

Promoting, Shaping  
and Upholding Internet  
Freedoms Project

# ANALYSIS OF THE SITUATION CONCERNING THE RIGHT TO PERSONAL DATA PROTECTION

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МЕТАМОРФОЗИС   
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# INTRODUCTION

This analysis aims to provide an overview of the situations with the legal frameworks related to media in the Republic of Macedonia in the past and current period as well. It is developed as part of the activities of the Promoting, Shaping and Upholding Internet Freedoms Project implemented by Foundation for Internet and Society, Metamorphosis, and supported by the Association for Progressive Communications (APC).

Main objectives of the Promoting, Shaping and Upholding Internet Freedoms Project are: promoting knowledge and understanding of situation related to the protection of the fundamental human rights online in the Republic of Macedonia, CSO and media capacity building, facilitating the process of sharing knowledge and good practices among citizens, CSOs and media.

The content of the paper is the sole responsibility of the authors and in no way reflects the views of the Foundation for Internet and Society, Metamorphosis, and Association for Progressive Communications (APC).

The development of information technology and the increased use of the Internet put the issues of individual privacy and protection of privacy on the part of the state and society in the focus of the debate. The need for the legal regulation of the protection of privacy as one of the fundamental human rights emanates from the fact that privacy becomes a collective value conditioned by the technology development that inevitably imposes all individuals to have the opportunity for a similar degree of privacy. To be able to provide a minimum degree of protection, cultural, moral, and customary values of a society must be taken into account upon creation of the legal framework. Privacy's relativity can be considered from two aspects. The first one opens the question of whether privacy has the same value for all people or its value depends on the cultural differences, while the second aspect refers to whether specific aspects of life are private by default or not.

When it comes to the clash of the right to privacy and right to personal data protection on the one hand, and the right to freedom of expression and informing on the other, establishing that it is a common sight will not be far from the truth. It happens among individuals, and even more often among individuals and media. The state has the right and duty to limit the right of media in cases of extreme influence over the right to privacy and personal data protection. Rights ought to be reasonably limited, and values ought to be taken into consideration at the same time. Then, an individual should surmount certain obstacles that cannot be reasonably overcome. Namely, individuals can, to a certain degree, be called to sacrifice their rights for those of the common public interest.

In the contemporary world, the media, including the Internet media, have become extremely powerful, and gaining the status of a seventh force and fourth branch of government hasn't happened by chance. By having this kind of power, the media often intrude upon people's privacy. When media intrude upon privacy, it can be said that the right to freedom of expression and the right to privacy collide. This also happens when the work of media as a whole is not in harmony with the privacy protection principles. The personal data protection is not set just as a right that protects the privacy of a person, but it also mostly refers to the protection of privacy when one is being informed. Though it's a matter of a relatively new concept in the human rights area,

privacy protection is under significant influence of the global trends and the exceptionally rapid information technology development. These reasons impose the need for harmonizing the media with the regulations and case law of this area.

According to the national legal framework, the Internet media are not a separate type of media; therefore, there isn't a separate type of risk to human rights and freedoms. The Internet plays an essential role in the improvement of access to information and the general dissemination of information as well. Concurrently, the risk of disseminating harmful content and communicating online for exercising human rights and freedoms, particularly the rights to the respect of privacy, is higher than the one posed by the mainstream media.



# INTERNATIONAL LEGAL FRAMEWORK FOR PRIVACY PROTECTION





# INTERNATIONAL LEGAL FRAMEWORK FOR PRIVACY PROTECTION

## EU CHARTER OF FUNDAMENTAL RIGHTS

Article 8 of the EU Charter of Fundamental Rights<sup>1</sup> refers to personal data protection and is a sort of an addition to the European Convention on Human Rights by covering the right to privacy more broadly.

Pursuant to the EU Charter of Fundamental Rights: “Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.”

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Unlike the European Convention on Human Rights, the Charter stipulates the principles of personal data protection that aim to establish conditions for fair and lawful processing of personal data. The principles of personal data protection entail fair and lawful collection and processing; purpose limitation; necessity; accuracy of personal data and upgrade thereof, and storage limitation. An article set so, transposed into the national personal data protection legislation, obligates the ones responsible for complying with and applying the values for the protection of this category of data while citizens are granted the right to personal data protection, should this right is abused. Finally, it provides oversight by independent authorities for personal data protection.

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1 [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

With regard to the right to freedom of expression, Article 11 stipulates that “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected.”

### **DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA AND ON THE FREE MOVEMENT OF SUCH DATA**

Directive 95/46/EC<sup>2</sup> is a referential text that regulates the personal data protection Europe-wide and sets the regulatory framework that aims at creating a balance between the high level of protection of individual’s privacy and the free movement of such data. To achieve this balance, the Directive sets strict limitations to the collection and use of collected data and prescribes that each EU member state ought to form an independent authority in charge of oversight over the processing of personal data.

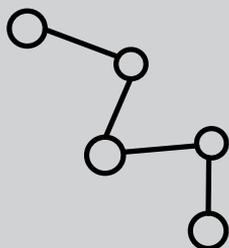
Generally, the Directive refers to personal data that is processed automatically, but also to data that is collected as a hard copy. Directive’s provisions do not refer to the processing of personal data by individuals, personal data collected based on various activities in the home as well as activities related to public safety.

By being the key regulation in this area, the Directive specifies the principles of personal data protection that have to be incorporated in every national personal data protection law.

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2 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>

# ANALYSIS OF THE SITUATION IN THE REPUBLIC OF MACEDONIA





# ANALYSIS OF THE SITUATION IN THE REPUBLIC OF MACEDONIA

The general framework for the development of personal data protection principles as a fundamental right of the man and of the citizen is defined by the following provisions of the Constitution of the Republic of Macedonia<sup>3</sup>. Article 18 stipulates - "The security and confidentiality of personal information are guaranteed. Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing."

In addition, Article 25 prescribes that "Each citizen is guaranteed the respect and protection of the privacy of his/her personal and family life and of his/her dignity and repute."

The Law on Personal Data Protection<sup>4</sup>, which is the key legislation in the area, was enacted in 2005. Part of the legal framework on personal data protection in the Republic of Macedonia also form the Law on Ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>5</sup>, as well as the Law on Ratification of the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>6</sup>, regarding supervisory authorities and transborder data flows.

The enactment of the Law established a new concept in the Republic of Macedonia, which entails including the right to privacy in our legal system, protection of the right to privacy of citizens, specifically the protection of their personal data. With the Law on Personal Data Protection, privacy becomes a component of the new society and is not just an individual need. Citizens have been granted the power to control and influence the "lords of

3 <https://www.sobranie.mk/ustav-na-rm.nspix>

4 [https://dzlp.mk/sites/default/files/pdf/Zakon\\_za\\_zastita\\_na\\_licnite\\_podatoci\\_2005.pdf](https://dzlp.mk/sites/default/files/pdf/Zakon_za_zastita_na_licnite_podatoci_2005.pdf)

5 [https://dzlp.mk/sites/default/files/pdf/Zakon\\_za\\_ratifikacija\\_na\\_Konvencijata\\_108.pdf](https://dzlp.mk/sites/default/files/pdf/Zakon_za_ratifikacija_na_Konvencijata_108.pdf)

6 [https://dzlp.mk/sites/default/files/pdf/Dopolnitelen\\_protokol\\_Konvencija\\_108.pdf](https://dzlp.mk/sites/default/files/pdf/Dopolnitelen_protokol_Konvencija_108.pdf)

information” by determining which data of theirs will be public, and which will not. The establishing of a legal and institutional framework on personal data protection is a critical moment in the history of human rights protection in the Republic of Macedonia, and an enormous challenge as well. The basic principles prescribed by the Law ought to be easily applicable in practice, regardless if it’s a matter of the processing of personal data by controllers or developing of rules and policies for work that are closely linked to the protection of citizens’ privacy.

Despite the existence of a complex legal regulation on personal data protection, in all domestic and foreign regulations on personal data, the public informing falls under the category of exceptions. Due to that fact, the manner of lawfully regulating the public informing is of immense importance for a complete and successful implementation of the legal regulations guaranteeing the personal data protection.

The freedom of public expression of thought is one of the fundamental freedoms of the citizens of the Republic of Macedonia. The freedom to express a stance or opinion on a specific issue entails the possibility for such stance or opinion to be heard, read or seen via the means of public informing, but also directly if it’s intended for someone personally. This freedom, however, also allows the one hearing the spoken thought (stance) to disagree with it, and even to demand rectification or disproof of what’s been said. Meaning that the opinion ought not to derogate or insult some of the freedoms or rights of others, and due attention must be paid to this.

The basic framework that guarantees the public informing in the Republic of Macedonia is provided by the supreme law - the Constitution. Article 16 of the Constitution of the Republic of Macedonia reads:

“The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right to reply via the mass media is guaranteed. The right to a correction in the mass media

is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited.”

When it comes to creating a balance between the right to privacy and the right to freedom of expression, the Law on Personal Data Protection (Article 4-a) includes exceptions, and one of them covers the public interest as a qualifier during the assessment of the violation of the right to personal data protection:

*“The provisions of this Law shall not be applied to processing of personal data carried out for the purpose of professional journalism, only in the case when the public interest prevails over the private interest of the subject of personal data.”*

This article specifies the exceptions regarding the application of the provisions of the Law on Personal Data Protection as per professional journalism even further. As it is laid down, this article aims to provide greater privacy protection of personal data subjects when their data is processed for professional journalism.

This provision’s main intention is obtaining prior consent by the subject when his/her personal data is processed for professional journalism purposes. Worded like this, it shows that the “privileged” position of journalists doesn’t mean that they are not supposed to comply with the personal data protection principles, especially when we have Article 10 of the European Convention on Human Rights which regulates the freedom of expression and limitations to that freedom and the Code of Journalists whose Article 7 reads that the journalist shall respect the privacy of every person, except in cases when that is on the contrary with the public interest. Further, this provision reads that the journalist is obliged to respect the personal pain and grief. The idea is to assess whether it is a matter of public interest or a person’s private interest.



# ASSESSMENTS ON THE SITUATION IN EU'S REPORTS





# ASSESSMENTS ON THE SITUATION IN EU'S REPORTS

## EU'S COUNTRY REPORT

EU's 2016 country report<sup>7</sup> highlights that the Directorate for Personal Data Protection aimed at strengthening its capacity through training, recruitment of new permanent staff and an increased budget. With respect to inspections, some 394 were carried out in both the public and private sectors. The Directorate received 393 complaints, out of which most concerning are the alleged abuse of personal data on the Internet, i.e., on social networks. It is also stated that further efforts are needed to ensure full harmonisation of legislation with the law on personal data protection, and also that greater use should be made of available administrative penalties. Up until the moment of publishing the report, the Directorate has not taken any action following the scandal over illegal interception of citizens' communications and also did not react to complaints submitted by NGO members after their personal data was published in several pro-government media. Additional efforts are still needed as regards the Directorate's political independence and proactive approach. The new law on privacy needs to be aligned with the recommendations of the Venice Commission.

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<sup>7</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf)

## **RECOMMENDATIONS OF THE SENIOR EXPERTS' GROUP ON SYSTEMIC RULE OF LAW ISSUES RELATING TO THE COMMUNICATIONS INTERCEPTION - 2015 AND 2017**

The Recommendations of the Senior Experts' Group of 2015<sup>8</sup> state that the Directorate appears generally to function well and with a high level of professionalism. It has received substantial international support. However, it is worrying that a Directorate for data protection has not been more actively engaged in investigating the apparent lack of data protection, the potential improper and uncontrolled registration of telephone numbers as well as invasion of the right to privacy through potential unauthorised surveillance. The group was informed that the Directorate believed that it could not react as long as criminal investigations are being conducted, and that it preferred to stay idle in order not to be criticised for choosing a side in the current situation. The Directorate also referred to the fact that it has not received any complaints.

The group understands the sensitivity of the matter, however, an independent institution cannot be accused of being used politically as long as it pursues matters falling within its mandate (and mission statement) and does so without being selective. The attitude of staying idle is, as such, a statement of fear and subject to criticism as the Directorate then shows that risks of intimidation from third parties govern the decision-making process within an independent institution.

The group further noted that in fact, the Directorate is not excluded from investigating violations of the right to privacy and data protection if criminal investigations are conducted. The Public Prosecutor confirmed this during the meetings with the group. The national legislation does not seem to prevent the Directorate from carrying out investigations in relation to the revealed intercepted recordings.

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8 [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf)

Moreover, in the Recommendations of 2017<sup>9</sup>, the Group states that with the inspections conducted by the Directorate for Personal Data Protection in the UBK, the Directorate for Personal Data Protection is the only independent body that has taken tangible actions to correct the abuse of UBK in terms of data protection. The Directorate conducted inspections, gave specific measures, and conducted control investigation to ensure that measures are being implemented.

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9 [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14\\_seg\\_report\\_on\\_systemic\\_rol\\_issues\\_for\\_publication.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf)



# GENERAL DATA PROTECTION REGULATION - NEW CHALLENGES FOR THE REFORM IN THE NATIONAL LEGISLATION





# GENERAL DATA PROTECTION REGULATION - NEW CHALLENGES FOR THE REFORM IN THE NATIONAL LEGISLATION

The ever-increasing electronic processing of personal data, the expansion of the use of the Internet as well as the global business development have imposed the need for modernizing and broadening the personal data protection regulation on European soil. The General Data Protection Regulation was adopted<sup>10</sup> on 27 April 2016, which initiated the reforms in the area of personal data protection, and it has a two-year transitional period within the EU; therefore its implementation will begin on 25 May 2018. In order for the regulation's provisions to be transposed in the national legislation, a new law on personal data protection is expected, and its bill<sup>11</sup> has already been drafted.

As regards the processing of personal data and freedom of expression and informing, the General Data Protection Regulation, and the bill on personal data protection prescribe that the processing of data for journalistic purposes or academic, artistic or literary expression, specific provisions may be excluded, should that be necessary for balancing the right to personal data protection and the freedom of expression and informing. This applies particularly to the processing of personal data in the audiovisual area and the news archives, and in press libraries as well. The provisions of the law shall not be applied to processing of personal data carried out for the purpose of professional journalism, only in the case when the public interest prevails over the private interest of the subject of personal data.

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When creating a balance between the right to personal data protection and the freedom of expression and informing, the following criteria are taken into account:

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10 [http://ec.europa.eu/justice/data-protection/reform/files/regulation\\_oj\\_en.pdf](http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf)

11 [https://dzlp.mk/sites/default/files/u4/predlog\\_zakon\\_zashtita\\_na\\_lichnite\\_podatoci.pdf](https://dzlp.mk/sites/default/files/u4/predlog_zakon_zashtita_na_lichnite_podatoci.pdf)

- nature of personal data
- circumstances under which personal data has been obtained
- the influence of the published information over the discussion on the public interest
- the popularity of the concerned individual and what's the subject of the information
- prior behavior of the concerned individual
- prior consent of the concerned individual
- content, form, and ramifications arising from publishing the information

Apart from this provision, the right to be forgotten, which appears as a proposed legislative provision for the first time, is significant for the freedom of expression online. The right to be forgotten is a concept that has originally stemmed from individuals' requests for limiting further processing of their personal data online and preventing constant or periodic stigmatization as a result of their past activities by erasing their personal data from all browsers. This concept still spurs many debates, especially in cases of correlation with the right to freedom of expression and the right to privacy. The main question here is whether the existence of the right to be forgotten online will reduce the quality of using the Internet and whether the exercise of this right will be considered censorship by going through the browsing history.

In an attempt to comply with the right to be forgotten and prevent personal data from appearing online, thus have a negative influence on users, Article 17 of the General Data Protection Regulation states that the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay on any ground.

This provision is transposed into the personal data protection law in full, and it is also said that "when the controller has published personal data publicly, he or she is obligated to erase the personal data by taking the available technology and implementation costs into account, the controller takes

sensible steps, including technical measures, to notify other controllers who process personal data that the personal data subject has requested the erasure of all links or copies or reproductions of personal data on the part of those controllers.”



# ESTABLISHING VIOLATIONS OF THE RIGHT TO PERSONAL DATA PROTECTION





# ESTABLISHING VIOLATIONS OF THE RIGHT TO PERSONAL DATA PROTECTION

Pursuant to the Law on Personal Data Protection, the personal data subject may exercise his or her rights for establishing violations of the right to privacy with the assistance of the following mechanisms:

- Submitting a request to the Directorate for Personal Data Protection (Article 18 of the Law on Personal Data Protection) - in this case, after the subject has submitted a request, the Directorate must act in the line of duty and consider the lawfulness regarding the publishing of personal data while taking into account all legal grounds.
- If the Directorate has established that the subject's rights had been violated according to the Law on Personal Data Protection, then the personal data subject has the right to compensation of suffered damage caused by the processing of personal data or any other activity conducted contrary to the provisions of this law. This right is exercised by filing a damage compensation lawsuit to the competent court (Article 21).
- The Directorate may initiate an infringement proceeding independently against the data controller if the personal data do not emanate from a personal data collection.
- Filing a lawsuit for the responsibility of damage compensation to the competent court - the court must rule upon the case and consider the lawfulness of the publishing of personal data by taking any possible legal ground into account. The plaintiff may withdraw the lawsuit at any time.



# PRACTICE OF THE DIRECTORATE FOR PERSONAL DATA PROTECTION





# ПРАКСА НА ДИРЕКЦИЈАТА ЗА ЗАШТИТА НА ЛИЧНИТЕ ПОДАТОЦИ

In itself, the publishing of personal data in media does not violate the provisions of the Law on Personal Data Protection. According to the abovesaid conditions, the publishing of personal data may violate personal data protection if the data has been obtained/collected from personal data collections illegally. If the media outlet publishes personal data from or is intended for specific personal data collection, without any legal grounds (i.e., public interest) or consent of the concerned individual, then that may be considered a violation of the Law on Personal Data Protection. If the media outlet publishes personal data from or is intended for specific personal data collection, without any legal grounds (i.e., public interest) or consent of the concerned individual, then that may be considered a violation of the Law on Personal Data Protection. If personal data is published, which is only a confirmation of facts and is not personal data from personal data collection, then that is not considered a violation of the provisions of the Law on Personal Data Protection. Still, this doesn't mean that the damaged party has no right to judicial protection (civil responsibility).

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When media publish data - legal grounds in the consent of the individual, grounds in any law are essential (for example in the Law on Free Access to Public Information), or the prevailing public interest - the freedom of expression prevails the right to privacy and personal data protection.

***SPECIFIC CASES FROM THE ACTING OF THE DIRECTORATE FOR PERSONAL DATA PROTECTION FOLLOWING REQUESTS FOR ESTABLISHING A VIOLATION OF THE RIGHT TO PRIVACY AND THE ACTING IN THE LINE OF DUTY***

- In 2011, the Directorate for Personal Data Protection established a violation of Article 23, Paragraphs 1 and 3 of the Law on Personal Data Protection - a document clearly showing the name, surname, address and unique master citizen number of a person had been shown on TV news. The same document had also been published on TV station's official website. Although the person was promised that the document would be removed, still the document remained uploaded on the TV station's website. The TV station hasn't used the appropriate technical measures to ensure confidentiality and personal data protection; therefore, it has violated the law by allowing unauthorized disclosure of personal data.
- The Directorate for Personal Data Protection has also acted upon a request concerning a video material, published on TV news and a YouTube channel, showing the person's body and face. The video material had been recorded by the Ministry of Interior during a search of private premises. Requester's building, apartment, furniture, face, and body were in the recording. The recorded person-requester had been detained the day after the search. The Directorate for Personal Data Protection has concluded that the procedure as per the request ought to be stopped because the right to personal data protection had not been violated. According to the inspector, there is no violation because the person is unidentifiable based on the camera recording.
- In 2013, the Directorate for Personal Data Protection established a violation of the right to personal data protection in the following case: A newspaper's website had featured an article containing derogative comments, personal insults, and lies concerning an individual and their family. The Directorate for Personal Data Protection decided that the media outlet is obligated not to process and publish personal data, not to process data unfairly or to conduct voluminous processing of data while taking into account

the purposes for which the personal data had been collected and processed in the first place. The media outlet had been supposed to apply adequate technical and organizational measures in order to ensure the confidentiality and safety of individuals' personal data. In this case, the media outlet had to anonymize the data.

- In 2016, the Directorate for Personal Data Protection received multiple requests for establishing a violation of the right to personal data protection. One of them pertains to three Internet portals that had published a photo of monthly salary calculations, accompanied by details on work experience, pension and disability insurance, health insurance, additional health insurance contributions, employment contributions, Economic Chamber and collective insurance, and another photo containing defamatory allegations had been added to the article. The initiative for establishing violations of the right to personal data protection has been rejected. Owing to the fact that the data pertained to a director of a public enterprise founded by a municipality, the inspector has decided that in this case, the public interest regarding the publication of the salary calculation prevails over the individual's interest.
- NGO employees have also submitted requests against several Internet portals and TV stations because they had published data on the salaries of their managers. Additionally, they have also requested from the Directorate for Personal Data Protection to conduct an extraordinary inspection in the Public Revenue Office because, as a competent authority, it possesses all relevant data on requesters' personal income. The Directorate for Personal Data Protection has decided that the media in question have to remove the articles due to the fact that they contain personal data of managers/directors who do not hold a public office, and because there is no other public interest behind the publication of such data. Though some media have accused the Directorate for Personal Data Protection of censorship, we deem that the decision is justifiable and proportional to the objective.
- There has been another case of a violation by a website that had published false data on a private company (the owner is Albanian). Company's owner had sent a letter before action to the website

accompanied by request for a public apology and withdrawal of the offensive content and defamation. As a result, the website only published company's request, without any apology whatsoever, and by doing so, it also published data on the company's owner (address, unique master citizen number). The Directorate for Personal Data Protection ruled a violation of the right to personal data protection since data was not processed in keeping with the law.

- A website published a photo of a child (a minor) on its Facebook profile, which was unbeknownst to the child's parent who hadn't given their consent for such action. By doing so, the website violated the right to personal data protection and the Directorate for Personal Data Protection elaborated that processing (publishing) personal data (photos) on websites and Facebook profiles without the knowledge and consent of the personal data subject or their parents, i.e., guardians, is prohibited.
- The Directorate for Personal Data Protection's indications to a daily newspaper (to the editor in chief) relate to a photo of the mayor of Skopje published on newspaper's cover. The photo had been taken at a beach, during the mayor's summer vacation. The Directorate pointed out to the editor in chief that in this case, the public interest for publishing the photo does not prevail over the mayor's private interest, and concurrently, the mayor's had not given consent for publishing the photo. The editor in chief declared the indication a severe attack to the freedom of expression and censorship which is prohibited by the Constitution and also meddling in the newspaper's editorial policy.

## **CASE LAW IN THE AREA OF PERSONAL DATA PROTECTION**

The case law in the area of personal data protection and freedom of expression in the Republic of Macedonia is rather weak, owing to the fact that the number of court cases is low. Hitherto, the Directorate for Personal Data Protection has been involved in three court cases related to violations of the right to privacy in terms of publishing of personal data of persons the media report on. According to the Directorate for Personal Data Protection, the courts generally follow its practice and stances from the aspect of judgments' rationale. This can be deemed positive in terms of recognizing the expertise of the Directorate as a competent authority for implementing the Law on Personal Data Protection, but also a red flag, in terms of insufficient understanding of the area of personal data protection. Specific are some courts' rulings based on the presiding judge's subjective perception and understanding without having a complete understanding of the essence of the processing of personal data.







# CONCLUSIONS AND RECOMMENDATIONS

On the one hand, the clash between the right to privacy and the right to personal data protection, and the right to freedom of expression and informing on the other occurs quite often. The state has the right and duty to limit the right of media in cases of extreme influence over the right to privacy and personal data protection. The personal data protection is not set just as a right that protects the privacy of a person, but it also mostly refers to the protection of privacy when one is being informed. According to the national legal framework, the Internet media are not a separate type of media; therefore, there isn't a separate type of risk to human rights and freedoms.

For the advancement of the situation, the focus ought to be laid on:

- Complete harmonization of the Law on Personal Data Protection with the General Data Protection Regulation
- Legal regulation of the Internet media's status, especially when it comes to the definition of responsibilities before the laws governing personal data protection and the media work in general
- Introducing provisions for personal data protection on the part of media in the Law on Media
- Support to media to create internal procedures for data protection of the individuals that are subject of the reporting, which will also be a tool with an internal focus that explains the manner of media's compliance with the personal data protection principles and will be the only means of establishing responsibility
- Detecting the main obstacles regarding the establishment of case law in the area of personal data protection
- Advancing the cooperation between the Directorate for Personal Data Protection and NGOs operating in the area of human rights protection

- Directed informative campaigns for raising awareness of editors, journalists, and other media workers
- Directed informative campaigns for raising awareness of citizens about the types of violations of the right to personal data protection as well as the mechanisms for the protection of this right



