent interference in political persons' and other figures' private lives.

In 1998, Resolution No. 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy was adopted. It stated that "the right to privacy provided by Article 8 of the European Convention on human rights must protect a person not only from interference by public authorities, but also from

any encroachment by individuals and organizations, including the media" (Delo "Von Hannover", 2004). Thus, not only private persons who post information about public persons in information networks without the knowledge of the latter, but also any mass media, including electronic ones, should be responsible for encroaching on a person's constitutional right to inviolability of his/her private life.

Dissemination of information on public persons' private life on the Internet sometimes leads to serious consequences for them. For example, in 2016, shortly before the elections of the President of the United States of America there was a hacking of the servers of the US Democratic Party. This resulted in open access to the personal data of presidential candidate Hillary Clinton (information about her health, private communications) as well as the data on the basis of which this candidate could be charged with violating the Federal Law regulating the conduct of secret diplomatic correspondence. The data were published by WikiLeaks and led to a drop in Mrs. X. Clinton's ratings and, probably, her defeat in the presidential election. As a result of the investigation and trial, the Romanian hacker Marcel Lazar, who fully admitted his guilt, was convicted and sentenced to 52 months in prison for this hacker attack (Gordeev, 2019).

Human health is one of the most vulnerable categories of personal data on the Internet for most public and famous people. According to the Federal Law "On the basics of protecting the health of citizens in the Russian Federation", information about the state of human health is medical confidentiality. This information is regarded as "information about the fact of the citizen's request for medical care, his/her health and diagnosis, other information obtained during his/her medical examination and treatment". It cannot be transferred to third parties without the patient's consent. Therefore, dissemination of information on the public officials' and celebrities' health on the Internet is illegal. The European court of human rights considered a case concerning the publication by the former private doctor of French President Mitterrand of the books with revelations about the President's health. It was

the opinion of the court that “the longer the time goes on, the stronger the public interest in President Mitterrand, who ruled for two seven-year terms, is and it takes precedence over protection of his rights in respect of confidential history of his illness”. The court ruled that there had been a violation of Article 10 of the European Convention for the protection of human rights and fundamental freedoms, which prohibits interference with a person’s privacy without his/her consent (Delo “Plon’ company”, 2004).

It is worth while paying attention to cases of misappropriation of personal data, for example, the public person’s name and image, which is widespread in social networks (VKontakte, Instagram, Odnoklassniki). The public person’s name and image are assigned by both underage and adult users of the Internet. Assignment of such information for one’s social page identification allows attracting the attention of other users of social networks. These are not the stars but their fans, who maintain the stars’ fake social pages and publish various news on behalf of famous and public persons. Despite the fact that the personal data assignment in this case is for personal purposes and, probably, the violators do not have malicious intent, such actions are illegal, since Article 19 of the Civil Code of the Russian Federation obliges the citizens to use their own name in civil circulation. This offense and, namely, misappropriation of personal data is not included in the Code of the Russian Federation on administrative offenses and does not entail administrative responsibility, as it is new for the Russian society.

In this case it is impossible to disagree with K.V. Podlesnaia and A.A. Semenova’s view that many issues of the Internet functioning are not regulated by Russian law. In the absence of norms and laws, that will regulate the actions of private users, as well as of various organizations and states on the Internet, a double standard is born and strengthened in the people’s minds: laws must be observed, but not in the network, as general laws are not applicable to the network, and special laws do not exist yet (Podlesnaia, Semenova, 2018).

Undesirable interference in public officials’ and celebrities’ private interests are “de-

liberate actions of obtaining private information by any means, for example, by personal observation, wiretapping, questioning of other persons, including recording of information by audio, video, photo, copying of documented information, as well as by theft or other ways of acquiring it (Postanovlenie Plenuma Verkhovnogo Suda RF, 2018)”.

Interference in private life becomes a crime if it regards the information that the citizen him/herself did not want to make public. Such crimes are most often qualified under Article 137 of the Criminal Code of the Russian Federation “Violation of privacy”, Article 138 of the Criminal Code of the Russian Federation “Violation of the secrecy of correspondence, telephone conversations, postal, telegraph or other messages”, Article 138.1 of the Criminal Code of the Russian Federation “Illegal circulation of special technical means intended for secret receipt of information”, Article 139 of the Criminal Code of the Russian Federation “Violation of inviolability of the home”. Moreover, according to Paragraph 2 of Clause 8 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 3 “On judicial practice in cases on the protection of the honor and dignity of citizens, and also the business reputation of citizens and legal entities” dated 24.02.2005 (Postanovlenie Plenuma Verkhovnogo Suda RF, 2005). When resolving disputes arising in connection with the dissemination of information about the citizen’s private life, it is necessary to take into account that in case of dissemination of the true data without the claimant’s or his/her legitimate representatives’ consent the defendant can be obliged to compensate for moral damage, caused by the spread of such information.

For example, in the appeal definition of the Moscow city court from 2016 judicial chamber on civil cases agreed with the decision of the trial court on recovery of monetary compensation, expenses on the state duty payment for applying to the court, expenses on notarization of the protocol inspection of the site from joint-stock company “Publishing house “Komsomolskaya Pravda”” and from the author of the article in favor of the famous Russian actor S.V. Bezrukov with regard to dissemination of pho-

tos and information about his private life on the Internet website of "Komsomolskaya Pravda" without his consent (Apelliatsionnoe opredelenie Moskovskogo gorodskogo suda, 2016).

Collection or dissemination of information about a person's private life in cases when such information has become publicly available or has been made public by him/herself or at his/her will cannot entail criminal liability and compensation for moral damage.

It is important to note that dissemination of false information on the Internet in relation to public persons can be made in the interests of third parties. For example, the Internet often contains information of an unauthorized advertising nature, aimed at promoting non-traditional methods of treatment of various diseases, weight loss programmes, and "healing" by witches and sorceresses. Such information can adversely affect the population's public health and behaviour, undermines the public officials' and celebrities' reputation and can be qualified under Article 128.1 of the Criminal Code of the Russian Federation "Slander". It has been repeatedly confirmed by the researches that dissemination of information about the celebrity's disease leads to an increase in seeking for examination for similar diseases by the population. Information about Angelina Jolie's positive testing for genetic predisposition to breast cancer contributed to a significant increase in genetic testing of women without a prior diagnosis of breast cancer or ovarian cancer in the United States (Liede et al., 2018). There are also examples of the negative impact of the celebrities' opinions on the population's health. Famous American TV presenter Jenny McCarthy publicly expressed her opinion about the dangers of vaccination for human health. This increased the number of refusals from vaccination among the population and attracted significant public attention to the control of vaccine safety in the United States (Hoffman et al., 2017).

Dissemination of false information about public persons on the Internet should include fictitious interviews of both these persons and people close to them. For example, Liudmila Putina's fictional interview with the influential German newspaper Die Welt (Newspaper

Die Welt, 2019) was aimed at undermining the democratic foundations of the Russian state and the authority of the public power.

Some celebrities themselves ask the virtual media to write false information about them in order to advertise and attract attention to their personality, which is not illegal. More recently, the Internet discussed the marriage of Prokhor Shaliapin, a singer, to a wealthy business lady. However, later the singer admitted that their marriage and all public statements were a business agreement and in fact the lady is not a millionaire, but a manager in a real estate company (Pelekhatskii, 2019). It was for the sake of promoting the brand of her company and his personality that the whole story was made up.

Disclosure of public persons' special personal data on the Internet by virtual media is usually carried out in order to attract the readers' attention, to increase the rating of views of the publication, and to develop their own business.

E.V. Talapina focuses on the need to create a mechanism of personal data protection in information networks, the mechanism being effective and clear for the citizens. Whereas formerly it was necessary to publish a refutation in these media in order to refute unreliable information, nowadays it is not enough. Information is copied and spread on the Internet very quickly, thus, it is sometimes difficult to find the primary source of information. The scholar sees the solution in wide application of the right to be forgotten on the Internet by the Russian citizens (Talapina, 2018).

For the Russian citizens the right to be forgotten on the Internet has been valid from January 1, 2016. Operators of Internet search engines are obliged to stop providing the links to information about the users upon their corresponding application. The applicant's claim should be considered and a decision on it should be made within ten working days of the receipt of such application.

The search engine operator is obliged to consign the applicant's personal data to oblivion, if the information on the Internet is spread in violation of the law, unreliable or irrelevant. The term of information relevance recognition

is not specified in the law, which is a legal uncertainty. In 1996, the Supreme court of Argentina ruled that personal data collected more than 10 years ago are obsolete, and from 2000, in accordance with Article 26 of the law "On personal data", this period is reduced to 5 years (Proteccion de los datos personales, 2000).

It is interesting to note that in Europe in the course of the 2014-2017 period, 41,000 famous people applied to Google for the personal data oblivion (Frolov, 2019). There is no such statistics regarding Russian celebrities in the public domain in Russia. However, only for the period from January 1, 2016 to March 25, 2016, the Yandex search engine received more than 3,600 applications from 1,348 people demanding to delete their personal information, of which only 27% were satisfied, whereas 73% were refused. As stated by the representatives of search engines, they often refuse such claims of the Russian citizens because of the inability to verify the unreliability of information, to assess its relevance, as well as because of prevalence of public interest over private one. For effective realization of the citizens' right to be forgotten, I.B. Chagin and A.V. Iurkovskii suggests assigning responsibility on the site owners for seven days after the request to provide the search engine owners with the proof that the information spread about the applicant complies with the legislation of the Russian Federation, is reliable and relevant, otherwise it will be forgotten (Chagin, Yurkovsky, 2018).

Judicial practice on implementation of the "right to be forgotten" in relation to false information about public persons in Russia is just beginning to form. One of the first court decisions on the oblivion of inaccurate information was made by the Mytishchi city court of the Moscow oblast in 2017 on a claim of Elena Skrynnik, a public official, formerly the Minister of agriculture of Mytishchi. In her statement of claim, she demanded to satisfy her request to remove false information, discrediting her business and professional reputation, from the Yandex search engine. Having applied to the search engine, she was refused in satisfaction of her claim and, consequently, had to apply to court which subsequently satisfied it (Loginova, 2018). This fact proves that the mechanism

of protection of the public persons' rights on the Internet is insufficiently worked out by the legislator.

The arbitration court of St. Petersburg and the Leningrad oblast in its decision of November 16, 2018 declared the information, posted by unidentified persons on the Internet, inaccurate and discrediting the business reputation of VTB Bank employees, including A.L. Kostin, its President and Chairman of the Board of VTB Bank (Sudebnoe reshenie Arbitrazhnogo suda, 2018). The information spread stated his intimate relationship with the Russian journalist Nailia Asker-zade, the act of presenting her an expensive real estate in the Central district of Moscow at the expense of the Bank, the information indicating unethical behavior in the applicant's public life, his and his employees' unfair industrial, economic and entrepreneurial activities. The court sided with the applicant, the bases being the fact that such information forms the Bank partners' and customers' misconception about the applicant's unfair business activities and that of impossibility to confirm the illegal actions of A.L. Kostin and his employees by judicial decisions, administrative and internal acts of the organization due to their absence. Therefore, the information spread was regarded as untrue.

Subsequently, on the basis of this court decision, the Federal service for supervision of communications, information technology and mass communications blocked about a thousand links to the sites mentioning VTB President Andrei Kostin and journalist Nailia Asker-zade. However, the court decision indicated the need for such information oblivion on 14 sites and 21 Internet pages, which has caused a lot of discussion about the legality of blocking other Internet sources. We believe that realization of the right to be forgotten in Internet sources, which are not specified in the court decision, is the authorized bodies' legitimate action aimed at qualitative restriction of the circulation of the information on the Internet, the information being recognized by the court as untrue, discrediting the applicant's honor, dignity, and business reputation. Given the high speed of replication and spread of information on the Internet, the claim for the information

to be forgotten, which is recognized by the court as inadmissible for being spread on each particular Internet resource, a court decision only is not appropriate. It increases the workload of the court and the wide spread of prohibited information. This is confirmed by the fourth court decision of the Arbitration court of St. Petersburg and the Leningrad oblast dated March 6, 2019 on the claim of VTB Bank on the need to ban 68 more Internet resources containing information previously recognized by the court as subject to be forgotten, but not executed due to its mass replication (Sudebnoe reshenie Arbitrazhnogo suda, 2019). We argue that the procedure for prohibiting the spread of information should be simplified and exclude repeated claims to the court on the recognition of the same information as untrue.

One should agree with A.A. Sirotskii who argues that ensuring information security is technically difficult in itself. One of the essential problems is to establish a link between the technical side of information security, providing the individual's economic, legal and information security under modern conditions. He concludes that each component of personal data should be considered in terms of its priority and status, the priority determining the degree of significance of specific data and the

status determining its scope. Depending on the priority and status, certain components of personal data or their combinations have one or another effect, expressed in certain economic and legal consequences that may occur when used (Sirotskii, 2013).

### Conclusion

The considered examples result in the conclusion about three types of violations in the field of public persons' personal data protection in information networks:

1. Misappropriation of personal data, and namely, illegal use of the name or the image of a public person for commercial or other purposes;
2. Unauthorized invasion of public persons' business sphere or privacy;
3. Dissemination of deliberately false information about public persons in social networks and other electronic information resources.

Thus, it can be stated that the public figures' personal data protection on the Internet is still in its formation stage. Yet, they have the right to control the amount of information about their personal life, available to an indefinite circle of persons, and its infringement should be subject to legal responsibility.

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## Конституционная защита персональных данных публичных лиц в сети интернет

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**Аннотация.** В представленной статье рассмотрена проблема конституционной защиты персональных данных публичных лиц в сети интернет. Авторы отмечают, что не всегда использование интернета направлено на достижение законных целей, в некоторых случаях это приводит к нарушению личных прав человека. Чаще всего в информационной сети интернет нарушается право на защиту персональных данных публичных должностных лиц и знаменитостей. Рассмотренные в статье примеры незаконного использования, распространения персональных данных публичных лиц в сети интернет позволили прийти к выводу о существовании трех видов правонарушений в области защиты персональных данных публичных лиц в информационных сетях. По итогам исследования авторы установили, что защита персональных данных публичных лиц в сети интернет находится пока в стадии своего формирования.

**Ключевые слова:** персональные данные, данные публичных лиц в сети интернет, личная неприкосновенность, охрана прав.

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