

RESPECT FOR PRIVACY BEGINS WHEN GATHERING INFORMATION

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ABSTRACT

The news treatment of issues at risk of invading the private sphere calls for an evaluation of the underlying public interest. The exercise of balancing values - right to information and right to privacy – occurs not only at the time of information transmission; it must be observed since the process of collecting, in order to reduce the damage caused. This article raises questions such as contact with citizens, including children, the conduct of journalists in trauma situations, voluntary exposure of privacy by public or anonymous figures, as well as hearing people under charges and the use of unconventional research methods, which may cause privacy violations. Taking closely into account the standards set in ethical instruments, this reflection covers specific cases.

KEYWORDS

Privacy; gathering information; public interest; public figures; ordinary citizens

INTRODUCTION

The set of boundaries between public and private spaces is in journalism constantly defied by the emergence of new cases that produce ethical questions. As standard it is recognized that health, family, sentimental, sexual and financial issues, as well as estate matters, political and religious convictions, are of private nature – therefore out of public interest. The intrusion in these areas thus requires solid substantiation. It is necessary to determine if public interest, associated with the right to information, prevails over privacy, civilizational values that we know are paramount in democratic societies.

“The various attempts to conceptualize privacy promote the idea that it is determined by the individual, thus not subject to standardization. What someone wishes to keep away from prying eyes may not exactly be what the other person wishes to hide. It is even possible that in specific circumstances that someone is willing to make private issues public – or even interested in doing so – and makes the contrary decision, if they are changed. Privacy may however be defined in the negative: it is the area where others are not allowed in” (Martins, 2013: 35).

An action in this sense is not considered private just because it is not done in public. It is accepted that informational self-determination is a right more recognized to common citizens than public figures, but in Portugal those are not, as standard, identified

in the news, contrary to for example England. From all the codes of ethics that regulate journalism only the German Press Council clearly mentions the concept of Informational Self-determination. The code of the Federation of Associations of Journalists of Spain recognizes the right not to provide information.

BALANCING OF VALUES

The fundamental question facing the journalist, when attempting to make compatible the right to information with the right to protection of privacy is formulated by Hodges (2009): what is the line that separates the right of the society to know and the right of the individual to hide? The decision has two stages: in the first the journalist assesses if he can invade the privacy of the person in the news; in the second if it can be made public.

The visible part of the work of the journalist is not always the invasion of privacy. When not limited by the immediate disclosure of the information the journalist has time to reflect on the values at stake, materializing the most demanding aspect of his mission, that of mediator between the event and the public. In the end he may decide not to disclose, if in the specific case the right to information gives in to the demand of preservation of privacy.

In case of live broadcast, either television or radio, the possibility of that reflection is non-existent. Often the journalist is under pressure from superiors that guide at a distance and in competition with other news companies. By simultaneously gathering and broadcasting information, the risk of violating private life increases. And more when the protagonist is the one contacting the press.

The recent coverage of the case of a Physical Education teacher, coach of a futsal team in the Lisbon area, accused of sexual assault on children, reveals how delicate the management of contexts is, when all professionals tend to adopt similar procedures, with no room for reflection. The day the trial began in February, in closed doors, some parents of the supposed victims, wanting to inform how they handled the situation, approached the journalists that were broadcasting live, outside the courthouse. For the audience it was clearly perceptible the embarrassment of some of the parents, who for sure regretted afterwards having identified the victims, by exposing them deliberately.

In these circumstances what action can the journalists take or are enabled to take? Approach people first, so they can measure the consequences of their actions? Refuse, pure and simple, and be outside their professional group? More doubts than certainties emerge, but we cannot ignore that most of the times common citizens are in question and that by their conduct have been subject to media attention but no less owners of the protection of their privacy, by principle inviolable.

It is a difficult exercise to keep cold blood and not be let contaminated by emotion, but it is a required one, for the professional. When covering trials of hideous crimes, when people take advantage of media coverage to exhort popular justice – or even seek death penalty – the professional finds himself in a difficult position, as he may involuntarily violate the principle of presumption of innocence and even to appeals contrary to human dignity.

The professional practice of the journalists may cause damage to someone, either when broadcasting the information or during research. Both require therefore reflection between values of equal dignity, including in the constitutional area: the right to information and the right to preserve private life. The preservation of privacy is nowadays recognized as public interest, as authors Whittle and Cooper (2009) find. However invasion of privacy – and even intimacy – may be legitimate. The question is what guidelines the journalist has and who is responsible for making the decision to turn these issues into news.

The codes of ethics, although detailed and essential instruments in the regulation of professional activities, do not ensure that that exercise reduces to a minimum the sacrifice of the right to protect private life, when public interest prevails. It is not even recommended to literally interpret the rules it incorporates, as the results may be different from those intended.

“No code may in effect establish without doubt how to avoid indirect identification of a victim of a sexual crime or determine how to conduct an interview to a child. With sensibility and good judgment, appealing to the ethical conscience, the journalist then decides how to act in the situation” (Martins, 2013: 236).

It is then essential to recover an ethical principle so often forgotten or sacrificed in the name of competition: the journalist should act according to his conscience.

That need also comes from the lack of enforcement by the professional regulatory institutions. Since 1993 the code of the British Press Complaints Commission (PCC) lists the private areas the journalist cannot access: private residence, garden and annexes, hotel rooms. And yet was never able to stop the abuses from the tabloids, as amply demonstrated in the report by a committee of the House of Commons about the situation of the press in the United Kingdom for the years 2009/2010. The MPs have concluded that in the case of Madeleine McCann, the British little girl that disappeared in Portugal in 2007, the behaviour of the press that published hundreds of false news was due to the mere reactive action of the PCC. “This was an important test of the industry’s ability to regulate itself, and it failed that test” (Culture, Media and Sport Committee, 2010).

As remarks Daniel Cornu (1999 [1994]: 408), now Ombudsman of the Swiss media group Tamedia:

“The journalist cannot say everything nor show everything. In his work, with his attitude, the journalist must refrain, must show control for all those involved in events that may cause physical or moral suffering. This respect for the human person is not only satisfied with private behaviour. It is also in his news speech, which is his public expression” (Cornu (1999 [1994]: 408).

The right to know is not also the right to broadcast. And what is hidden not always must become news. The dangerous tendency now to “tell everything” came from the contamination of the journalist with entertainment, of the mixture between satisfaction of public curiosity and satisfaction of public interest. If the goal is to reveal “all the

details”, even without news relevancy, the culture of gratuitous invasion of the privacy of citizens is created – how often with journalists thinking they have powers they actually do not have. “Pursuit of the news is not a license for arrogance”, as so rightly observes the code of the Society of Professional Journalists (United States).

It is clearly about value of the human dignity, a principle so present in codes of ethics such as the Unesco Declaration or the German Presskodex. Let us consider funerals. The fact that a person’s rights continue to exist after death justifies that the media coverage is not without special care – the BBC code requires prior authorization from the family. The collection of images of people in mourning may be considered an intrusion of their intimacy. The respect due to the dead demands that close ups be avoided.

The social responsibility of the journalist is therefore tested daily:

“Journalism will not survive as a serious activity, if it is not based on the conviction that when practiced the aggression to fundamental values of the human society, such as privacy and access to information, is only acceptable if as a result is in question the conquest or preservation of social gains, significant for the improvement of culture and life. And that besides requiring lucidity, courage and wisdom, is only obtained with conscience, when faced with the responsibility of making decisions that produce irreversible effects” (Chaparro, 1997).

ESTABLISHING THE RELEVANCE OF NEWS

The evaluation of news relevancy is unquestionable, when private matters are involved. During research and investigation it may lead to ethical questions, considering the fact to report. Under what circumstances should past events be mentioned? Is it correct to involve family or friends of the people in the news or story? Is it justified that, because of public interest, a person that has just lost a family member in an accident be contacted? What news advantage may be obtained by interviewing a child that has witnessed a crime? Should a felony committed by an unknown citizen be news, identifying its author? What if it is a public figure?

The lack of definite answers to these questions reinforces the need for reflection. In order for the journalist in the field not to feel closed in his analysis of the behaviour to take, naturally subjective – or bound to possible questionable ethical impositions from superiors – it is important to stimulate debate. Even more because, when facing these realities, they call on the social responsibility of journalism.

Unless it is related to the news the mention of past events represents a gratuitous intromission of privacy. Reminding that someone accused of tax fraud was in a contested divorce a decade ago, or served time for domestic violence, only increases negative public perception of the character of the citizen. The respect for the right to forget, as stipulated in some legislations and self-regulatory instruments, is mostly recommended when considering crimes or other anti-social behaviours.

Not involving closely related people – beginning with family members – from being subjects of news is contemplated in various codes, safeguarding cases of clear journalistic importance. It is admissible if necessary for the comprehension of the context – and even so without mentioning the name. However the journalist must not forget that the brother of someone accused of murder may be as far away from the act as a neighbour. Or that the son of a member of Parliament does not lose the right to his private life, just because of the importance of his father. Or that the suspects of drug trafficking by the father of a football player should not be object of news, in the context of family ties, as recently happened in Portugal.

The news coverage of when British citizen Robert Murat was charged with kidnapping Madeleine McCann in May 2007 is an example, for the wrong reasons. Pictures of his mother were published and, according to his information to a newspaper three years later, it was proposed to his ex-wife the payment of the equivalent to 220 thousand euros for an interview, pointing him as a pedophile. The town where she lived in England was “invaded” by journalists, forcing the police to transfer his daughter to a safe location.

The sense of “trial” Murat suffered in public gained unimaginable proportions. “One day a british journalist and a photographer barged into my house, saying they were going to write about me. I answered: I do not care what you publish. Next day headlines: ‘Maddie: I do not care’”, he told the newspaper. After having filed several lawsuits for defamation Murat received 600 thousand pounds in compensations from ten newspapers alone, when he was no longer a defendant.

Madeleine McCann’s case reveals just how excessive media coverage of certain events – could be called a spectacle – gets ethical regulations, nowadays a consensus, to be ignored. Starting with the most elemental: the independence of the journalist, mortgaged by trying to replace the police in the investigation of a potential crime, by gathering testimony that is not credible and by exposing many citizens outside of the situation.

It if was not for the almost planetary dimension of the case, the name Murat – at least according to the Portuguese media exposure culture – would not have been made public, as he was not a public figure. The truth is that there is no consistency of procedures as to the protagonists of news and news coverage – considering the reality in France this is stated in the 2013 Annual Report of the Information Ethics Observatory, created by the Association for Preparing a Press Council.

In France the only rule generally respected, according to the report, is to conceal the identities of minors, by legal imposition. In all remaining cases several practices are applied: mention to profession, age and place of residence, initials of name and last name, just last name, false name, fictitious names. The last three options have risks that cannot be underestimated. The disclosure of the last name may cause confusion with a namesake. “*Désigner par exemple deux délinquants par les prénoms fictifs de Mohammed et Khaled ne revient-il pas à les désigner comme d’origine maghrébine?*” questions (Observatoire de la Déontologie de l’Information, 2013). “*Cet éclatement des pratiques peut conduire à une certaine incompréhension du public, dans la mesure où pour un même fait le nom de la personne sera révélé dans un média et pas dans un autre*”.

The respect for the presumption of innocence – the value considered in the choices mentioned above - is the toughest test for the journalist, particularly for suspicions of crimes socially repugnant. Therefore, we see the adoption of restrictive ethics regulations. One of the codes in Italy, where the profession is regulated by a Council, determines the non-disclosure of images of hand-cuffed citizens, so the public does not perceive that person as already condemned. BBC only identifies pedophiles with sentence carried if the name has been previously made public by the police. In news coverage about the subject it only allows the identification of the place where the acts have been committed, but not details, such as the residence of the suspects.

It is the acknowledgement that the problem of identification has multiple dimensions. An image, for example, is susceptible to provide indirect identification, a risk made bigger when covering events in small communities, where every corner is recognizable by its residents. For the general public showing the street where a child victim of rape lives is irrelevant. For the residents of the village or neighbourhood that image may be sufficient to reveal the identity.

Whenever private life may be in question the place is not indifferent. In public places people can expect a lesser degree of protection of privacy, but that is not exempt from restrictions, in certain circumstances. Situations such as a patient receiving medical treatment in a public or semi-public place and wounded people in road accidents justify self-constraint from the journalist. It may be even required double authorization: contact and collection of images, and its reproduction.

The British codes, directed to the audiovisual, adopt the concept of “legitimate expectation of privacy” to characterize situations in public places, where they are at risk of being violated. The Ofcom code presents as examples a naked child, someone disfigured by a disease or images of a suicide attempt captured by closed circuit imagery. BBC signals the recordings, even in public places, so people decide whether or not they want to be filmed.

Eventual violations of privacy by the press, when gathering information, although negative for the people in question, may not reach public knowledge. Still some codes try to limit the journalist’s intervention at this stage, multiplying regulations, not always bound to succeed.

“The degree of specification of the PCC code, regarding subjects of private nature closed to journalists, undoubtedly demonstrates the concern with the abuses by the british sensationalist press. Even prior authorization to access hospital areas not open to the public is mentioned, something unparalleled in other ethics regulations” (Martins, 2013: 162).

Sensibility and common sense: nothing replaces these attitudes, no matter how dense and rigid the ethics codes may be. A lot of times the journalist must resist emotional involvement, that eliminates distancing and, as already said, damages his function as a mediator.

CONDITIONS OF CONTACT WITH SOURCES AND WITNESSES

The contact with sources and witnesses, either personal or by other means, takes special importance, when gathering information. The loyalty in the approach, condition necessary for the credibility of the journalist, is manifested in the clarification of the conditions in which it is done and its objectives. The codes in the northern European countries give the person to be interviewed the right to know beforehand the context in which his statements will be used (either to be published or just support material). The Dutch code recommends an “informed decision” over whether the person intends to say something and that new permission be obtained, in case the journalist intends to use the statements in another context. I.e. it is up to the person being interviewed to determine in perfect conscience the interest, opportunity and extension of his media exposure.

In tragic events, in which the journalist faces situations of psychological fragility or emotional vulnerability, the respect for the right to intimacy in private life takes center stage. The people in question may be in depressive state, with levels of self-esteem reduced to a minimum and even not in their full capacities. So ethics codes just like the Portuguese demand that the contacts be held in conditions of serenity.

It is worthwhile to revisit the analysis produced in 2001 regarding this, by the extinct High Authority for the Mass Media. In a directive about authorization for the use of images in television, of people in situations of “clear psychological fragility”, the former Portuguese media regulatory authority disallowed the “question in the moment” and lists several previous diligences: the use, whenever possible, of family members or legal representation; clarification of the characteristics of the news story, so that the person in question decides with all the elements; evaluation of potential conflicts between the right to inform and personal identity. In more severe cases the Portuguese high authority demanded written consent, to protect the people involved and the journalist himself.

The story may be an additional factor of victimization or add unnecessary suffering, as so many specialists have been stating. “Journalists who are sensitive to the suffering of others and understand the complexity of emotional trauma are often able to write about traumatic experiences in a way that is informative, engaging and often helpful to readers” (Kawamoto, 2005).

The Dart Center for Journalism & Trauma, a net of journalists and health professionals based in the US that reflect on this issue, recommends the training of journalists for conflict and tragedy scenarios. For example they should be prepared for reactions of anger and rage, sometimes not caused by the contact with journalists, but because people do not take advantage of it, unlike others, precisely when they feel the need to communicate. The adoption of basic precautions is the advice of Victims and Media Center, of the Michigan State University (*cit. in* Smith, 2008): in the beginning of the contact place questions related to privacy and confidentiality; never say “I know what you are feeling”.

A sensitive question is the conduct of the journalist for issues such as revealing the identity of victims, either murder or accident. The rule that the information only be released to the public or families, after the authorities have themselves released it – should it be respected? The positive answer to the question seems the most reasonable

one, but the specific situation may justify the contrary. Consider the example of military people killed in combat. Admitting that the identification of the victims by the media is not absolutely pertinent, from a news perspective, the truth is that by not doing it creates tension and anxiety in the family or friends, and also from all members of the group. It is then justified more flexibility in regards to identification choices but the journalist should totally refrain from approaching people who are not aware of the death – or permanent disability – of those closest. Still journalists should consider the possibility that they involuntarily will be the first to bring the bad news to them.

When covering earthquakes, floods, accidents, terrorist acts or other traumatic situations the safekeeping of human dignity is what is at stake. It is part of the internal rules of television networks, for example, the assurance that sick or bedded people are not identified in the broadcasts, like the *Charte des Antennes France Télévisions*.

However it is not only the respect for personality rights that the journalist must consider, during news stories of this kind. It is important to produce a thorough and impartial report, in order to ensure that the testimonies are credible – i.e. helps to present the events as objective as possible. Someone who has just lost someone or something is surely not in the best conditions to provide a reliable testimony.

By majority – there is no code that ignores it – contact with children and young people should observe vast restrictions. In this case the principle to respect is the safekeeping of the development of personality and eventually the reintegration in society. Regardless of legal regulations – in Portugal it is under the regulations that protect children and young people at risk – it is the general rule that minors are not identified, either as protagonists of illicit acts or as witnesses or victims.

In 1986 the extinct Press Council considered a case of potential damage that professional negligence may have caused in this specific area. “Irreparable marginalization” of a ten year old child, presented as suspect in having murdered a four year old one was the effect created by a morning newspaper. The council underlined that by only making public the first name of the child the identification would not be stopped, because of the small community he was in. His “moral and social” rights, as well as those of the victim, were “severely and irreparably” affected (Press Council, 1986).

In Italy, where the profession is regulated by an association, a code was created in 1990, the Treviso Chart, dedicated specifically to the coverage of events involving minors. The document that focuses on the superior interest of the child imposes several limits, in particular when identity revelation is concerned. But curiously does not exclude informing about suicides, under the condition that potential imitation aspects are not emphasized.

Several television channels have technical resources to conceal identity, often used when children are in question. Since 1998 the PCC code says that publication of information of minors cannot be justified with their parent`s notoriety or personal position. These are issues to respect when broadcasting, but also during research.

Self-regulation instruments are common to all media companies: demand for authorization from family members, tutors or legal guardians, for interviews with children,

as well as the collection of testimony. Some media companies go even further – by not allowing questions that are beyond their ability to understand or even contact with children involved in family conflicts, such as contested divorce.

Coelho (2005) mentions a cornerstone case. In 1995 a child was interviewed for a television story, with the consent of the mother, whose father had been prevented from contacting. Considering that the personality of the minor, seven years old, might be affected, the court agreed to an injunction requested by the father, with the goal to stop the child's image and voice from being broadcasted, even if "covertly". The ruling was not totally respected: the news channel broadcasted the testimony, just not showing the face.

The decision not to identify children and use maximum care in interviewing them are restrictions that do not exempt journalists from ensuring that, in specific circumstances, they are the story – with a face and right to be heard. Preservation of anonymity is not equal to not having identity, making children "ghosts" to the media, as states Marie-Christine Gryson-Dejehansart in "Outreau, la vérité abusée" (*cit. in* Guiller & Weiler, 2010). The author, a psychologist, alerts to the perverse effect in the absence of images of children, transformed in virtual beings.

"How do we make readers ethically comfortable with our storytelling choices and morally uncomfortable with what the story depicts?". The perplexity shown by Moore (2011: 14) is in regards to the treatment of sexual crimes, an area so susceptible to sensationalism that raises many ethical dilemmas. Recognizing that the personal suffering of the survivors is inevitably exposed, the author, a journalist by profession, tries to fix limits: "If we do this with any other intention than that rape should not happen — or if we do this without any clear intention at all — we are indulging in a kind of storytelling that critics do not hesitate to call pornography".

Moore thinks of the audience, when defends these positions:

"Trauma stories require the writer to consider the reader, listener, or viewer as a partner in the creation of ethical journalism. Our choices as craftsmen—about identity and attribution, about detail, about writer's voice, about structure and style, and even about medium—do more than simply tell the story. They tell readers about our values" (*idem, ibidem*).

ROLE OF THE JOURNALIST IN THE PROTECTION OF PRIVACY

The observations of the author lead us back to the question of how the story is broadcasted, something that cannot be dissociated from the collection of information. If the aggressor is the protagonist, instead of the victim, it is because the choice has been to preserve the victim. However the issue is not entirely peaceful. When a victim of rape decides to be identified what attitude should the journalist take – accept his will to be identified or refrain from doing it?

In 2009 the case of an elderly woman was studied. She had been the victim of a brutal rape, and it was news in two newspapers in a very detailed way, with photos and by

revealing name, residence and age. The Regulatory Authority for the Media (RAM) considered that ethical infractions were committed, as the conduct of the journalist could not be justified by the will of the woman to be exposed. The regulatory authority stated that “the essential right to intimacy of private life and the human dignity itself were severely violated” (Regulatory Authority for the Media, 2009). “Can the rule of law tolerate, in its midst, such an extreme and irrevocable degradation of the liberty of public access to the most intimate aspects of the life of a citizen, even if such offense has been consented? The answer cannot be other than no”. This was the question of the RAM, drawing the attention to the risk that media coverage can unravel behaviours of exclusion and stigmatization.

The authorized media exposure – that Portuguese High Authority for the Mass Media in 2000 designated the television show “Big Brother” as “offered privacy” – has several dimensions. The involvement of anonymous citizens does not have the same nature as that of public figures that have their private lives all over the so called “yellow press” – nowadays one should actually say various media.

By voluntarily transferring private matters to the public domain these citizens lose the legitimacy to afterwards close the doors they have opened. Still the journalists should evaluate potential negative effects of that exposure. It is important to preserve minors and family members not directly associated with the events, as well as evaluate circumstances that might justify a change in attitude in regards to the invasion of their private space, from those that have consented or wanted it.

Privacy exposure is not a safe-conduct to ‘voyeurism’ or for the removal of ethical duties:

“It does not make sense to ask for authorization to photograph a couple whose relationship is public, but it is justifiable to respect an actress with a lot of media attention but who has just given birth and wants to preserve the child. I.e. actions that have derived from previous consent should be practiced but autonomous ones require authorization” (Martins, 2013).

The media attention to common citizens is however the most serious challenge to the social responsibility of the journalist, simply because “to begin with people are a no-news: it is necessary a substantial reason (that may be in principle given) for them to be news” as marks the Ethics Council (EC) in 1996. They are news only “if they do something that makes them news and even so if the terms of the news do not violate their rights to image, good name and preservation of intimacy”.

“Anonymous citizens do not know how media work and sometimes their own rights. They are more vulnerable to invasion of their privacy, even if by naivety or eagerness to stand out. Duty of loyalty towards society requires the journalist not to take advantage of such situations” (Martins, 2013: 48).

They are people that sometimes are not aware that media attention may be harmful to them, as they are not used to being in contact with journalists.

Their privacy must be defended by the journalists, in these circumstances; this was defended by the EC in 2002, highlighting that this attitude, for all reasons, must be given special attention when dealing with “children, mentally handicapped people or marginalized individuals”. They must be informed that they are not obliged to expose themselves and that “no harm will come from not doing it”, as sustained by the EC in 1996, when obtaining express consent for testimony – the “passive or manifested” tolerance by someone does not constitute implicit authorization for the exposure of their privacy, according to the *Charte des Antennes France Télévisions* – as well as in refraining from exploring, without justifying with public interest, issues susceptible of interfering with personality rights.

Courage is demanded to the journalist, when he recognizes that higher values justify aborting that approach. However because of tight competition the reflection within the newsrooms is scarce and newsroom self-regulatory councils tend to lose their positive and stimulating influence. The refusal to comply with the demands of citizens available to share their privacy is an attitude particularly challenging to the ethical and professional conscience but such option is rarely even questioned.

The result is the uncritical journalistic treatment of sensible situations, as happened with the Portuguese young boy reported missing by his father, in December 2010. Because his father believed he had been kidnapped, due to possible enticement to sexual practices over the internet, the media developed the case pursuing successive contradictory versions told by him. However the young boy returned home a week later, and it was determined that he had gone to a friend's home.

The risk of bringing common citizens to the media spotlight, without them wanting it, is often forgotten. Oliver Sipple, the American citizen who in 1975 was able to abort an assassination attempt on president Gerald Ford, was the case that demonstrates just how damaging media coverage can be, even if full of good intentions. Sipple, an accidental hero, saw his homosexuality revealed by a newspaper, with the goal to fight stereotypes, just like the one that gay people are, by nature, weak. He was abandoned by his family, and died in misery.

LEGITIMACY OF RESEARCH METHODS

The report of irregularities and criminal conducts, one of the noblest missions of journalism, frequently means formulation or reception of accusations. In several ethical documents the duty to listen in advance and provide time enough for the ones involved to pronounce themselves, is well stated. The code of the Austrian Press Council even determines that no accusations can be broadcasted without previous statements from those affected – a norm that if strictly enforced can stop the revelation. Less radical is the French ethics chart: it condemns attitudes like omitting the duty to listen to the parties, in order to get an exclusive, or contacting those involved close to printing deadlines, thus making it impossible to effectively clarify the facts.

The use of hidden cameras and microphones, as well as false identities, is amongst the most ethically censored professional practices. Whatever the qualification

– “banished” methods in the French code, disloyal or illegitimate in others – it should be an exception, substantiated in indisputable public interest and as long as there are no conventional means to gather information.

The use of such methods justifies reflection more because they may become intrusive actions to privacy than because they break the law, eventually not being an illicit act, if legitimized by the right to information. Although it is not always respected the duty of the journalist is to consider and keep safe the reputation of innocent people, hiding their identity or making it clear that they are totally unaware of the reported facts. The principle is valid for the so called cover-up operations but also for the stories when accompanying police operations, as well as health officials or traffic checks, where by nature all those involved rightly deserve the respect of presumption of innocence.

Significantly some codes just like the Austrian one include, among the “unjust and improper” methods, pressure, intimidation and exploit of emotional and stressing situations. As a result of the death of Princess Diana PCC improved in 1998 the restrictive regulations regarding approach to protagonists of news stories – it started immediately by prohibiting image collection through “continued stalking”. In 2009 and in the code at the time the question of harassment lead to the detailing of procedures not allowed – image collection in private areas without authorization, presence of journalists after they have been asked to leave and even specific terms as to the collection of information by telephone.

The use of wiretapping by journalists during judicial inquiries is more and more frequent. Nothing against, as a starting point for an investigation; but its reproduction, pure and simple, requires a thorough analysis. Besides the probable breach of justice secrecy the journalist cannot but consider the fact that most of the times he only has access to certain parts, selected by the police, based on their criteria for the investigation and not media criteria. It is the responsibility of the journalist to assess the potential damage to the rights of privacy and to the word – or even the intimacy of private life – regardless of the content of the conversation and social status of those involved.

A private conversation is by nature supposed not to be heard by others. It has specific moment and context. The broadcasting of parts of the conversation by the media may misrepresent its meaning, produce different meanings from the original or not wanted by the protagonist; therefore it must be an absolutely exceptional expedient. As underlined by a ruling in 2010 by the RAM it is only admissible “when facing issues of undisputed public interest and seriousness, when the danger and social damages of not broadcasting are clearly higher, i.e. clearly disproportional to the damage of the values considered in the legal prohibition of its broadcast”.

Due to the technological evolution the use of social networks is nowadays unquestionable. Having them as sources for information, subject to the assessment of reliability as any other, is the most prudent attitude. Some media companies already gave in to the temptation of using them as “proof”, and have not considered that they may have resulted in, for example, false profiles on Facebook, with potential to destroy reputations.

The duty of the journalist to scrutinize information to which he accesses is not compatible with the option, recently made in Portugal, of justifying in the message of a

family member the thesis that the suicide of a teenager was due to bullying or in electronic messages between young people, regarding a crime on a beach in the outskirts of Lisbon on December 2013, where six students drowned.

The “Meco case”, as it was known, is paradigmatic: The identity of the survivor would not have probably been revealed if the event had been, from the start, treated by the media as a crime, something only later considered. Supposed initially to have been an accident the identification came naturally. The silence of the young man, about what happened, fueled speculation, bordering on media “trial”.

The growing tendency of citizens to expose aspects of their private life on social networks does not authorize the journalist to turn them into news. In that sense the practices such like revelation of contents of personal messages on Facebook are condemned, something that happened for the broadcasting of the homicide of the Portuguese social commentator, in 2011. The ethics codes start to consider this new reality. Such is the case of the Treviso Chart that prohibits reproduction of electronic messages of minors.

PCC recently considered several cases of disclosure of photographs extracted from social networks, in general removed through the negotiation with media companies that accepted the removal of the images from their online platforms. In question are the privacy and, more specifically, the right to image. In one of the cases the photograph supported the news regarding the winning of the lottery prize by a woman (in 1998!), something she wished not to reveal.

IMPACT ON PUBLIC

The question of the impact of information collection in the private area is not limited to the eventual damage to the protagonists. The effects on the public should also be considered, in all its sides – starting with their sensibility. Images of patients in hospitals or of death and wounded people in wars are bound to affect. Therefore by legal ruling or self-regulatory decision various television networks advise beforehand about the nature of the images.

A scientific article about news broadcasting on the Boston Marathon bombing in 2013 sustains that the repeated broadcasting of images keeps alive the potentially traumatic and distressful experience (cfr. Holman *et al.*, 2013). In the US a debate on sounds potentially generating identical reactions occurred, after recordings of phone calls of desperation were made public, during the shooting in the Newtown school in Connecticut.

When covering crimes of great social impact the image is overvalued because it causes shock and starts emotions. It should however be assessed if those effects exceed the strict goal to satisfy the right to information. An analysis to the 1788 photos published for a month in five daily newspapers, about the Dutroux case, a pedophile that in 1996 left Belgium in shock (Dufrêne, 1998) concluded that most were images of victims, detained people, phases of the investigation and popular reactions. It was all about symbolizing “*l’horreur, la tristesse, la révolte, l’impuissance de la justice, parce que la société n’a pas été capable de les sauver et que chacun, médias compris, se sent peut-être un peu responsable*”

(idem, 104). But was it necessary to publish 35 photos five or more times? One of the victims, Laetitia Delhez, appeared 20 times.

Discriminatory approaches – racial, of gender or of any other nature – that create media stereotyped or stigmatizing representations are so damaging to those involved as they are of provoking negative reactions in the public. That is why ethical rules condemn them. Within this category is identification of an assassin by ethnical or national origin, something that tends to establish a relation of causality between that condition and the tendency for criminality. This is also valid for reports on “troubled” neighborhoods. In the one by France 2, in September 2013, in a place close to Grenoble all ingredients were there.

The story, “*La Villeneuve: le rêve brisé*”, broadcasted in the program “Special Envoy” to talk about the homicide a year earlier of two young people, rose strong criticism from civic associations, involving judicial complaints to the regulatory authority and the responsible for the news channel. The Superior Council for Audiovisual confirmed on January 2014 that France 2 disrespected its ethical obligations, by overvaluing the negative aspects of the neighbourhood.

The journalist did part of the filming with agents in police vehicles. Several residents denounced by letter interviews to minors without authorization, the distortion or some omission of their statements – a woman even claimed to feel betrayed – and mistakes apparently deliberate in the presentation of testimonies – “Mama” was presented as a single mother, simple house maid, although she had family and was a social mediator. //

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