



EUROPE

Private data excluded from journalistic investigation

● Ricardo Gutiérrez

Journalists know what the score is: appearances can be deceptive. The massive inter-connectedness of citizens through social media and the sharing of data on multiple digital platforms give the impression of an open space which is crystalline and porous. The new editorial fields that journalists specialised in processing data are exploring suggest a more transparent and more democratic society.

It's a sham! In the ultra-connected world of the 21st century, access to reliable sources and the checking of data is a daily challenge for journalists trying to distance themselves from the paths trodden by mass communication. Noise dominates the networks. Reliable, relevant information in the public interest is the needle in the haystack.

In the context of this digital jungle governments, under the pretext of protecting citizen's privacy in the face of mass surveillance, are increasing the number of laws and regulations which hinder journalistic investigation and put a manacle on press freedom. Sacrificial victims of 'Big Brother' ideology, whistleblowers (Assange, Snowden) are now criminalised and reduced to exile.

The European Federation of Journalists in the name of the 320 000 professionals it represents has waged a thankless, bitter war in the past few months. A struggle for influence passed on to Brussels, amid general indifference, even though it involves fundamental issues for journalists.

The subject of the dispute is the European bill to regulate personal data protection which will be directly adapted to the internal law of each European Union country. Its initial version suited us perfectly – it exempted article 80 from the regulations which allow journalists to use protected personal data.

It is a question of healthy balance between individual and collective interests. Guaranteeing citizens the protection of their private information is good; allowing journalists to work, if necessary, on this individual information in the public interest is even better.

The European legislator is not leaning this way. Due to some obscure state policy, not disclosed by the tens of European members of parliament we have (peacefully) besieged, the exception accorded to journalists has disappeared into thin air. Our

hundreds of emails, our heated meetings, the rallying of publishers to the cause, has resulted in nothing...

On 14 March 2014, in spite of our ceaseless campaign, the European parliament validated the proposed bill that will now be submitted to the Council of the European Union. “*The citizen is finally in control of his personal data*” commented a European MP, much less effusive on the blow dealt to the freedom of the press.

For us the battle is not over. The journalistic exemption, denied by Europe, could very well be integrated into the internal laws of member states. The United Kingdom has just led the way by bringing out its Data Protection Act that includes provisions to unshackle journalists. With all due respect to the ‘citizen protectors’ of the European parliament...

Translation from the French by Melanie Brumberg



FRANCE

Privacy of the powerful versus public interest – France swings between the two ● Catherine Vincent

14 March 2014, vindication for Nicolas Sarkozy when the Paris High Court ordered the news website Atlantico to withdraw from their site extracts of secret recordings made in 2011 by Patrick Buisson during meetings with him when he was President of the Republic. The day after these documents were published in the press, the Sarkozy-Brunis counter-attacked and applied for a summary judgement on the grounds of invasion of privacy. The High Court in Paris decided in their favour, forcing Atlantico to delete the recordings where the voices of the couple could be identified.

Three days earlier, the same case: Jean-Michel Goudart, former media advisor to Nicolas Sarkozy, had applied for a summary judgement in the same Paris court to stop any further publication about him. Again the court ruled in his favour, deciding that “*M.Buisson recorded comments that are personal opinions, issued in a private conversation at the end of a working meeting between two people who knew and trusted each other.*” The court held the recording to be unacceptable, regardless of the nature of the subject concerned, because it had been obtained secretly. In this case, the Paris court followed the same reasoning as had been applied in the Bettencourt affair: on 4 July 2013, the Versailles Court of Appeal ordered *Le Point* magazine and Mediapart website to withdraw pirated recordings made by Liliane Bettencourt’s butler from their sites, deciding that circulating them was a violation of the privacy of the billionaire Madame Bettencourt. After the injunction had been validated in the Court of Cassation on 2 July 2014, Mediapart denounced it as ‘censorship’ and threatened to take the case to the European Court of Human Rights.

In both these recent cases, the French courts decided in favour of the protection of privacy, rather than considering them as issues of freedom of expression and therefore part of the democratic debate. But this is not always the case. Interviewed by *Le Monde* in July 2013, Emmanuel Derieux, a law professor at the University of Paris II Assas and author of *Media Law* (LGDJ, 2010), explained that “*There are as many decisions applied in favour of freedom of expression as there for privacy. Depending on one’s point of view, it is interpreted as an infringement of one or the other.*”

● CENSORSHIP OR RESPECT FOR PRIVACY?

Apart from the judicial repercussions, these two cases highlight the thin line that the journalist has to tread when reporting on the private lives of public figures. This was further illustrated in the Hollande-Gayet affair and the *Closer* case at the beginning of 2014.

To recap: on 10 January 2014 the weekly gossip magazine *Closer* published an article of several pages, with accompanying photos, about “the President’s secret love” for the actress Julie Gayet. Sales of the magazine shot up (610 000 copies, double the normal sales). François Hollande (expressing himself in his own name and not as the president of the Republic) declared in a communication to Agence France Presse that he “*profoundly deplored*” the violation of his privacy to which he felt he had a right, “*like all citizens*”, and said that he was considering the possibility of taking legal action against the publication. In the end, he did not take *Closer* to court and on 27 March 2014 the magazine was forced to pay 15 000 euros in damages to Julie Gayet for infringement of her privacy including her image privacy rights. In the meantime, the affair had caused a media tidal wave, leading to numerous articles, comments in opinion columns and different points of view regarding the role and limitations of press freedom. There was also the perennial question – does a head of state have the right to privacy in these days of the internet and gossip press?

To discover that the president got on his scooter and, like a teenager, went to meet his girlfriend in secret may make you shrug your shoulders or smile but why should we care about this sort of trivial tittle-tattle? Do they tell us something about the way he governs? Or anything about his fiscal, economic or social policies and values? These are the questions that should be asked when deciding whether or not journalists have the right to report on the private lives of politicians.

Anne Muxel, sociologist at the Political Research Centre of *Sciences Po* [Institut d’études politiques de Paris] (Cevipof) feels that “*Analysing public figures on the basis of personal criteria could be relevant. Individuals are not completely split. The ‘self’ is not divided. But the right to scrutinise others, however legitimate it seems, can lead to abuses and simplistic conclusions. You cannot apply conclusions about a person’s private behaviour to their professional competency. It is the same as when we anthropomorphise: observing animal behaviour through the prism of our own behaviour can be useful but we cannot transfer one to the other. The fact that a man cannot decide between two women does not mean he cannot decide between two political choices.*”

One thing is certain: a person who is in the public eye can no longer expect to keep what goes on behind the scenes secret. The hyper-reactiveness of today’s communication tools, the way the media functions, the self-interest of political adversaries, our general inquisitiveness regarding the public versus the private, all the elements are there to make the line between the two more porous. Consequently, where are the limits? As far as political leaders are concerned, the response varies according to country and culture.

The Hollande-Gayet affair (called a ‘melodrama’ by the *New York Times*, while in France it was referred to as ‘vaudeville’) could not have happened on the other side

of the Atlantic without causing a major political crisis. As the writer Christian Salmon underlines, Barack Obama and his family embody ‘*with apparent authenticity*’, the ideal couple and the ideal family. “*We cannot imagine Obama cheating on Michele and this would be poorly received if it happened during his second term of office*” states the author of *La Cérémonie cannibale* (Fayard, 2013). He adds: “*Assuming he did, and this was made public, it would not have an effect on the voters from a moral standpoint, but rather on the credibility of the narrative that has been presented and in which the president has been instrumental.*”

● MUST A STATESMAN RENOUNCE HIS PRIVATE LIFE?

In France, due to the monarchist tradition and the legacy of the age of Enlightenment, things are seen differently. The head of state shows a public face to the voters but has the right to keep his private life out of sight. Under the Fifth Republic, General de Gaulle embodied this concept more than anybody and Georges Pompidou reinforced it with written texts: after the Markovic affair (when the actor Alain Delon’s bodyguard was found murdered in October 1968 and there was an attempt to implicate Claude, the president’s wife) as well as insistent press investigations into the state of his health, he added article 9 to the civil code guaranteeing everybody the “*right of respect for their private life*” and new articles to the penal procedural code punishing any violation of this right.

The first fault line in the wall built between public life and private life came from the power holders themselves. Valéry Giscard d’Estaing was the first to use his relationship as an electoral argument. Next came François Mitterrand who, once his double life had been revealed, actively stage-managed it. From then on, the gaps in the wall became gaping holes due to the conjunction of two elements: the presidency of Nicolas Sarkozy who pushed the stage management of his private life for electoral ends to its ultimate level; and the arrival of the Internet and continuous news which changed the nature of political communication.

“*Until this point, the head of state chose to communicate on such or such a point and communicated as he pleased. Today, he is in a permanent media bubble which overexposes the smallest act or gesture,*” continues Christian Salmon. And there is another element, he feels, that has changed the parameters: globalisation. “*With the development of global markets, European institutions and credit agencies, the traditional politician has, little by little, been deprived of attributes and powers. Hence the importance of acquiring a symbolic value and ‘performing’ for the media to embody a story in which all private and public elements connect. What would the Obama myth be without the image of his ideal family, Michelle and his two daughters?*”

Should we blame journalists for this permanent media coverage, or the politicians themselves? “*In actual fact, it is a system in which everybody participates. Including the general public who tweet, comment and influence equally the perception of the whole,*” continues Salmon. It is what he calls the ‘Truman Show’, from the American film by Peter Weir (1998) about the life of Truman Burbank who, unsuspectingly from birth,

is a star in a huge reality TV show. *“In this story there is only one fool, Truman, who thinks he is a real person in a real world when, in fact, everybody is acting and obliged to perform.”*

● THE TYRANNY OF TRANSPARENCY

Politicians today are experiencing what has already happened to movie stars, sportsmen and other public figures. They are symbolic representations onto which we project our desires and fantasies. In this context, how can they really hope to have a private life? And even more so when political candidates are the first to submit to this ‘celebritisation’, as seen currently. The reason the French have debated the Hollande-Gayet affair to such an extent is because it challenged the assertion the future president had made to Gala magazine in 2010 that *“Valerie is the woman of my life”*.

Anne Muxel feels that this affair has awoken a specific tension in France. The intense media coverage of the president’s private life has, amongst other consequences, led to *“lessening the very negative perception French citizens have felt towards the political elite”*. Although, she adds, this desire for proximity contrasts with the demand by these same citizens for a greater separation between those who govern and those who are governed. *“For French people, there has always been this idea of a sacred presidential function, of a head of state above the nation who must play an extraordinary role in relation to the ordinariness of the lives of the people. This monarchic view that we have of presidential power is at odds with the media coverage of their private lives.”* From her point of view, this characteristically French gap explains the recent debate about respecting statesmen’s privacy.

● IS SEXUALITY AN ISSUE OF PUBLIC INTEREST?

What is public interest? *“What it comes down to is not what is of interest to the public but what does the public, legitimately, have the right to know,”* explains Nicolas Hervieu, lawyer at the Centre for Research and Studies of Fundamental Rights (Credof). Easy to say, but how can one determine from the private acts of elected politicians what is likely to influence the way the electorate will vote? It is a question of context and is sometimes arbitrary. However, it seems that, even in France, a growing number of recent legal cases have given priority to freedom of expression for the press, even when it concerns the most intimate aspect of private life – sexual orientation. This was seen in the decision taken on 19 December 2014 in the Paris Court of Appeal.

The case opposed Octave Nitkowski, a student at *Sciences Po* and the Sorbonne, political blogger at Henin-Beaumont¹, and author of the book *‘Le Front National des Villes & le Front National des champs’* (Jacob Duvernet, 2013), against a high ranking member of the Front National (FN). Nitkowski had revealed that this politician had

¹ Commune of Pas-de-Calais (northern France), historically on the left and where the candidate for the Front National (extreme-right political party) won the local elections on 30 March 2014.

had a homosexual relationship. Because of his status *“at the forefront of politics”* the Court decided that the right to know took priority over the respect for privacy. His homosexuality and its possible influence on the politics of the FN, who had remained quiet during the vote on gay marriage in 2013, was judged to be relevant to the public interest debate.

Does this mean that a politician has to conceal his personal life during his term of office? For Emmanuel Pierrat, a lawyer in Paris specialising in publishing law, *“having nothing left to hide”* and *“making his life available to citizens”* is the price to pay for being a high level politician. *“Transparency is the corollary of democracy because it muzzles the conspiracy discourse. The private lives of politicians does concern voters and the people we sleep with can have an influence on the way we vote: sexuality is part of political life”*.

Less radical, the sociologist Anne Muxel does not go so far as to think that a statesman has to sacrifice their privacy. To her, the essentials are honesty and taking responsibility for one’s actions. *“There is now such a boldness and demand for honesty from citizens with regard to politicians that their transgressions cannot be without consequence, even when they are of a private nature. If one wishes to present oneself as honest, one has to rid oneself of all forms of duplicity.”* In the western world, the right of a journalist to know and to make known the secrets of the people in power seems, increasingly, to be a moral right.

But are we going too far? Is there not a danger of fuelling peoples’ growing disaffection with their leaders? The Cevipof ‘political confidence barometer’ showed in January 2014 that 87% of French people think politicians *“are hardly concerned, if at all, by what they think”*. That was two points more than in 2012 and six more points than in 2009. The frivolity of Sacha Guitry’s *“Is your private life being invaded? That’s because there’s nothing to say about your work”* can definitely no longer be applied to politicians.

However much we sanctify the Republic, the demand for transparency regarding the private lives of French politicians is gaining ground today and the growth in the number of cases in the European Court for Human Rights (ECHR) is not surprising.

● EUROPEAN COURT MOVING TOWARDS FREEDOM OF EXPRESSION

“Since the European Court was created, it has always aimed to balance the protection of the two values guaranteed by articles 8 and 10 of the European Convention on Human Rights: private life on the one hand and freedom of expression on the other” explains Nicolas Hervieu. *“In the last few years, however, legal cases have progressively inclined towards freedom of expression where this is seen to be a question of the public right to know. This applies to all media as the court feels that any restriction on press freedom in the gossip press would have a negative impact on political reporting and investigative journalism too.”* He attributes this development in part to the expansion of the European Council to include East European countries subject to censorship for a long period, and do not have a Latin temperament.

Protection of private life versus freedom of expression – one of the main criteria used by the ECHR to cut through this recurring, impregnable question is whether or not the public interest debate is being served. The court has thus decided several times in the last few years that publishing stories about the private lives of personalities and celebrities in the press – tabloid or celebrity – was justified in the name of the public’s right to know.

One example of this occurred on 7 February 2012 when Princess Caroline von Hannover, daughter of the late Prince Rainier III of Monaco, and her husband Prince Ernst August von Hannover petitioned the Court of Strasbourg. Invoking a prior ECHR decree which had ruled in their favour, they instigated several legal proceedings in the German civil courts to ban publication of photographs which appeared in *Frau im Spiegel* and *Frau Aktuell* magazines between 2002 and 2004 and which had been taken without their knowledge during a skiing holiday. The federal Court of Justice decided in favour of Princess Caroline regarding two of the photographs, for the reason that they were not in the public interest, but took a different decision for a third photograph.

This photo showed the couple walking in Saint-Moritz and was accompanied by an article alluding, among other things, to the deterioration of Prince Rainier of Monaco’s health. The German Court ruled that the prince’s illness constituted an event of public interest and the press therefore had a right to report on the way his children were reconciling their duties of family solidarity with their legitimate private needs, notably going on holiday. This was the reasoning adopted by the ECHR. “*The qualification given to the illness of Prince Rainier as an event of contemporary life by the German courts does not seem unreasonable*” it declared, adding that “*This photo, considered in light of the accompanying article, contributed in some way to the public right to know.*”

“*From this moment on, the court oriented its case law towards the freedom of expression,*” observed Nicolas Hervieu, “*and, in particular, offered a framework in which national jurisdictions could reason when considering the issue of protecting private life against the public right to know.*” An ongoing question which journalists and lawyers will continue to debate.

Translation from the French by Melanie Brumberg



UNITED-KINGDOM

Privacy and the press in Britain ● Nick Higham

On 21 March 2002 a 13-year old schoolgirl called Milly Dowler went missing in Walton-on-Thames, west of London. Six months later her remains were discovered in a field 20 miles away, and in June 2011 a former nightclub bouncer called Levi Bellfield was convicted of her kidnap and murder.

Milly’s death was of course a tragedy for her family and friends. But it had dramatic repercussions for many others, too.

It led to the trial and imprisonment of the man who had once been editor of Britain’s biggest-selling Sunday newspaper. It led to the closure of that same newspaper, the News of the World, with the loss of 200 jobs. It led to a scandal which reached the very heart of government, since the editor had gone on to be director of communications to the prime minister, David Cameron.

It led to the longest, most detailed and most wide-ranging of the many inquiries mounted since the Second World War into the behaviour of Britain’s press. And, for a time at least, it brought to the very top of the political agenda an issue which has long preoccupied journalists and politicians, judges and lawyers, not to mention the victims of press intrusion: the issue of privacy.

The inquiry was chaired by a distinguished judge, Lord Justice Leveson. His report was long, thorough and hard-hitting. But more than 18 months on from its publication it has changed little. The newspapers have rejected his central recommendation, even in a watered down form, arguing that it could bring to an end three centuries of press freedom in Britain.

But privacy remains a live political issue. Dozens more journalists are facing the prospect of criminal prosecution. Attempts by the civil courts to develop a law of privacy based on European human rights law have fuelled anti-European sentiment. And data protection laws designed to safeguard the privacy of the individual are accused of threatening legitimate investigative journalism.

● THE PHONE HACKING SCANDAL

So what was it about the case of Milly Dowler that proved so explosive?

Soon after her killer's conviction in 2011, the Guardian newspaper reported that the voicemail of Milly's mobile phone had been "hacked" by reporters working for the News of the World who had listened to the messages left there by worried friends and relations.

The Guardian also claimed (wrongly as it turned out) that the paper's investigator had deleted the messages, leading her family to believe that she might have done it herself and giving them false hope that she was still alive.

The news was met with revulsion. David Cameron called the claims "disgusting" and "truly dreadful". Two days after the Guardian's story, by which time there were claims that the News of the World had also listened in to the voicemails of victims of the July 2005 terrorist bombings in London and of the families of British soldiers killed in Afghanistan, he promised an official inquiry. The following day the News of the World's owners, Rupert Murdoch's News International, announced that the coming Sunday edition of the paper would be the last, after 168 years, and that it would carry no advertising – several of the paper's advertisers had in any case already announced a boycott. And five days after the Guardian's revelation Andy Coulson, the News of the World's editor at the time of Milly Dowler's disappearance, was arrested by police.

The events of that week in 2011 were the culmination of a growing scandal over phone hacking. Intercepting phone messages is a criminal offence, and in 2007 the News of the World's royal editor, Clive Goodman, had been jailed after being convicted of hacking into phones belonging to the royal household. A private investigator working for the News of the World, Glen Mulcaire, was also jailed. Goodman's editor Coulson resigned, but insisted that he knew nothing of any illegal activities, and resurfaced four months later as the Conservative Party's director of communications and media adviser to David Cameron, then leader of the opposition. The News of the World meanwhile declared that after "a rigorous internal investigation" there was no evidence of widespread phone hacking: Goodman had been a single rogue reporter.

This was nonsense. Evidence piled up over the next four years that phone hacking was routine at the News of the World: up to 3,000 people might have had their voicemails hacked, the Guardian claimed. Names emerged, mostly of celebrities or public figures, including politicians and senior members of the government. The News of the World was accused of a systematic cover-up of the evidence, and the Metropolitan Police were accused of failing to investigate the original allegations properly. When the police finally did start a new inquiry dozens of journalists were arrested, leading Trevor Kavanagh, a political columnist on the News of the World's daily sister paper, The Sun, to talk of "a witch hunt" which at any other time would have caused uproar among civil liberty and human rights campaigners.

The growing clamour forced Andy Coulson to resign a second time, this time as the Conservative-led government's director of communications. But it wasn't until the accusations that "ordinary people" like Milly Dowler and her family, victims of terrible

crimes, had also been targeted that the affair went from being a scandal of interest principally to journalists, politicians and the victims themselves to something so shocking that government had to act. A line had been crossed.

In June 2014 Coulson was convicted of conspiracy to hack phones: despite his denials, the jury concluded he had known what was going on.

As a result of the police investigations many more journalists – by no means all from the News of the World – are still at the time of writing facing criminal charges over phone hacking, computer hacking, and bribing public officials.

● THE LEVESON INQUIRY

The inquiry into "the culture, practice and ethics of the press" promised by David Cameron began taking evidence in November 2011; Lord Justice Leveson reported a year later. His inquiry was the seventh into Britain's unruly press commissioned by government in less than 70 years.

Among those who gave evidence to Leveson were many victims of appalling press intrusion, among them Milly Dowler's parents, Bob and Sally.

As well as ordinary people there were celebrities, people who had chosen to put themselves in the public eye but still hoped for a degree of protection for their private lives and for their families.

And the inquiry heard from newspaper editors and reporters. Several spoke of a "bullying" culture in the newsrooms of Britain's "red top" or tabloid popular press, which encouraged journalistic excesses. Others defended their trade.

Paul Dacre, the editor of the Daily Mail, spoke of celebrities "invading their own privacy" as a justification for intrusive stories. A former features writer for the News of the World, Paul Mullan, was startlingly frank: "Privacy is for paedos {paedophiles}, fundamentally," he said. "No-one else needs it. Privacy is evil. It brings out the worst qualities in people. It brings out hypocrisy."

Lord Justice Leveson was unimpressed. In his report he wrote that parts of the press had "caused real hardship and, on occasion, wreaked havoc with the lives of innocent people whose rights and liberties have been disdained." He went on: "This is not just the famous but ordinary members of the public, caught up in events (many of them truly tragic) far larger than they could cope with but made much, much worse by press behaviour that, at times, can only be described as outrageous."

Some of this behaviour was criminal. Much was not. And if it wasn't actually criminal, what could be done about it?

● CODES OF PRACTICE AND THE LAW

In theory there are rules about privacy and the media in Britain, and clear principles which journalists and media organisations are expected to observe. In practice, applying those rules consistently, and getting newspapers to stick to them, has proved challenging.

Evidently there is a line between what is acceptable by way of legitimate investigation and what is unacceptable intrusion.

Hacking into the voicemails of a suspected murder victim and her family was on one side of the line.

On the other side of it was publishing details of MPs' expenses claims, as the Daily Telegraph did in 2009. The paper had been sold a computer disc containing details of the claims which revealed a pattern of abuse ranging from creative interpretation of the rules to outright fraud by the people's representatives, much of it to do with the guidelines on what and how MPs can claim for the costs of running two homes, one in London and one in their constituency.

As a result of the investigation the system of Parliamentary expenses was reformed, more than £1 million of taxpayers' money was repaid and several MPs and members of the House of Lords stood trial. Lord Justice Leveson praised the scoop as "an example of journalism at its best". Evidently it was in the public interest for MPs' crimes and misdemeanours to be exposed.

But between those two poles lay a grey area, where newspapers and the victims of intrusion rarely agreed on what was permissible and what was not.

From 1991 to 2013 newspapers and magazines operated under the terms of an Editors' Code of Practice, which was modified and updated from time to time. Clause 3 of the code dealt with privacy. "Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications," it read in its final form. "Editors will be expected to justify intrusions into any individual's private life without consent."

But someone who publicly disclosed information about themselves might forfeit some of their right to privacy. And there was lots of room for interpretation. "It is unacceptable to photograph individuals in private places without their consent," the code said, but added: "*Note – Private places are public or private property where there is a reasonable expectation of privacy.*"

But what constitutes "a reasonable expectation of privacy" was never satisfactorily resolved. And even being in an unambiguously private place was no guarantee against intrusion, if a newspaper simply decided to ignore the code.

Other clauses of the editors' code forbade "intimidation, harassment or persistent pursuit", and the use of subterfuge or eavesdropping, and required journalists to act with "sympathy and discretion" when dealing with cases of personal grief or shock. But many of these were subject to a public interest override.

"The public interest includes, but is not confined to: detecting or exposing crime or serious impropriety; protecting public health and safety; preventing the public from being misled by an action or statement of an individual or organisation," it read. (That last clause allowed newspapers to justify many intrusive stories on the grounds that the hypocritical victim had said one thing but done something different.)

Editors were told they must demonstrate not only that they reasonably believed they were acting in the public interest but "how, and with whom, that was established at the time".

But the code added: "There is a public interest in freedom of expression itself."

The code was implemented by the now-discredited Press Complaints Commission, a newspaper industry self-regulatory body whose perceived failure to eliminate press intrusion was one of the reasons why the Leveson inquiry was set up. (Leveson in his report pointed out that not only did the commission exonerate the News of the World of phone hacking in 2009, it went on to condemn the Guardian for investigating and publishing stories about the cover-up.)

A persistent criticism of the commission was that it administered a code deliberately written to give newspapers and journalists as much room for manoeuvre as possible, and that in its findings it repeatedly came down on the side of the newspapers who funded it and appointed its members (who included serving editors as well as lay people) rather than on the side of complainants. The press were said to be "marking their own homework".

Nor was the law much help.

Theoretically Britain does not have a privacy law; Parliament has never passed a Privacy Act.

But in 1998 it did pass the Human Rights Act which incorporated into UK law the European Convention on Human Rights. Article 8 of the convention establishes the individual's right to a private and family life. Article 10 guarantees freedom of expression. For the first time a right to privacy was explicitly recognised in a British statute.

Judges were initially cautious. If Parliament hadn't legislated to create a systematic right to privacy, they were reluctant to develop one on a haphazard case by case basis. But that is in effect what has happened.

The courts decided that it was now possible for someone in Britain to sue for "the wrongful disclosure of private information". It was then up to the court to balance the individual's Article 8 right to privacy against a newspaper's Article 10 right to freedom of expression.

As a result, many media lawyers say UK privacy law is currently a muddle.

● AFTER LEVESON

The Leveson inquiry concluded that a new system for regulating newspapers was needed – one that would be independent of both government and the newspaper industry, one in which the public could have confidence and one which had powers not just to hear complaints but to investigate persistent breaches of standards and to impose sanctions, including fines of up to £1 million.

The Press Complaints Commission should be scrapped and replaced. Its credibility as an industry-wide example of voluntary self-regulation had in any case been destroyed when one newspaper group had simply withdrawn.

The new body's members should be appointed by an independent panel, Leveson said. To give newspapers an incentive to join, those that refused should be penalised by having to pay heavy costs and punitive damages in libel actions, even if they won the case.

Crucially and perhaps naively he said there should be a state-backed "recognition body" to certify that the new regulator set up by the newspapers themselves was indeed independent of the industry and fit for purpose. This was not, he insisted, remotely the same as giving government any influence over what newspapers wrote. The press saw it differently, characterising the proposal as the thin end of a wedge which would allow politicians and Parliament, after 300 years of press freedom, to interfere in newspapers' affairs. "The process has more in common with tyranny than a nation that founded parliamentary government" thundered the Sun.

The government decided statutory underpinning was unacceptable. Victims of the press who had given evidence to Leveson cried foul, claiming they had been betrayed. So the political parties came up with a compromise. The new recognition body would be established by an ancient device called a Royal Charter. But the newspapers refused to accept that too.

So the bulk of the newspaper industry has gone ahead and set up a new complaints body (IPSO: the Independent Press Standards Organisation) which they say is "Leveson-compliant" but which does not meet the criteria spelt out in the Royal Charter and which the new recognition body does not therefore recognise. The Guardian, the Financial Times and the Independent have so far stayed aloof.

And there, for now, matters rest.

● WHAT HAVE WE LEARNT?

In any debate about privacy in Britain, someone is always bound to quote one or other of three well-worn phrases.

The first, a hard one to translate for non-English speakers, is that what interests the public is not necessarily in the public interest. The public are undoubtedly interested in scandal and scuttlebutt, the more salacious the better, and in personal stories of people caught up in tragic or dramatic events. But publishing such stories often delivers no wider benefits to society at large; and there are sometimes good reasons why, in the interests of the individuals concerned, our curiosity should not be satisfied. Deciding where the balance lies in these two interests is a work in progress; perhaps it always will be.

The second phrase is a quotation from David Mellor, who as a government minister in 1991 set up the last inquiry into the press in the wake of a series of scandals – of which perhaps the most notorious was when a reporter and a photographer from a Sunday newspaper broke into the hospital room of a television actor recovering from brain surgery. The press, Mellor warned, "was drinking in the Last Chance Saloon": if they didn't clean up their act, then the newspapers would feel the consequences.

The inquiry on that occasion was also conducted by a lawyer, Sir David Calcutt QC. He concluded that the body which oversaw the press, the Press Council, was toothless and should be replaced by the Press Complaints Commission. If the commission failed to improve things, then a statutory Press Complaints Tribunal should be established, consisting of a judge and two lay members appointed by the government.

Two years later he was invited to report on progress. The new commission's performance did not impress him. He decided it had failed and told the government to set up a statutory tribunal. It didn't.

So when the Leveson inquiry was set up some wags remarked that it was now "last orders in the Last Chance Saloon", a reference to the barman's cry of "last orders!" shortly before closing time in British pubs.

As the difficulty in implementing Leveson's central recommendation demonstrates, it seems that closing time has been deferred indefinitely. The need to protect a free press from government interference has trumped the most serious attempt in recent years to curb newspapers' worst excesses by establishing a watchdog with real teeth. No British politician wants to be seen as an enemy of a free press. No British politician wants to alienate newspapers whose coverage has the power to swing voters. And no British politician wants to make enemies of newspapers which have the power to expose and to humiliate public figures, politicians included.

The third phrase is the Latin tag "Quis custodiet ipsos custodes?" which can be translated as Who watches the watchmen? or Who guards the guardians? The press is the watchdog of democracy, but keeping the watchdog itself on a leash has proved impossible, because newspapers refuse to accept the oversight, even at several removes, of the same democratic politicians they daily hold to account. And there is no other legitimate centre of power with the leverage to force newspapers to clean up their act.

Glibly, one is forced to conclude that in the case of the British press the most effective guardian is one of their own: the Guardian, the newspaper which has done more than any other, through the dogged investigative journalism of its reporter Nick Davies, to expose abuses and criminal behaviour.



ITALY

Privacy: journalists under constraint

● Velia Iacovino

The rights and duties of journalists should be defended and not restricted. While the right to privacy should be respected, in reality, the Internet has become a platform for all kinds of abuse. In addition, the main concern of traditional media – laid low by financial crisis and competition and overcrowded with poorly-paid freelancers – is to satisfy the markets. Finally, although it seems obvious that all lives should be treated with the same respect, all lives do not carry the same weight on the scales of society.

● EDITORIAL ROBOTS: AN END TO SLANDER AND VIOLATIONS OF PRIVACY

Journalist robots¹ do not make defamatory comments or violate privacy. Previously only a dream in the minds of publishers, politicians, dictators and great social manipulators, these have become a reality today. Robots have entered media offices. To do the housework might be our automatic response to this but they are, in fact, writing the articles we might be reading and reporting sanitised, ethically spotless truths.

A software application² that produces news automatically and strictly adheres to the 5 W's of information gathering (Who, What, When, Where, Why?) has been operational since 1st July in a large international press agency. In the future, nearer than one might imagine, publishing directors will no longer risk being the subject of complaints and no journalist will risk being sanctioned for breach of professional ethics. It will be the News and nothing but the News, which will probably end up in the hands of mercenaries, who will produce fantasy news according to the tastes and hankerings of complicit readers to whom they will report incredible, customised realities. They are already operating on the internet, where people of influence feel free to manipulate, where the race to reveal indiscretions is under way, and where private lives have no protection. If this is the future we want, a future which is already here, to a certain extent, then it makes sense to accept the new rules imposed by the powers-that-be. Rules that limit freedom of information, in the name of the sacrosanct

1 The word “robot” comes from ancient Slav and means “servant”.

2 Automated Insights have created the Wordsmith software application which develops and transforms profit and loss data provided by companies into short articles of 150 to 300 words.

right to privacy, and encourage self-censorship by instilling in journalists the fear of having to pay millions in damages. And, in parallel with the explosion of information on the web, we have the relentless pursuit of editorial budget cuts and the elimination of journalists. This is the situation in Italy where trade unions and publishers have signed a new agreement regarding independent work which established €250 per month and €20 per article as ‘fair’ pay for journalist collaborators already working in precarious conditions.³

● UNDERPAID FREELANCERS AND SELF-CENSORING JOURNALISTS

What are the consequences of all this? It is easy to imagine: underpaid and exploited freelance journalists who have to spew out article after article to survive and, in addition, work in solitude at home in a corner of their shared apartments without the benefits of the warmth and productive atmosphere of a newspaper office. Their articles will be cheap, competitive and must trump all others. To achieve this, articles have to be ‘colourful’, shed blood, and not miss a single interesting detail gleaned from social networks. This is happening because the journalist of the future, however talented and competent, will have neither the time nor the financial resources to investigate on the ground and will have to meet the demands of a readers’ market demanding more and more ‘fast food’ information, with high emotive content. In this context, it is easy to create monsters to present on the front pages, and to brutally invade people’s lives, particularly those least equipped to defend themselves against such an onslaught.

This is why we have to say “No” to the new limitations and the progressive, relentless deskilling of the profession. If we fail to block this ongoing process, we are heading for a very sorry future. On the one hand we will have a privileged caste of increasingly restrained journalists who will not dare to have a go at the powerful and will choose the gag rather than lose their jobs because they are frightened of complaints and civil litigation. On the other hand there will be a production force of news gathering by the piece. This is another reason why we have to stop legislators imposing new constraints and fight for the dignity of reporters. A free, honest journalist, worthy of the name who is neither a slave to the keyboard nor a slave to his master, does not need codes, norms or rules to do their job. They know what it means to enjoy the rights and duties of journalism and the need to respect the dignity of others. Journalists must not become an endangered species. This would be a serious blow to democracy.

³ The new national contract was signed on 24 June 2014. The agreement between the FNSI [National federation of the Italian press] and the FIEG [Italian federation of newspaper publishers] on minimum freelance pay resulted in violent divisions within the profession. The Secretary of the national press federation, Franco Siddi, was asked to resign and the national association of journalists lodged an appeal with TAR [Regional administrative court].

● FREEDOM OF THE PRESS: ITALY WORSE THAN NAMIBIA BUT IMPROVING

The downward slide has, unfortunately, been happening for some time so it comes as no surprise that Italy is 49th in the table of the World Press Freedom Index. It is a position we cannot be proud of even if we have gone up eight places compared with last year. What is this improvement attributed to? Are other countries sliding back? Or is it due to the prospect of a law being outlined that de-penalises the offence of defamation by the press? The problem is that we are quite simply worse than Costa Rica, Namibia, Cape Verde and Ghana. A blow to article 21 of our constitution.

Broadly speaking, this is the scenario. A scenario worthy of *The Day After* for a profession in a deep coma, threatened by insecurity, editorial and political super-powers and economic crisis; plus, in addition, incapable of transforming the new media of the Internet age to its advantage. In this context, each round, whether it is played on the professional or legislative field, is decisive in its fallout and affects society’s capacity to choose its own destiny, the health of that society and democratic well-being. It is not a question of protecting the privileges of the Fourth Estate, as is often claimed in order to trivialise the seriousness of the issue. The duty to provide information is in danger. This is a precious commodity which must be defended at all costs. But, even more than this, the right to be informed is in danger and this is one of the most important values guaranteed by the inviolability of article 2 of our basic charter.⁴

● MARCH BATTLE AVOIDED TIGHTENING OF THE SCREWS

March 2014 in Italy, the last battle to date took place over the threat of tough new limits on the freedom of information. The Italian Council of the Order of Journalists managed to ward off an attempt by the Guarantor of Privacy, Antonello Soro,⁵ to reform the current ethical code. This code, annexed to the law concerning the treatment of personal data and duties, is a judicial masterpiece balancing journalists’ rights and duties which do not need any modification. The text of the reform – fortunately, later shelved – introduced new rules which seemed to be aimed solely at inciting journalists to censor themselves. It began with the first article, reinforcing the “essential” character of information limits, by repeating the constitutional principle that “*the press cannot be subjected to authorisation or censor*”.

If it had been rubber-stamped, this would have been fatal for the press but as if this were not enough, something else was being prepared to for inclusion that aimed at codifying the care given to the information processing. This care is integral to the objectives and aspirations that guide journalists but, more often than not, journalists

⁴ The right to inform and to be informed comes from the interpretation by the Constitutional Court of Judgement 94/1977, which placed this right amongst the priority values guaranteed by article 2 of the Charter (see Manual of Journalism by Alessandro Barbano in collaboration with Vincenzo Sassu, Ed. Laterza).

⁵ Proposition for the modification of the Code of Professional Ethics relating to the treatment of personal data linked to the exercise of journalist activity, presented in March 2014 by the Guarantor of Privacy, Antonello Soro.

find themselves confronted with a major obstacle: a lack of time. Of course, lack of time should never be an excuse in grievance cases or in other disciplinary cases (as stipulated nonetheless by article 3 of the Guarantor's proposition). The provision also aimed to impose the right to be forgotten by updating data kept in archives and by de-indexing and deleting old articles. All this is in opposition to the findings of the European Court for Human Rights in Strasbourg ⁶ that states that newspaper web archives are not only protected by article 10 of the Convention guaranteeing freedom of expression but that they play a central role in a democratic society because of their historical value.

This was not all. The Guarantor also demanded that no reference be made in press articles to details relating to the past of the protagonist concerned; this could extend to forbidding the citation of the name of a convicted criminal so as not to affect their social reintegration. A clear way of drawing the curtain over the past of public figures, who might then be in a position to demand tough sanctions if a journalist made the slightest false move. Moreover, the text presented tough restrictions on the publication of the content of phone tapping; a right which had also been safeguarded by the judges of the European court. They decided that, in the balance of the various interests concerned, the protection of press freedom remains a priority and essential in a democratic society.

The reform would also require journalists not to divulge the identity of a person in a judicial hearing, unless it was necessary for the sake of understanding the news. Finally, it prohibited, without exception, the identification of people named in any capacity but not implicated in the proceedings, and encouraged journalists to assess the risks when they make reference to people under investigation.

These were all further steps to restrict the autonomy of journalists whose traditional historic role has already become less effective as a result of a succession of developments. Major and minor regulations which would risk adding opportunities to contravene the privacy code. This has serious consequences, even now. It is similar to processing data without the consent of the person concerned, an offence that can be tried in court and is liable to imprisonment whether a journalist commits it for his own profit (e.g. to obtain a promotion), or for others, (e.g. to provide their editor with a scoop and thus an increase in sales). It is dangerous behaviour that always causes damage which the journalist and publisher must compensate, unless the opposite can be proved. An attitude which could be considered a disciplinary error, in more serious cases, punishable by suspension or being struck off the register of the Order.⁷ It is clear that these new restrictions would only have increased self-censorship, especially regarding those in power.

In reality, privacy is not the same for everybody and it is the privacy of ordinary people which should be defended. It is often ordinary citizens who are named and shamed

⁶ See article 167 of the code on privacy (legislative decree n° 196/2003) on illicit processing of personal data in order to gain a benefit for oneself or for others or to harm others. The current norm is general in scope and applicable to everyone, therefore applicable to journalists who are not exempt.

⁷ Verdict in the European Court of Human Rights, 16 July 2013, (Galasso case), plea no.33846/07.

and this happens because in the Internet era, as previously mentioned, competition has increased between the Internet and the classic news media which has reduced their level of alertness. It is also because professional journalistic standards have deteriorated and because publishers, in the grip of an economic crisis, must increase their sales. In the context of this downward slide, it does not help to harden a law on privacy which works perfectly as it is.

● THE GAMBIRASIO CASE AND THE TWEET OF MINISTER ALFANO

The case of the murder of Yara Gambirasio, a little girl killed in November 2010, is a good example. Not only did journalists and social media compete in a frenzy over certain details of the affair but the Minister of the Interior, Angelino Alfano's announcements concerning the developments in the investigation should also be highlighted. He tweeted two words: "*Murderer identified*". Judgemental language in complete violation of a fundamental constitutional principle: the presumption of innocence which applies not only to politicians but also, and especially, to the man in question, Massimo Bossetti, even if the assertion was backed up by DNA evidence.

The minister made a mistake and became the source of great controversy. Journalists made mistakes but they made no mistakes in the surname, first name or photos of the alleged perpetrator. They went too far regarding a particular point and this is what the Guarantor himself pointed to in the note circulated on 19 June 2014, when he spoke about "*the tendency (...) to circulate information – including sensitive, even genetic details – relating to subjects implicated only indirectly and marginally in judicial cases that resonate with public opinion*". This refers to the collateral damage of investigations which, not only led Bossetti to discover, out of the blue, that he was the biological son of another man and not the man who had brought him up, but also destroyed the 'family and personal life' of his mother who had been forced into the media spotlight and was already very upset by the tragedy of her son being accused of a terrible murder. The Guarantor limited himself to asking journalists only to speak about the presumed guilty party and not the parents' marital situation.⁸

Finally, article 6 line 1 of the professional ethics code states clearly: "*Divulging important information for the public or social interest does not hamper the respect of the private sphere as long as this information, however detailed, is indispensable because of the originality of the facts, or the particularity of how the event occurred and/or the nature of the protagonists*". This means that it is possible to describe what happened, to talk about investigations and everything concerning the supposed perpetrator of an act. As far as names are concerned, the only restriction is for minors. For photos, article 8 line 1 warns that photos of people implicated in a crime must only be published if they respect the essential character of the reporting; in other words, if they are an integral part of the story.

⁸ www.francoabruzzo.it/document.asp?did=14212

● PRIVACY IS NOT THE SAME FOR EVERYBODY

While it is true that the individual's life should be treated with respect by journalists, all lives are not equal and they do not and cannot carry the same weight on news scales. This is definitely the case for people who decide to go into politics. Their choice automatically means that they renounce a large part of their privacy as ordinary citizens.

Whoever decides to devote themselves to the service of the collective has to become transparent, or at least more transparent than other people. Silvio Berlusconi's affairs over the past few years illustrate this clearly. Mud raking? Up to a point. If he was simply an ordinary citizen, nobody would have taken much notice – apart from the gossip press – of his parties and festivities, of the nights in his Arcore villa and the women he associated with. But as President of the Italian Council of State, crossing the line into his private life was inevitable; it is more acceptable than intruding in the lives of anonymous citizens.

Was there any cruelty? Perhaps. But one thing is certain: a man of the institutions must behave irreproachably, firstly because he is an example to others, secondly because he is, inevitably, a reference for all those who elected him and, finally, because he is an ambassador of the country for the whole world, embodying the values of the society he represents, beyond his own electorate. If there was mud raking, and this is the feeling shared by Italians, it is Italy that has been the victim and Italians could demand damages from their ex-Prime Minister for the negative fallout for the country's international image, after the affairs of Karima el Mahroug or Ruby, of Bunga Bunga, of dinners worthy of Boccaccio and other sensational stories. It is not a question of false morality. A person of this significance should be transparent if only for one very important reason: state security. A Prime Minister who cannot control himself is easily corruptible and is, moreover, not reliable.

One hopes that the principle of two distinct weights and measures for private life are consolidated and clarified, especially since the judgement pronounced by the Court in Strasbourg against France, Greece and Finland threatening conviction for journalists who revealed secret discussions during political summit meetings in their countries. In Italy, Felice Casson, senator from the Democrat Party and ex-judge, emphasised this judicial direction in an interview with *La Repubblica* on phone tapping. He did not wish the current rules to be modified so that it remained an indispensable investigative tool. *"It is not easy to find the right balance between the private lives of people, the right of journalists to inform and the right of citizens to be informed. Because a democracy is also based on information"*. Casson went further by underlining the point: *"I think that anyone who decides to go into politics renounces, almost by definition, a part of their privacy. Which means that they have to be in every respect, more transparent than the normal citizen."*

Casson signed an amendment in favour of journalists, providing a decriminalising feature which allows norms for confidentiality to be breached when they concern stories of high institutional importance. Furthermore, he confirmed his commitment to protecting privacy but only within the limits he can accept, which are allowed by the Court of Strasbourg and give journalists the role of 'democracy watchdog'. These

limits were already provided for in our current professional ethics code which came into force on 3 August 1998 after the approval of Law 675 of 31 December 1996 for the protection of privacy. While some people wish to reform it, it is in fact as vital and relevant as ever.

Article 6 already takes into account the distinction, now expected by many people, between private citizens and public personalities. It establishes a clear relationship between fame and the possibility of being a news subject and this is precisely the reason why the private sphere of public personalities must be revealed if a story has an impact on their social role or public position. Why add more norms to the ones that already exist, especially if these only make the current framework even more opaque?

Translated from Italian into French by Manola Gardez

Translated from French into English by Melanie Brumberg



SWEDEN

No sex please, we're Swedish!

● Martin Aagård

The Swedish media has had a long-lasting and genuine lack of interest in sexual scandals.

Now it is starting to change its attitude towards the more intimate spheres of private life, but the dramaturgy of a classic scandal doesn't really seem to work.

The notion of privacy is changing rapidly in the new media landscape. But it's not the media leading the change. It's the public.

The non-existing tradition of scandals concerning the more intimate spheres of life in Swedish media are well documented to the degree that it has almost been conceived as a sort of "Omertà" where the media and the national elites together withhold information which might discredit them, from the public eye.

The best known "public secret" in Sweden was the three-decade love affair between Royal Prince Bertil (1912–1997) and the British actress Lilian Craig (1915–2013). A relationship never mentioned in the press until the seventies, although it had been a fact since 1943.

Another famous example is how one of the founders of the Swedish welfare state, the social democratic Prime Minister Per Albin Hansson (1885–1946), had two families for many years: one in his home town Malmö, and one in the capital, Stockholm. An arrangement he justified with modernist views on marriage as a bourgeois institution. It was a well-known fact but ignored by the Swedish media and given very little public attention even after his death.

● A MORE INTELLECTUAL APPROACH TOWARDS JOURNALISM

Though the Swedish press – particularly the tabloids – is close to the British media, it has never copied the Anglo-Saxon attitude towards nudity, sex, sexual minorities and adultery. In comparison, Swedish tabloids are gentle and compassionate, partly because their roots lie in a different press tradition, with strong political core values and a more intellectual approach to journalism, which allows them to publish daily

literary reviews, scholarly reviews and even poetry. The Swedish tabloids are, indeed, a product unthinkable in many other countries. This can be explained by the general high level of education in the country, and also because during the 20th century the principal owners of Swedish press – the political parties – regarded the press as a part of a larger modernization project – a form of “public education”.

Even the more outspoken gossip magazines have a lighter touch than abroad. There is no established paparazzi culture in Sweden (at least until very recently) and the only paparazzi pictures published are those of international celebrities.

Gossip magazines are very considerate with their sources. Very few of the publications covering the lives of the Swedish elite could afford to have a hostile relationship with the royal family. Instead of “publishing and being damned” they are guided by the principle “don’t publish and keep getting invited to royal weddings”.

Sweden is indeed a small country in that respect. But deeper reasons are probably found in Swedish society.

Liberal politics towards sex, high gender equality with consequently high divorce rates, one of the highest levels of secularism in the world and a developed, mature democracy with strong and stable political parties don’t leave much room for either “dirty” political campaigning, nor for the press to question the personal morals of individual political candidates.

Sex education was also a notable part of the social democratic modernization of Sweden, and has resulted in a radically de-dramatized view on sex. Sweden’s tolerance for different sexual orientations is today one of the highest in the world according to a World values survey. The LGBT community is treated with respect and public service TV, as well as the tabloids, have engaged actively in campaigns supporting LGBT liberation.

Sweden’s tolerance for different sexual orientations is today one of the highest in the world according to World Values Survey.

● EVADING TAXES – A BIGGER OFFENCE

You could of course add the Lutheran tradition to the argument. A strong work ethic emphasizing the individual’s contribution to the common good makes evading taxes a bigger moral offence than having sex with the wrong person.

The most famous scandal in that respect involved the “crown princess” of the Social democratic party Mona Sahlin, who had to resign in 1995 after it was discovered she had used her government credit card for private purposes. The story was named “the Toblerone Scandal” after the paper *Aftonbladet* found a receipt that revealed Sahlin had bought a chocolate bar with taxpayers’ money.

Though the story has been both ridiculed and criticized, in retrospect it actually uncovered a systematic misuse of public funds, much bigger than just a piece of Swiss chocolate. And the damage to Mona Sahlin’s political career was heavy. When, ten years later, she finally became party leader, she lost the election.

● THE LITTORIN SCANDAL – NEW DIGITAL SOURCES AND A NEW APPROACH

The digital era has changed the infrastructure for journalistic sources. Mobile phone photography, hacked emails and public postings on social media sites have given reporters access to information previously just considered gossip. As digitalization strives forward, some notable stories seem to have changed Swedish journalists’ attitude towards sexual morals.

Two months before the general election in 2010, a reporter from the major Swedish newspaper *Aftonbladet* was waiting for the Minister of Employment, Sven Otto Littorin, at the airport in Visby. He wanted to confront the Minister with the allegation he had paid a young prostitute to have sex with him. The Minister answered briefly: “I don’t ever comment on questions like that”.

Within hours this short confrontation became one of the most discussed journalistic stories for many years in Sweden.

The reason was simple.

The next morning, Sven Otto Littorin simply resigned. Suddenly and very unexpectedly. With short notice he summoned a press conference where he claimed that hard work had taken its toll on him and that his family, especially his children, required him to spend more time with them.

Aftonbladet, shell-shocked by the pure speed of events did not handle it very well, though it seemed right at the time from an editors’ perspective. Instead of publishing the allegations, *Aftonbladet* demanded that Littorin answer their questions first. He, of course, made himself unavailable.

It wasn’t until three days later, on June 10, that *Aftonbladet* presented the full story. The anonymous “Anna”, a former student, claimed that she had had sex with Littorin four years before. She was 26 at the time and he paid her 2.000 kronor (200 euros). *Aftonbladet* had access to a computer with email conversations, where the Minister’s phone number was disclosed and there was no doubt about the identity of the customer. Important to know in this story is that paying for sexual acts is criminalized in Sweden. Selling sex is not. The controversial “Sex Buyer-Law” was introduced in 1998 and has since been copied in two other Scandinavian countries – Norway and Iceland. What “Anna” accused Littorin of was not just immorality or indecency. It was a crime punishable with imprisonment for at most six months. Had it not been, the story would probably not have been fit for print.

● CROSSING A HISTORICAL LINE

Some journalists were truly offended by the Littorin scandal. “A disaster for the political system” wrote liberal editor Niklas Ekdahl. He pointed out how the Swedish press never mentioned Per Albin Hansson’s two families because his duty as a founder of the welfare state was much more important than his “modern” family life. *Aftonbladet* had crossed “a historical line”, he stated. He was supported by the political editor at liberal *Dagens Nyheter*, Peter Wolodarski, who wrote *Aftonbladet* suffered from “a lack of boundaries”. Ekdahl, a staunch political supporter of Littorin, tried to set the record straight according

to his views and made the first interview with the minister on a TV show called *Min sanning* (My Truth). A strange, conceptual show where the person interviewed is supposed to present their subjective version of a debated event without being confronted with hard questions. Littorin did not recount the events correctly. Although it initially might have looked like a new chapter in how the Swedish media relates to privacy, the Littorin scandal actually wasn't. The core of the story was a potential crime. The sex was just a bonus.

● A ROYAL AFFAIR TURNS THE PAGE

But six months later a truly magnificent scandal exploded in public. And this time it definitely seemed as if the media's views on personal morals were changing. Rumours of the story had been circulating for decades, and the former chief of the news agency TT said it was healthy that journalists finally wrote about it instead of just gossiping.

The scandal was all about adultery and sex and concerned the ultimate journalistic trophy of them all – his majesty the King of Sweden Carl XVI Gustaf. It's probably a good indication of how reluctant the Swedish media has been to publish sex-related stories, that the story about the "coffee girls" had to be published in a book before the newspapers picked it up. Book publishers in Sweden do not answer to the same ethical regulatory system as the press and the only legal way to confront them is suing for libel.

The book *Den motvillige monarken* (The Reluctant Monarch) revealed how the young king spent considerable time in strip clubs run by local Swedish gangsters in the company of young women who were not the Queen – so called "coffee girls". It also revealed that the king had an intimate affair with the singer of the Swedish band *Army of Lovers*.

So. This affair had all the requisites you could possibly demand of a classic "scandal". Power. Sex. Criminals. A betrayed queen. But the dramaturgy of scandal also requires some sort of outrage, demands for resignation or just simple moral condemnation. There was nothing of this kind.

It actually ended with a giant anticlimax. At the most confused press conference in Swedish history, the King took a break in his annual hunting party to tell the press that it was now time to "turn the page". And those were the final words he spoke on it. And while Danish press simply dubbed him "the strip club king", the Swedish media made very few attempts to discredit or ridicule him and his behaviour.

● THE PUBLIC IS NOT INTERESTED

There is another, less known reason why the Swedish press seldom covers the scandalous sides of the royal family: it doesn't sell newspapers.

During the coverage of the "coffee girl-scandal", *Aftonbladet's* sales figures were considerably lower than a comparable month from any other year. The public was simply not interested.

Among the Swedish elite, there actually seems to have been little change in the Swedish Omertà. A colleague of mine recently had to censor a column about the Royal Prince Carl Philip's new fiancé Sofia Hellqvist. Though the Princess-to-be herself told the story about how she once had an intimate encounter with the former porn star Jenna Jameson (they made out at a party) my colleague had to leave this fact out.

Prime Minister Fredrik Reinfeldt's recent divorce has also been treated extremely gently. Despite speculations about another woman, not a single word has been written about it. Rather than using paparazzi, the Swedish media is basically waiting for a public appearance with both of them before publishing anything. You can easily compare this with how the French press covered the divorces of presidents Sarkozy and Hollande.

● CONSTANT SURVEILLANCE – THE BIG SHIFT

Sexual scandals aside, there has been a much more important shift in how the media relates to personal integrity over the past five years. Rather than a more cynical media corps, I think we have seen a media that is desperately trying to cope with a giant technical transformation where citizens are constantly monitoring each other and providing material to the press that previously was unthinkable.

This new, never-ending documentation of our lives has opened fantastic journalistic possibilities, big ethical challenges but also a sort of fatigue among the public towards this kind of material.

The most important story in this development concerns a Swedish political party and has nothing to do with sex, but violence.

A late summer night in 2010, three members of the nationalist opposition party The Swedish Democrats (a party similar to the French *Front National*) encountered a well-known comedian, on a street in central Stockholm. They instantly recognized each other and started an argument. Both sides recorded snippets of the discussion with their phones and published films on Youtube supporting their version of what had happened.

But two years later the newspaper *Expressen* gained access to the unedited films from the politicians' mobile phones. It showed a scenario that was completely different from what they had presented on Youtube. The politicians were extremely aggressive, calling the comedian derogatory racist names, hitting an interfering woman, and arming themselves with iron bars, looking for someone to beat up. To put it simply, they were acting like brutal hooligans. The video documentation could not be ignored. Two of the politicians had to leave their seats in Parliament and take time out from the Party. How *Expressen* got access to the films has still not been revealed, but this was not the last time secret, private recordings from the Swedish Democrats leaked to the press.

● A PARANOID "RECORDING CULTURE"

The following year an audio recording surfaced in which a Member of Parliament called immigrants "parasites", and said Sweden should send children of immigrants to prison.

A video recording where a member of the party board compared his colleague to the Norwegian terrorist Anders Behring Breivik was also published, as well as a clip where party leader Jimmie Åkesson sang white supremacy songs in his home.

Members have confessed to the press that the party had been infected with a paranoid “recording culture”, where everyone was constantly recording each other to be able to discredit each other in internal power struggles.

Politicians trying to discredit one another is of course nothing new, but the quality of the documentation is. It might seem like a virtual goldmine for reporters, but to many editors’ surprise there is a fatigue spreading among the public towards this “hidden camera” material.

In an era where video recording equipment was rare, confessions captured on secret camera were an important journalistic tool to unveil somebody’s hidden agenda. But the media’s dramaturgy of the “hidden agenda” seems to have notably changed since everybody constantly can record each other.

If we compare with the election year of 2002, when the public service TV program *Uppdrag granskning* secretly recorded conservative politicians uttering racist comments, the difference is striking. The program was considered to have changed the result of the election. Today, the effect is diminished. This time there were no notable changes in the popularity figures for the Swedish democrats and one of the politicians who armed himself with iron bars is already back in Parliament.

During the summer of 2014, the tabloid *Expressen* went further and published a secretly recorded film of Sweden’s most famous actor using cocaine. A story that definitely would have been a sensation 10 years ago caused very little public outrage today. The “hidden camera” is just not working as it used to. A scandal requires a secret to be revealed, and in an age where there are few secrets, scandals become impossible.

● TRANSPARENT LIVES – A MAJOR CULTURAL SHIFT

The new millennium has actually seen a major cultural shift on many levels regarding privacy and public intimacy. Scandinavian literature saw the dawn of what has been dubbed “autofiction” literary writing – literature with a level of intimacy that formerly was very rare. But these public diaries are just a smaller part of a new wave of public honesty that probably could be described as a more “narcissistic” culture. A narcissism that has become an important part of what we call “new media” and “citizen journalism”. Podcasts, blogs, social media and photo sharing have all created a form of public intimacy where people can communicate with the public without “filters”. An intimacy that, in some ways, has led to a crisis for established journalism.

On the one hand, the new media landscape has created ways of avoiding traditional media. For example the Swedish football diva Zlatan Ibrahimovic who for many years avoided the press, last year released his own app for mobile phones, where he can communicate directly with his fans. He doesn’t need the press for PR purposes any more. In 2012, the artist Carl Michael von Hausswolff caused uproar after he used ashes from the concentration camp Majdanek in an artwork. But instead of talking to the

media, he made his only public appearance in a podcast hosted by an art collector. Few questions were asked.

When important public figures like these create their own channels for communication it is of course a challenge to those who are supposed to scrutinize them. But even more worrying is the level of trust this new intimate media climate enjoys.

● THE ILLUSION OF TRANSPARENCY

In 2011 the biggest Swedish journalistic prize “*Stora Journalistpriset*” was very surprisingly awarded to a hashtag on Twitter created by a PR-agent.

The hashtag #prataomdet (“talk about it”) was used to publish personal experiences of sexual abuse. It had little to do with journalism – the stories were never questioned or corroborated, they were personal, subjective and very intimate – and it probably received the award because Twitter was seen as a technical innovation for public storytelling. But the award was definitely also a sign of the level of trust that personal testimonies suddenly enjoyed.

During the same period, shows focusing on personal confessions gained popularity. The podcast *Värvet* (The task) rose to fame doing totally non-confrontational interviews where the subjects tell their own story. The TV show *Min Sanning* was another example of how journalists abdicated from their task to question and interrogate the interviewee. This year Swedish public service TV released the program *Nyfiken på* (Curious about) where a psychoanalyst guides political candidates through a conversation clinically free from hard-boiled political questions. It is a show mimicking the tone and personal, intimate atmosphere of a podcast. This new media intimacy has created an illusion that the subjective story comes closer to the truth than traditional journalistic work. It is an illusion of transparency – a word widely used to describe this new climate.

A good example of the conflict between this fake transparency and traditional journalism occurred earlier this year when Sweden’s most famous podcaster Sigge Eklund was interviewed by the magazine *Filter*. The interview was not very sensational but questioned some of Eklund’s ideas about himself. The podcaster was outraged and started to pursue the reporter publicly, calling his text “abusive” and claiming the reporter was driven by “hate”. It was obvious he was not used to being questioned in public, which does not make him unique. But more worrying was the fact that the public also regarded the article as some kind of attack just because it was not written entirely in Eklund’s favor. Eklund was supported not only by his fans but by several media commentators in something that became a minor media scandal. The illusion of transparency in new media is indeed a challenge for journalism. An illusion that has to be defeated.



SLOVENIA

Pushing Boundaries: The relationship between public and private in Slovenian media ● Tjaša Pureber

From one (sensationalist) article on private matters of politicians to another, journalists in Slovenia are pushing the boundaries between the concepts of public and private. With loose legal definition of the difference between public curiosity and public interest, norms and standards are being shaped through the practice of reporting. We talked to some of the leading journalists in Slovenia in order to explore concrete cases, that set precedence in determining public interest when reporting on private matters of key figures of Slovenian society. We will explore legal, practical and ethical circumstances in which journalists are case by case searching the delicate balance between public and private matters of people they report on.

If it is expected that respect for privacy is generally lower in tabloid-oriented media, it is interesting to explore the standards of public-private dilemma in serious media. In other words: we will try to explore when reports on sexual or financial scandals of politicians become equally or even more newsworthy in domestic politics editorial offices than say, public finances and financial crisis.

● FROM CONSTITUTION TO JUDICIAL PRACTICE

The legal framework defining the relationship between private and public in Slovenian media is first of all set in the constitution. Article 35 declares that “the inviolability of the physical and mental integrity of every person and his privacy and personality rights shall be guaranteed.” The right to privacy is on the other hand limited by freedom of expression. Article 39 of the Slovenian constitution claims that freedom of expression of thought, speech, public appearance, press, and other forms of public communication and expression shall be guaranteed.

Besides the very clear prohibition of publishing personal information (for instance address, phone number, email, etc.) that is determined by the Personal Data Protection Act, the norms set in the constitution and law are very general. Therefore it is important to look at actual judicial practice in order to determine how far the media can go in reporting on personal matters of public figures. In the year 2000, the constitutional court judged the above-mentioned articles, trying to determine which right takes precedence over the other. They determined that the right to privacy is not absolute, but determined

by other people's rights. They further claim that people's lives are divided into private and public life. The less intimate the field of private life, the less legal rights a person has when in conflict with other people's rights. The Constitutional court also differentiates between absolute people from public life (people that are in public interest, for instance politicians, artists, celebrities, officials, etc. and therefore media are free to write about their personal life without their explicit permission) and relative people from public life (these are the people that the public is interested in only regarding a specific event, for instance serious criminals or lottery winners).

This follows the decisions of the European Court of Human Rights, which allows a more invasive approach of the media towards politicians who must be more tolerant towards criticism of their work, at the same time as they must allow more intense interest from the public regarding events from their private lives.

● LOOSE LEGAL BOUNDARIES LEAVE SPACE FOR (MIS) INTERPRETATION

The Journalists' Code in Slovenia directs reporters to honour the right of individuals to their privacy. Further on journalists should avoid sensational and non-justifiable revelations of peoples' private life in public. Invasion into privacy is only allowed when public interest is stronger than the right to privacy, whereas the right of the public to get more information is greater when journalists are reporting on public figures. Journalists nevertheless warn that the rules are not clear enough. "We do not even know what determines the term public figure. Consequently journalists have to decide from one case to another according to their moral compass," says Vasja Jager, journalist at *Večer* daily and a member of the journalists' Honorary court of Arbitration. Tanja Starič, former Editor-in-chief of news programs on Slovenian national television, who is currently working on Slovenian national radio, agrees with Jager. "The line is very thin, and no legislation can truly define it in a way that there would be no exceptions. So there is no rule telling us not to publish news that a politician is ill, but that we could publish this news if important events are cancelled due to his illness," explains Starič.

It was exactly the severe illness of late Slovenian president Janez Drnovšek in 1999 (at the time he was Slovenian prime minister) that was an important challenge for journalists in pushing the boundaries of intrusion into the private life of a public person. "In the end the media made some kind of collective decision to publish the news about his cancer, because he was a leading politician. But you cannot have the same standards for everyone, especially because public figures determine very differently to which point they let us into their privacy," says Jager. "Drnovšek did not want us to report on his illness, former Slovenian president Danilo Türk talked about his cancer to a certain degree, whereas the first Slovenian prime minister and current member of European parliament Lojze Peterle built his entire election campaign on the story of his struggle with cancer," explains Jager.

"I think that we are watching the fall of journalists' standards," says newspaper *Dnevnik* journalist and the president of Honorary court of Arbitration Ranka Ivelja. "There is no more distinction between public interest and public curiosity. Of course we could say that the private life of a president is within public interest, but we also need a

boundary on that. I think that the boundary with Türk was not set by journalists, but by the president himself, who had good advisers who told him not to respond to questions about illness. This case shows how politicians can help set this boundary," reflects Ivelja. She points out another, completely different example: "Janez Janša (former prime minister, convicted for corruption, currently in jail; A/N) in the beginning did not want to talk about his children, or allow their pictures. Now, (after the trial; A/N) we have interviews with him and his wife, we witness her tears, details about children and family problems. They are obviously accepting this because it is in their interest, and the media is willingly assisting in this."

There are however boundaries that journalists do not cross. Starič remembers the case of a minister who had an extremely sick son, but this never became known to the public despite the fact it was common knowledge among journalists. There are also restrictions when it comes to suicides or suicide attempts.

Starič is convinced that commercial and public media differentiate in practice when it comes to determining what public interest is: "Criteria we were using in national television were that we published the news about politicians' personal lives if it affected their work." She concludes that times have changed since Drnovšek got ill: "Now it is completely normal that in case of illness of a prime minister their team would publish that. Ten years ago, this was a taboo. Media and politicians have come closer here to the point that there is less space for mistakes."

The verdicts of the journalists' Honorary Court of Arbitration should be one of the guidelines for determining public interest from public curiosity, despite the fact that the knowledge of these cases is seldom transferred to the general reporting practice. "Public interest, as we define it though the practice of our court, are things that are important for the people. These are things they must be aware of to make decisions, to choose on elections, to understand the world. Everything else is merely public curiosity. People are curious and there is nothing wrong with that, but when we, the media, serve this need in order to raise ratings, and invade peoples' privacy – which is something that can hurt someone – this is then the point where a line has to be drawn," explains Ivelja.

● INTERFERING IN PRIVATE LIFE YES, BUT NOT IN ALL FIELDS

Besides issues regarding the health of visible politicians, journalists have engaged in the major public debate on the limit between private in public only a few other times. In 2009, a closed session of the government was transmitted live on the Internet, without the ministers knowing about it. Besides revealing secret governmental information to the public, it also showed some personal tensions among the cabinet members. Given the fact that journalists were in this case not directly involved (and they only reported about the leak), the debate about this is not crucial for our article, but it nevertheless opened up a question, as to whether or not politicians on public function can expect a certain degree of privacy in a working place or not.

In Slovenia, only few sexual scandals that included visible politicians were reported. The first one happened with Member of Parliament Aurelio Juri in 2005, when he was

caught arranging a swinger meeting with an undercover journalist of tabloid media. Serious media reported on the topic to a certain degree, but more in the context of him arranging the meeting when he was supposed to be working and via his professional, not his personal phone. There were also rumours in the tabloid media of one more Member of Parliament and a former president allegedly having mistresses, but in both cases the debate was rather focused on issues of how this possibly affects politicians into granting special privileges with public funds for their personal life.

“Serious media would never publish the news, that the president has a mistress. They would publish that he is ill. This is the practice of editorial judgements, developed through years. At the end of the day, Slovenia is a young country, and the media have spent relatively little time in the environment of a multiparty system and the plurality of political options,” explains Starič.

In 2012, broadsheet newspaper Delo published a story speculating that the highest-ranking member of the Slovenian Roman Catholic Church, cardinal Franc Rode had a son. The Cardinal denied everything, proved the claims to be wrong with a paternal test and sued the journalist and newspaper for wrongful claims and damaging his reputation. The news was picked up by all, tabloid and serious media. It opened up the dilemma, to which point can media interfere in the private life of a visible member of society, living in the public eye, but nevertheless not an elected politician. Given the fact that there is still an ongoing trial, the journalist’s honorary court of arbitration is according to its habit still not revealing its verdict on this particular case in order to prevent the internal self-regulatory body to be used in an open court as evidence of potential guilt or acquittal. “We do not have all the information about the case. They have followed the rule, that a journalist must ask another party for a comment, when they report on them. Rode had a chance to answer the accusations and invited journalists to join him in the Vatican, but the newspaper had already decided to go and publish the information and refused to come to Rome. I think that in a case where there is such a serious accusation that could potentially really hurt someone, one must do everything and even a bit more,” says Ivelja. She would confront the cardinal with the accusations: “I would tell him: we cannot pretend it does not exist. You are a public figure, you represent moral integrity in society and therefore the public has the right to know if a person who proclaims certain moral standards follows what he preaches.”

● FINANCES: THE ULTIMATE TEST FOR PRIVATE-PUBLIC LIFE DILEMMA

If there is one field of politicians’ personal life that is under public light in all kinds of media without questions of legitimacy of such interference, it is their financial wealth. “This is specific to Slovenia. Already in the nineties, marketing experts came to the conclusion that Slovenians are willing to forgive vices, for instance politicians cheating on their partners, but they would never be willing to forgive if someone bought their wife perfume with public funds. They are very liberal towards the sexual behaviour of politicians and completely puritan and impatient when it comes to their finances,” claims Starič. She supports this claim by explaining that it never was a problem, that the former Prime minister was divorced, or that the current president of the state “lives in some kind of open relationship and admits that faithfulness is not the biggest virtue.

We also haven’t had a single revelation about homosexual politicians. On one hand this might be proof of a puritan society, since politicians fear such admissions, or it might also mean that these things are simply not in the centre of media and public attention.”

There were numerous events, connected with financial scandals that even led to the downfalls of certain politicians. In 2002 then still unofficial presidential candidate, successful manager France Arhar, had over 30 percent support among voters. When his high salary (which he first refused to reveal) became publicly known, his support dropped in one month to only 13 percent. Minister for internal affairs Gregor Virant found himself in the spotlight due to accusations he was getting discounts on plane tickets at the state owned firm, whereas the former Prime Minister Janša and Slovenia capital Ljubljana mayor Zoran Jankovič found themselves accused of not being able to explain how they built their fortune.

“Fortune is negatively sanctioned in Slovenia,” explains Jager. But it is not about a theme, it is about how the topic is contextualized, he continues: “A journalist must be focused on why he or she is writing about the topic in order not to change it into a witch hunt. So it is important not to write about fortune per se, but to question how it was obtained.” Starič speculates that the focus on politicians’ wealth might be connected to the previous socialist regime in former Yugoslavia, where equality was demanded, though not always realized, but inequality certainly was not as visible as today. “It is also true, that media is on one hand creating the needs of the public, but on the other hand also responding to them. So affairs that include financial matters will simply get more response in the public than more private matters, for instance sexual scandals,” concludes Starič.

● JOURNALISTS: TOOLS OF POLITICIANS OR GUARDIANS OF PUBLIC GOOD

Journalists in Slovenia often complain that there has been no systematic development of in-depth investigative journalism. Therefore many topics, which are put on the media agenda, are the product of anonymous letters and lobbying that more or less clearly serve to pummel political opponents. The task of journalists is therefore to recognize this tendency and decide whether or not public interest is great enough for them to willingly participate in the game. This question is especially delicate when it comes to revealing the personal life of key actors in the political arena.

“Perhaps the general guideline should be that when a politician wants us to write about their personal life, we should refuse and when they do not, we should push for it,” suggests Jager. He admits that even when you know the information is clearly launched by political opponents, journalists should sometimes think whether or not to pursue the story: “I remember the rumours about politicians taking drugs, there were even supposed to be some videos. If I got them, I would publish them; despite the fact it is an invasion of privacy and coming from the other political camp. An important politician that has to decide about key reforms of the state cannot do so on cocaine, in a euphoric state, and the public has the right to know that.”

● NEW SOCIAL MEDIA, NEW CHALLENGES

With rising court cases against journalists, launched by politicians for allegedly damaging their good name and interfering in their private matters, a new challenge arises for journalists in Slovenia. “Courts are a much undesired regulatory mechanism, when it comes to journalism,” says Ivelja. Despite the fact that there have not been many severe cases that would limit the right of journalists to report on public figures and that it seems that judicial practice in Slovenia to a certain degree stands on the side of the public interest rather than the right to privacy, Ivelja warns that the increase of private lawsuits against journalists may also increase their self-censorship.

If the norms and standards are at least discussed in the traditional media, new media, such as blogs, Internet pages of political parties, Twitter, Facebook, etc, are a grey zone, caught between the need for professional standards and freedom of expression. Social networks have a problem distinguishing between private and public forms of communication – although it is supposed to be private, it is not, due to the amount of people receiving information. People creating the content are not journalists and are therefore not bound to professional journalist standards and (self)-control. Blogs and media of political parties are also not regulated and often serve as an invasive tool into the private life of public figures.

It therefore seems that journalists will on one hand have to face the fact that it is only in the rise of their collective professional standards that they can find the guidelines to distinguish between the public and private life of people they report on. Jager nevertheless warns the responsibility is not just on journalists: “Our audience is on one hand appalled by our standards of reporting, but the ratings show they always respond when there is some scandal being reported. They must be aware that by diverting their attention to quality media, they also can contribute towards better media reporting.”

The right of people to maintain their privacy will always be in conflict with the right of the public to know what public figures are doing. It seems that there is still space left to create more common and precise rules of reporting. But at the end of the day the responsibility to stay on the thin line between public and private lies on each individual journalist. Therefore it seems even more important that these journalists work in conditions that enable their professional development and integrity so they may serve their purpose of controlling the decision-makers and give voice to the public.



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