DREPT PUBLIC

CZU 347.9:342.72/.73

THE RIGHT TO PRIVACY AND THE TRANSPARENCY OF JUSTICE: TWO WEIGHING EXERCISES*

Mihai POALELUNGI,
*Chief Justice of the Republic of Moldova***

SUMAR

Dreptul la respectarea vieții private și justiția transparentă: două exerciții de punere în balanță

În acest articol, autorul ia în dezbatere o problemă despre care azi se discută foarte mult în societatea noastră, un subiect scos în prim-plan mai ales de ziariști – anonimizarea anumitor hotărâri judecătorești. În Republica Moldova, invocându-se practica anonimizării generale a hotărârilor judecătorești existentă în unele state ale Uniunii Europene, dar și evoluțiile recente din domeniul datelor cu caracter personal, s-a propus modificarea Regulamentului privind modul de publicare a hotărârilor judecătorești pe portalul unic al instanțelor naționale. Proiectul de modificare stabilește că hotărârile judecătorești trebuie să fie anonimizate „în conformitate cu prevederile Legii privind protecția datelor cu caracter personal". Propunerile au stârnit nemulțumiri în rândul jurnaliștilor și al unor jurişti. Autorul consideră că, în realitate, circumstanțele sunt cele care le conferă principiilor forța și caracterul lor benefic și a decis să analizeze dacă această soluție este una justificată în situația din Republica Moldova. El sugerează, ca mod de stabilire a echilibrului corect inerent Convenției Europene a Drepturilor Omului și Constituției Republicii Moldova, punerea în balanță, utilizată chiar de Curtea Europeană a Drepturilor Omului.

Cuvinte-cheie: *hotărâri judecătorești, anonimizare, punere în balanță, echilibru, Convenția Europeană a Drepturilor Omului, date cu caracter personal, viață privată.*

SUMMARY

Within this article, the author emphasizes a problem which is nowadays largely debated in our society, a subject especially highlighted by the journalists – the anonymization of court decisions.

In the Republic of Moldova, by way of invoking the practice of general anonymization of judgments, also existent in some of the European Union states, and the recent developments in the field of personal data protection, was proposed the amendment of the Regulation on the manner of publication of judgments on the unique online portal of the national courts.

The draft amendment establishes that the judgments must be anonymised „in accordance with the provisions of the Law on the protection of personal data". The proposals have raised negative reactions among journalists and some lawyers.

The author considers that, actually, the circumstances are those which determine the beneficial form and character of the principles and decided to analyse if this solution is justified in the case of the Republic of Moldova. He suggests balancing as a means of striking the fair balance inherent to the European Convention on Human Rights and to the Constitution of the Republic of Moldova, a method which is used even by the European Court of Human Rights.

Key-words: *judgment, anonymization, balance, European Convention on Human Rights, personal data, private life.*

„Your first term docket reads like alphabet soup!" [2]. With these words counsel for several newspapers and magazines reproached the Supreme Court of the United Kingdom in 2010, referring to the anonymization of certain court judgments.

* The translation of this article from Romanian into English was made possible by the generous support of the American people through the United States Agency for International Development (USAID), through the Open Justice Project. The contents of the article do not necessarily reflect the views of the United States Government, USAID, or the Open Justice Project.

** Many thanks to Teodor Papuc, who supported the development of this article.

Moldova is not exempt from this problem either. Considering the practice of general anonymization of judgments in some European Union states, and the latest developments in the field of personal data protection, namely the "right to be forgotten," it has recently been proposed to amend the Regulations on the publication of judgments on the single Courts' Web Portal of the Republic of Moldova. The draft amendment to the Regulations, now before the Superior Council of Magistracy, prescribes that judgments must be anonymized „pursuant to the Law on the Protection of Personal Data" and that „persons who meet the requirements of Article 10 of the Law No. 133 of July 8, 2011, 'On the Protection of Personal Data'" may access non-anonymized judgments "through an automated access mechanism". Although supported by many arguments, the proposals have sparked protests among journalists and members of the legal community. In my opinion, however, it is the circumstances that give principles their strength and beneficial nature (e.g., the principle of the protection of a name as an aspect of the right to privacy), so I decided to consider the appropriateness of this solution in the context of the Republic of Moldova. In this article, I assert that the analysis of the anonymization concept involves two exercises of weighing fundamental rights and interests in relation to their particular circumstances. I therefore propose weighing as a method for reaching the right balance between the European Convention on Human Rights (the Convention) and the Constitution of the Republic of Moldova–the method used by the European Court of Human Rights (the Court) itself. Typically, legal reasoning implies seeking solutions that are balanced as objectively as possible for the posed problems.

As a side note, I feel that it is my obligation to take a stance as Moldova's Chief Justice since, once adopted, the amendments would influence, among other things, the public's trust and confidence in the judiciary.

In what the draft amendment to the Regulations entails, I can see a conflict between the right to privacy and the principle of open justice. The right to privacy, guaranteed by Article 8 of the Convention, comes up here in its two manifestations: the individual's name and their reputation. In *Pfeifer v. Austria*, November 15, 2007, § 33, for example, the Court noted that "privacy" covers aspects related to personal identity, such as a person's name or image, as well as their physical and psychological integrity. Furthermore, Article 8 of the Convention covers the right to the protection of reputation (*Axel Springer AG v Germany [MC]*, February 7, 2012, § 83). On the other hand, the interest of open justice is apparent in Articles 6 § 1 and 10 of the Convention.

I. The first weighing exercise under Article 6 § 1 of the Convention

Article 6 § 1 of the Convention states that everyone, with a few exceptions, is entitled to a public hearing and that judgments must be „pronounced publicly".

In *Ryakib Biryukov v. Russia*, January 17, 2008, the Court found a violation of Article 6 § 1 because of the lack of public access to a civil case judgment, where only the ruling of the judgment had been made public, whereas its full text had been drafted later and communicated to the applicant. Furthermore, in *Malmberg and Others v. Russia*, January 15, 2015, the Court condemned Russia again for failing to ensure public scrutiny of the judiciary, since it had not granted the public access to the reasoning of the judgments dismissing the applicants' claims.

The rationale for establishing the publicity of legal proceedings in the Convention is to protect citizens against the secret administration of justice and the possibility of corruption and arbitrariness. Additionally, the publicity of legal proceedings and judgments helps to maintain trust and confidence in the courts. Open and transparent administration of justice serves the purpose of Article 6 § 1 regarding the fairness of legal proceedings, which is one of the fundamental principles of any democratic society. It is true that the contracting states enjoy considerable freedom in choosing appropriate means for ensuring the compliance of their judicial systems with the requirements of Article 6, and that the Convention does not require the publication of judgments specifically on the Internet. In other words, the requirement regarding the publicity of legal proceedings and judgments does not entail the requirement to publish judgments on the Internet. To my knowledge, so far, no decision of the Court has established the general obligation under the Convention for national authorities to publish judgments on the Internet. The Court only admits such a possibility in *Nikolova and Vandova v. Bulgaria*, December 17, 2013, § 84, when it states that "not only did the Supreme Administrative Court examine the case in camera (see above), but the judgments given were not delivered in public and were not available at the registry of the court or on its Internet site, nor could the first applicant herself obtain a copy." Under Article 6 § 1 of the Convention, it is sufficient to provide the text of a judgment at the courts' registry [5, p.29]. In fact, the Court provided judgments at the registry for public access in the case of *Pretto v. Italy*, December 8, 1983.

The publication of judgments on the Internet is an effective way of ensuring public access to them. It can be considered a constitutional requirement stemming from the principle of good governance, because it is less expensive than providing judgments at court reg-

istries. Therefore, if the publication of a judgment on the Internet equates to making it available to the public at the court's registry, then it is implicitly similar to pronouncing a judgment in public. It should be noted, however, that Article 6 § 1 refers to (i) the public hearing of a case, and (ii) the public delivery of a judgment. The public hearing of a case allows for several important exceptions: "the judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." On the other hand, Article 6 § 1 does not provide for exceptions to the public delivery of judgments. Can it be said that the exceptions to public hearings also apply to the public delivery of judgments and, consequently, to the publication of judgments on the Internet? The answer is yes. To determine which forms of publicity are compatible with the requirement of the public delivery of judgments within the meaning of Article 6 § 1 of the Convention, we need to consider the circumstances of this process, as related to the purpose and subject matter of that article. When drawing such a conclusion in *B. and P. v. the United Kingdom*, April 24, 2001, § 45, the Court followed Article 31 § 1 of the Vienna Convention on the Law of Treaties: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Under that convention, the literal interpretation of Article 6 § 1 on the public delivery of judgments is not only unnecessary for the purposes of public scrutiny, but it may frustrate the very primary purpose of Article 6 § 1, which is to ensure a fair trial (*B. and P. v. the United Kingdom*, § 48).

In *Raza v. Bulgaria*, February 11, 2010, § 53, the Court held that the publicity of judgments is meant to ensure public scrutiny and is a basic safeguard against arbitrariness. In the case of terrorism, for example, the authorities of states that have suffered or are at risk of terrorist attacks have chosen to classify only those parts of judgments whose disclosure might compromise national security or the safety of others, thus demonstrating that there are techniques for accommodating legitimate security concerns without denying fundamental procedural safeguards, including the publication of judgments.

An example would be a trial in chambers, where the parties are two spouses who have decided to end their marriage because of the infidelity of one of them. Suppose that they are two regular persons whose divorce does not spark what is called legitimate public interest. The trial of such a case in private takes place under the privacy exception provided for in Article 6 § 1 of the Convention. If the public was allowed access to court records, the right to spousal privacy, namely the right to reputation, would be disproportionately affected by the pursued legitimate purpose of judicial transparency. This raises the question of whether the judgment that will be published on the Internet should preserve the parties' names and other identifying details. The same reasons that barred the public from the proceedings require the removal of this information from the judgment that will be published on the Internet. In this regard, the Court states that national authorities may carry out proceedings involving residence of juveniles in chambers to protect the right to privacy of children and the parties, as well as the interests of justice. The public delivery of such judgments would largely frustrate these purposes (*B. and P. v. the United Kingdom*, § 46). Therefore, judgments can be published, but without the parties' and children's names and details, to let the public review the way the courts generally address such cases and apply appropriate principles. The Court also notes that anyone may consult or obtain a full copy of the orders and/or judgments regarding residence of children (§ 47).

According to Article 6 § 1 of the Convention, the publicity of legal proceedings and judgments is a rule and the protection of the parties' privacy is an exception. This leads to another finding: the existence of a hierarchy of rights and interests within Article 6. On the scale of interests and rights, the interest of open justice, materialized by the requirement of public proceedings, is held above the right to privacy. However, its weight is abstract rather than concrete. In other words, it is desirable for legal proceedings to be public and for judgments to be pronounced in public. The interaction between rights and/or interests, however, happens in the real world, where legal proceedings refer to concrete circumstances. The identification of the relative position of a right or interest within the rights hierarchy represents the first step in the weighing exercise [1, p.49].The concretization of that right is the next step. It may lead to the conclusion that a right or interest that is hierarchically lower than the opposite right or interest actually weighs more heavily. This is important, considering that some lawyers who strictly follow legal texts are inclined toward abstract interpretations, rather than concrete situations.

Therefore, although more important in the abstract hierarchy of rights and interests than the right to privacy, the interest of open justice can lose some of its importance and allow the anonymization of judgments published on the Internet in certain divorce proceedings, and even to the extent of keeping judgments unpublished, provided that interested parties can con-

sult them. For open justice, the only thing the public needs to know is that X divorced Y, and that procedural and substantive rules were applied correctly to ensure a fair proceeding to the ex-spouses (see *mutatis mutandis, Ryakib Biryukov v. Russia*, § 45).

This is the first weighing exercise, and it is performed by a judge adjudicating a case. The judge determines whether the litigants are entitled to the anonymization of the judgment or to keeping it unpublished after the proceeding. There is a second weighing exercise, which the Superior Council of Magistracy may carry out when deciding on the amendments to the Regulations, with possible scrutiny of the Supreme Court of Justice in accordance with Article 25 (1) of the Law on the Superior Council of Magistracy.

II. The second weighing exercise and the interaction between Articles 8 and 10 of the Convention

The second weighing exercise is performed outside Article 6. Article 6 refers to the rights of the parties from the perspective of the interest of open justice as a way of ensuring the fairness of proceedings, rather than the rights of the media or the public. If the secrecy of a judgment affects the applicants, they may invoke Article 6, whereas the media and the public may invoke Article 10 to request non-anonymization of judgments. In other words, Articles 6 and 10 have different beneficiaries.

The second weighing exercise looks at the general anonymization of all judgments and starts with the following question: is it more important to anonymize judgments, citing the right to privacy, transposed into the name and reputation, or to publish court judgments without anonymization in the interests of open justice and public information, allowing the media and the public unrestricted access to these judgments?

For the media, the freedom to obtain and disseminate information is essential. As the Court held in *Observer and Guardian v. the United Kingdom*, November 26, 1991, journalists have the duty of providing information and ideas on matters of public interest. Such information and ideas are more protected the greater the legitimate public interest is.

Article 10 of the Convention expressly provides for the right of the public to receive information from the media. However, since that article imposes a negative obligation on a state to not interfere with the freedom to receive and impart information, the Court was rather circumspect in recognizing the general right of access to information, including the information and documents in administrative matters. For a long time, the Court avoided interpreting Article 10 as imposing the positive obligation upon a state to provide information to the media or the public. Eventually, it acknowledged the right to public information for those who act as a "watchdog." This was the case in a recent judgment in *Magyar Helsinki Bizottság v. Hungary*, November 8, 2016, in which the Strasbourg judges held that nothing prevented them from interpreting Article 10 § 1 of the Convention as including the right of access to information. The Court cited the European consensus in favor of the recognition of such a right under Article 10. Citing the subject matter and purpose of the Convention as a tool to protect human rights, the Court noted that the provisions of this treaty must be interpreted and applied in a manner that ensures the applicability and effectiveness of these rights. The notion that the right of access to information in no way falls within the scope of Article 10 may lead to situations in which the right to "receive and impart" information is affected to an extent that would damage the very freedom of expression. Considering that access to information is essential for the exercise of the applicant's right to receive and impart information, the Court may interpret its denial as an interference with this right. Even if the Court had not acknowledged this right as protected by Article 10, we could have been certain about its existence in Article 34 of the Constitution of the Republic of Moldova. What appears important is the Court's listing of the criteria for citing the right of access to information held by a state in *Magyar Helsinki Bizottság*, §§ 158-170. Note that the Court came to these conclusions while deciding on specific cases, rather than general situations. Despite the general nature of the analysis in the second weighing exercise, we can draw certain standards from specific cases:

(a)The purpose of access to information

- There must be a prerequisite that the person requesting access to the information held by a public authority seeks to exercise the freedom to "receive and impart information and ideas" to others;
- The acquisition of information is a preparatory step in journalistic business or in other business that creates a forum for, or is an essential element of, public debate;
- The safeguard afforded to journalists under Article 10 in relation to reporting on matters of general interest is subject to the clause that they act in good faith to provide accurate and reliable information in accordance with journalistic ethics;
- It must always be ascertained whether the requested information is necessary for the exercise of freedom of expression;
- If withholding information hinders or impairs the freedom of expression, including the freedom to "receive and impart information and ideas" in a manner consistent with such "duties and responsibilities" as may arise from Article 10 § 2, then the information is necessary.

(b) The nature of the requested information

- The requested information or documents must pass a public-interest test to justify their disclosure under the Convention;
- The public interest refers to matters that affect the public to such an extent as to stir their interest, attract public attention, or significantly influence citizens, particularly if their well-being or the life of their community is affected;
- The matters that are likely to give rise to considerable controversy, that refer to an important social problem, or involve a problem the public has an interest in, are matters of public interest;
- The public interest cannot be reduced to a thirst for information about the private lives of others, the wish for sensational gossip, or even voyeurism.

(c) The role of the applicant

- The Court attributes weight to the applicants' role as a journalist, "watchdog," or nongovernmental organization whose activities are related to matters of public interest;
- The Court highlighted the vital role of the media in facilitating and fostering the public's right to receive and impart information and ideas as follows: „[The] duty [of the press] is nevertheless to impart — in a manner consistent with its obligations and responsibilities — information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Otherwise, the vital public-watchdog role of the press may be undermined" (*Bladet Tromsø and Stensaas v. Norway [MC]*, May 20, 1999, §§ 59 and 62).
- The function of creating various platforms for public debate is not limited to the media, but may also be exercised by nongovernmental organizations, whose activities are an essential element for an informed public debate;
- Civil society can also make an important contribution to debating public affairs;
- The way in which "public watchdogs" carry out their functions can have a significant impact on the proper functioning of a democratic society. It is in the interest of a democratic society to allow the media to play this vital role in communicating information on matters of public interest. Since accurate information is the tool of their trade, it will often be necessary for individuals and organizations acting as "watchdogs" to have access to information to perform their role of presenting matters of public interest.
- Obstacles created to hinder these parties' access to information can lead to their failure to act as a "watchdog," by affecting their ability to provide accurate and reliable information;
- Scientific researchers and literary authors enjoy a high degree of protection in matters of public interest;
- Given the importance of the Internet in offering the public access to news and facilitating the flow of information, the role of bloggers and social media users can be assimilated into that of "watchdogs" as far as Article 10 is concerned.

(d) Availability of information

- In finding in some cases that the denial of access to information infringed upon Article 10, the Court meant that the requested information was available and did not involve the collection of data by the government;
- The Court deems the availability of information an important criterion for the general consideration of whether the denial of access to information conforms with the freedom to receive and to impart information.

In the public debates regarding the proposals for the Superior Council of Magistracy to amend the Regulations, some media representatives argued that their right of access to information would be violated in cases of general anonymized judgments, which involves removing the names of parties in judgments. Parties' names may serve as valuable clues for journalists since they can reveal whether a court was impartial in its judgment. Considering that judges are often accused of corruption, the names of parties can be a significant, and sometimes decisive, detail in making conclusions.

Therefore, the anonymization of judgments would restrict access to information, and the administration of justice would not be transparent in terms of the parties' names. The anonymization of judgments published on the Internet poses problems in terms of access to information and the principle of open justice, as possible trips to the courts' registries to consult full judgments would be very expensive for the public, and courts would have to spend more human and material resources to provide this service. Judicial databases with judgments published on the Internet are great tools for information and communication, particularly given their ability to store and transmit information.

Advocates of judgment anonymization cite the right to reputation and that the name is an item of personal data. As mentioned above, the right to reputation and the right to a name are aspects of the right

to privacy protected by Article 8 of the Convention. Indeed, publishing information about a person with the mention of their name undermines their right to privacy. The Court made this point in *Kurier Zeitungsverlag und Druckerei GmbH v. Austria (No 2)*, June 19, 2012, § 44, where a newspaper had revealed the identity of a juvenile victim abused by his mother, although the child had neither been a public figure, nor had he become such by entering the public space as a victim of a crime that had attracted much public attention.

Anonymization advocates therefore want to avoid violations of the right to privacy of parties to legal proceedings. However, their proposal is of a general nature and applies equally to offenders convicted for serious crimes and to parties of ordinary property disputes, to dubiously acquitted relatives of a politician and to parties of divorce proceedings. This means that we need to start from the assumption that in cases on matters of private life whose publicity is not justified by a legitimate public interest, the parties ask for, and the judges take care that, the judgments are anonymized. How about cases that do not deal with important privacy aspects? Can one reasonably expect the observance of this right by the anonymization of the judgment?

Some courts, including the Court itself (*Halford v. the United Kingdom*, June 25, 1997) and the Supreme Court of the United Kingdom (*Khuja (Appellant) v. Times Newspapers Limited and Others (Appellees)*, July 19, 2017), apply a preliminary test regarding a reasonable expectation of privacy. The court must ascertain the existence of such a reasonable expectation to weigh the right to privacy against the right of the media and the public's right to know. Can one generally state that the parties to a property dispute have a reasonable expectation of privacy by the anonymization of judgments, as long as their lawsuits have been publicly adjudicated and the judgments have been pronounced in public? Can those parties invoke the right protected by Article 8, as long as the publication of the judgments with their names on the Internet does nothing more than replicate the reality of publicly adjudicated cases and publicly delivered judgments? If the media and/or the regular audience were present during those proceedings, and if the names of the parties are known, anonymization makes no sense. In *Wegrzynowski and Smolczewski v. Poland*, July 16, 2013, the applicants won a national libel lawsuit against a newspaper. Nevertheless, the defamatory article with their names remained on the newspaper's website. It had been published online with the printed edition, and people could still read it, including in the country's libraries. When the applicants filed in a new lawsuit to have this article removed from the website, the courts invoked the *res judicata* principle, stating that the applicants had already initiated an action on the same merits. Moreover, the definitive judgment in the first trial had not created a legitimate expectation for the applicants that the article would be removed from the newspaper's website. Furthermore, the Court noted that it was not the role of the judiciary to engage in the rewriting of history by ordering the removal of all traces of the publications equated by definitive judgments to attacks on the individual reputation from the public domain. Therefore, considering all the circumstances, the Court concluded that the state had complied with its obligation to ensure a balance between the rights guaranteed by Article 8 and the rights guaranteed by Article 10.

My point is that the parties to a publicly adjudicated proceeding whose judgment has been delivered publicly, where the anonymity of the judgment concerning them has not been justified, do not benefit from the reasonable expectation of privacy in the form of anonymization because this matter is *res judicata*. Therefore, to elaborate on the example above, the parties to a property dispute, which does not deal with an important aspect of their private life and where the courts did not consider anonymization necessary, may not claim a violation of the right to privacy because of the publication of their names in the judgment.

I admit, however, that the reasonable expectation of privacy is not a decisive factor, as the Court stated in *Vukota-Bojić v. Switzerland*, October 18, 2016, § 54, and that the parties to a regular property dispute may insist on anonymization. An example is another case adjudicated by the Court in *Aleksey Ovchinnikov v. Russia*, December 16, 2010, § 50. In this case, the Court noted that, in certain circumstances, restrictions on the reproduction of the information that has entered the public domain can be justified, for example, to prevent the continued propagation of the details of the private life of a person, which are not the subject of any public or political debate on a matter of general concern. Note that the analysis of this statement and its application to our situation does not imply that the publication of names in judgments is the violation of the right to privacy. The conclusion arising from this case is that publishing names in judgments can lead to a violation of the right to privacy if the media or the public distorts or misuses this information. In such a case, a civil liability action filed by the injured party against the newspaper that published details of the party's private life, taken from judgments posted on the Internet, when such details do not relate to a public or political debate on a matter of general concern, could succeed. The purpose of satisfying the audience's curiosity by publishing gossip may not prevail over the right to privacy.

In all cases, before deciding, the Superior Council of Magistracy needs to weigh all circumstances, including those specific to our society. In what follows I will describe what should happen in such a scenario.

After the first weighing by the courts in the specific cases they adjudicate, if it is judiciously established that the privacy exception from Article 6 § 1 of the Convention does not prevail, the right to privacy will be represented by its less important aspects, including the parties' names. The publication of the parties' names in legal proceedings on the delimitation of two properties does not affect the core of the right to privacy. Its importance is marginal. It would be greater only if it could be corroborated by other "spicy," intimate, or sensitive information. The names of the publicly known figures whose lawsuits have been tried in public are not so much of an objective value for them. The arguments in favor of access to information (regarding the parties' names) and the interest for an open justice would outweigh them in the second weighing exercise. This would lead to a "weakened" right to privacy on the one hand, and a strong right to freedom of expression on the other hand. What is left is to demonstrate the importance of the freedom of expression, which calls for open justice.

III. The weighing of the freedom of expression

In our transitional society, where family and business ties are viewed as existential virtues and often recipes for success, honest citizens increasingly place emphasis on the accountability of governance *sensu lato* (including all three powers in a state). The publicity of the information about the way in which government officials perform the functions of a state is essential, especially since they are paid from the public money. The investigative press in the Republic of Moldova has been looking for several years on the not-so-impeccable situation in the justice sector. Journalists in this field attend court hearings involving political and public figures, as well as their relatives, and often alert the public when judgments are poorly reasoned or have an unexpected outcome. When not attending court hearings, they study court judgments published on the Courts' Web Portal, looking for connections between their protagonists and policy-makers. Access to the names of parties in non-anonymized judgments is essential to the oversight or watchdog function of the media and to inform the public of information it has a right to know. As Lord Sumption argues in a recent opinion, whose translation was published on the website of the Supreme Court of Justice of the Republic of Moldova, "the media serve as the eyes and ears of a wider public which would be absolutely entitled to attend [legal proceedings] but for purely practical reasons cannot do so" [3]. The public does not have time to read all court judgments. They cannot compare – sometimes for lack of the necessary training – the contradictory solutions of some courts on matters with similar factual circumstances and based on the same laws. So, professional journalists do it for them. For this reason, most citizens can find out what is happening in the justice sector just through the media. Citizens have the right to receive information from the media, i.e. „the right not to be kept in the dark," and the media has the right to access the information necessary for that purpose.

If adopted, the proposal to anonymize judgments would hit the very essence of the freedom of expression of the press. To quote Lord Roger, the judge who drafted the opinion of the majority in *Guardian News and Media Ltd & Ors in HM Treasury v. Ahmed & Ors*, a 2010 case adjudicated by the Supreme Court of the United Kingdom:

63. What's in a name? "A lot," the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH & Co KG v Austria* (2000) 31 EHRR 246, 256, para 39, quoted at para 35 above. More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [2004] 2 AC 457, 474, para 59, "judges are not newspaper editors." See also Lord Hope of Craighead in *In re British Broadcasting Corpn* [2009] 3 WLR 142, 152, para 25. This is not just a matter of deference to editorial independence. The judges are recognizing that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.

Of course, this analysis is not intended to be a comparative law study; the practice of the European Court of Human Rights will suffice. There, the rule is that the information communicated regarding an application, both in writ proceedings and in hearings, including

the information about the applicant or third parties, is accessible to the public. The parties should be aware that the presentation of the facts, as well as the Court's decisions and orders, are usually published in the HUDOC database on the Court's website. The application for anonymization must be filed when completing the application form or as soon as possible after that. In both cases, applicants must justify their request and specify the impact the publication might have on them. The Court may authorize anonymization or order it on its own initiative — Rule 47[1](4) of the Rules of Court.

I believe that some solutions that are accepted in advanced democracies can be detrimental to democracies in transition. Germany, for example, has followed a rigid practice of anonymizing judgments for more than a century, that is, before the adoption of its fundamental law. Sometimes, tradition, along with the professionalism of German judges and the public's trust and confidence in the judiciary, has a say in that society.

Only eight percent of Germans believe that the judiciary is not immune to bribery, whereas in the Republic of Moldova this figure is eighty percent. It is somewhat amusing to note that most often it is when a party brings a case about the violation of the rights guaranteed in the Convention before the Court that the German media learns of their names. On the other hand, after careful weighing, the German Federal Court of Justice refuses to decide in favor of persons who have served their sentences and then request the anonymization of reports containing personal details about their criminal proceedings on the online archives of public media outlets, giving priority to the freedom of expression. Several such cases are now pending before the Strasbourg Court [4].

In a conflict between a right to privacy lacking in force and a strong right to freedom of expression, with the right focus on the need for information and the danger of ignorance – realities of a transitional state – the right to freedom of expression prevails. Ancillary methods of providing an automated mechanism for journalists to access the full text of court judgments are dangerous. Journalists, bloggers and regular citizens can act as watchdogs or readers, openly or anonymously, as they choose (see *mutatis mutandis* *Sanoma Uitgevers BV v. the Netherlands*, September 14, 2010, § 71). Obliging those observers and commentators to register to access the full text of judgments affects the essence of their freedom of expression again, as they can no longer act anonymously. The danger that the media or regular citizens may violate a weak right to privacy of individuals whose names are listed in judgments published on the Internet can be counteracted through tort claims. The violation of a strong right to freedom of expression by anonymizing judgments and establishing a controlled access to their full text affects the whole of democracy and the entire edifice of the rule of law, and can have irreversible consequences, especially in terms of the public's trust and confidence in the justice system.

* * *

Given all the above, my opinion in this article is that in the context of the Republic of Moldova, a policy that disadvantages a small number of people through interference in a marginal aspect of the right to privacy is nevertheless justified, at least in the medium term, because it makes our society better as a whole.

In these several pages, I have tried to address an issue that certainly deserves wider consideration and requires a concerted effort in good faith by all those interested.

Bibliographic references:

1. Peggy Ducoulombier, Interaction between human rights: Are all human rights equal? in Research Handbook on Human Rights and Intellectual Property, Christophe Geiger (ed.), Edward Elgar Publishing, 2015, p. 49.
2. Guardian News and Media Ltd & Ors in HM Treasury v Ahmed & Ors, [2010] UKSC 1, par. 1 from the Opinion of Lord Roger.
3. http://www.csj.md/images/Khuja%20recurent%20v%20Times%20Newspapers%20Limited%20si%20altii%20intimati.pdf.
4. M. L. v. Germany and W. W. v. Germany, No. 60798/10 and Nos. 65599/10, cases communicated to the German Government on November 29, 2012.
5. Marc Van Opijnen, Court Decisions on the Internet: Development of a Legal Framework in Europe, Journal of Law, Information and Science, Vol. 24, No. 2, 2016, p. 29.