

COMPARATIVE STUDY OF EXCEPTIONS TO IMAGE RIGHTS WITH EMPHASIS ON THE IRANIAN LEGAL SYSTEM

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Abstract: Individuals have a right to their images, meaning that they can decide on permitting having their photos taken or published. Therefore, the consent of the person who is the subject of an image must be obtained for photography or publication. This right, however, is not absolute and without exceptions. People have the right to know what is happening in their community. As a result, if a photo is taken of someone and published for information, it is not necessary to insist upon obtaining consent. Several legal systems allow the imaging of others for informational purposes. However, in such cases, the privacy and dignity of people must be observed, and no one is permitted to publish images insulting or contrary to the public/personal internet. Also, images must not be used for business purposes. In the Iranian legal system, the freedom of the press (principle 24 of the Constitution) and the importance of public interest and its priority over private interests (principle 40 of the Constitution) convey the same idea that the principle is to allow publishing images for informational purposes.

Keywords: Photo; Public interest; Right, Privacy; Human rights.

1. Introduction

Image right implies that individuals have an exclusive right to and can freely decide about their images (Peptan, 2014, p. 29). This freedom includes the freedom to

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decide about the photography and its manner. In addition, people can decide about the publication and usage of their images (Helling, 2005, p. 25).

Despite this right, people have always attempted to take photos of others, publish them, and even use them for different purposes. This inclination can be attributed to curiosity and amusement when people pry into the secrets of others' private lives. It can also be for financial gain when the image of a famous person is used in a commercial advertisement or for introducing a product (implying that the famous person endorses the quality of that product). Sometimes, however, the intention of taking and publishing a photo goes beyond: The photographer or publisher intends to inform others of something, and others want or need such information. Each of these motivations is treated differently. Some are respectable and needed by society. Therefore, perhaps limiting one's right to his image for such intentions is acceptable. However, others are nothing more than fun or commercial misuse. In this case, preserving the integrity of the image is preferred.

In 1998 Jean-Baptiste Schroeder & Elisabeth Logeais in their article titled "The French Right of Image: An Ambiguous Concept Protecting the Human Persona" examined the right to image as one of the rights related to the personality in the law of France. They believe that French courts will adopt the right to image in circumstances such as the risk of parody, involving freedom of speech and news information, and photographing in public places (Logeais & Schroeder, 1998).

In 2005 Justyna Balcarczyk scrutinized the different theories of protecting image right in the USA, Italy, and Germany whereupon the approach of American doctrine implies the image right as a proprietary right, while these countries move toward the theory of rights of personality (Balcarczyk, 2010).

In 2014 Rodica Peptan in his article "The Right to Own Image in the New Romanian Civil Code" defined the right to the image as a primordial right like the right to life, health, reputation and honor, and privacy, but it may be limited by factors such as public order (for example in judicial investigations), the citizens' right to access information and the right to freedom of expression which jurisprudence will make a decision according to the conditions and based on the principle of proportionality (Peptan, 2014).

While the aforementioned research studied image right in specific legal systems, this article has focused on the subjects that this right may be ignored and no English research that examines this subject in Iran law by a comparative approach has been found.

This article investigates the conditions where it is allowed to take photographs of people or publish their photos without their consent and when it is required to obtain their permission.

As Iranian legal literature on this topic is limited, the approach of other legal systems, particularly the European countries, was first investigated through comparative

study. It is observed that publishing photographs of others is allowed when the publisher seeks to inform, even without the consent of that person. Otherwise, obtaining the consent of the person is required. After the comparative study, the position of the Iranian legal system regarding this subject is analyzed.

2. The need to obtain permission

1) There are three separate stages to producing and using a photo: taking a photo by others, its publication, and its usage. A photo may be used for advertising a product or service or presenting a certain idea (Logeais & Schroeder, 1998, p. 517). The main question is whether permission is required at each of the mentioned stages. The answers to the second and third stages are almost clear: all legal systems agree on the principle that publishing the images of others is possible only with their consent (Brüggemeier & Authors, 2010, p. 375). However, there are disagreements in legal systems when it comes to taking a photo with no intention of publishing.

2) Based on respect for persons' freedom, some legal systems maintain that merely taking a photo of a person without publishing is not harmful, and there is no need for consent. As a result, mere photography is allowed. But when one intends to publish a photo, the subject's consent must be acquired. These systems prioritize the freedom of action and the intention of those who take photographs over the subjects of a photo. For example, in Australian law, an individual (regardless of fame) cannot claim compensation for taking their photo. In this legal system, the right to image is inserted in Article 78 of the Copyright Act, and applying this article is subject to the release of the image. The mere act of taking a photo is not sufficient to entitle a person to a lawsuit. Therefore, it is not forbidden to take photos of others (Ibid). Similarly, British law has no prohibition against photography, and the reputation of an individual has no impact on this rule. In one case, the judge declared that a famous person trying to prevent people from taking a photo does not mean that any photo taken is a violation of his privacy.

3) Nevertheless, this notion is difficult to follow completely. The freedom to take a photo of others is limited because there will always be concerns involved (Mirshekari & Ahmadi, 2021, p. 12) Therefore, some legal systems (e.g., in France) maintain that the right to image is not only for publication but also for merely taking a photo. In the French legal system, individuals have an exclusive right to their images and can prohibit having their photos taken and published without explicit and prior consent. Therefore, taking a photo of someone else, even without publication, requires their permission (Logeais & Schroeder, 1998). In Belgian and German law, taking a photo of others without their consent is prohibited (Brüggemeier & Authors, 2010). The Greek law emphasizes that images of an individual belong to them and assumes them as the owner. Therefore, it is prohibited to take a photo of others in

any form, even if the image is not presented to the public, reproduced, or published. The Greek Supreme Court upheld the same approach in Decision 961 in 2003, and the same stance is seen in their legal literature (Georgiades & Authors, 1979).

4) In line with this stance, even the legal systems that allow taking a photo without the consent of the person have been driven to reconsider their approach. For example, Australian jurists believe that other rules of this legal system can be used for image rights. It is specifically cited in Articles 1328 and 16 and Article 8 of the European Convention on Human Rights that taking the photo of others through privacy violation is forbidden (Brüggemeier & Authors, 2010). In the United Kingdom, after enacting the Human Rights Act of 1988, it has been judged differently in cases which one is trying to prevent others from taking their photo and photographing others can be forbidden because of privacy violations. Privacy violation usually occurs when personal information is obtained from a private environment. However, in exceptional cases, obtaining information from public and accessible places warrants the violation of privacy provided a reasonable expectation of preserving privacy exists (Westkamp, 2009).

3. Exceptions to the principle of the need for permission

As mentioned above, a person's right to their image is respected by regarding consent as a necessity. Therefore, the principle is to obtain the permission of a person to take their photo or publish it. However, this rule, like other rules, is not without exception. Despite disagreements, legal systems have concluded that in some cases taking and publishing a photo of a person does not require their consent. The following chapter addresses these exceptional cases. However, it should be noted that the possibility to take the photo and publish it in the cases in question does not imply permission to use the images in any way or form. In other words, while one can use the image of a person in these cases, it is also subject to several rules:

3.1. The impossibility of identifying the person in the image

In some cases, the identity of the subject of a photo cannot be specified (for instance, due to the small size of the photo or the presence of a crowd). This gives rise to the question of the necessity of consent in these situations and whether the subject can claim that this photo violated their right to their image. As the person in the photo cannot be identified, there is apparently no violation or harm to their rights. A similar issue was raised in a case in France in 1993. Two separate women placed two lawsuits against a famous photographer (Robert Doisneau) and claimed to be a young woman seen in one of his photos. The court did not rule in their favor, as it was believed that it was impossible to identify the woman in the photo. The judgment was confirmed by the Paris Court of Appeal on December 10, 1996. Also, if the childhood image of an adult is used, they cannot claim a violation of rights as

their identity is impossible to discover due to changes in appearance (Synodinou, 2014).

A similar stance exists in some other legal systems. In Romania, for example, consent of an individual is not required for taking or publishing their photo if they are in a crowd and cannot be identified (Marilena, 2012). Similarly, Section 3344 of the California Civil Code forbids the use of a person's image only if they can be identified in the image (Lauterbach, 2005).

3.2. Taking photos in public places

1) A public place is where anyone can access without special permission, such as parks and streets. Naturally, a public place may have set limitations and conditions, such as opening times, but they do not change its public status (Gendreau, 1994). In some legal systems, photography in such places is allowed so taking a photo of people in that place does not require their consent. For example, the legal system of France maintains that photography in public places such as streets and even publishing the photo is allowed without the consent of the person because it is practically impossible to obtain the consent of all persons in a public place and image. It is an inevitable aspect of social life that someone may take a photo of people in a public place without their consent. The judiciary system of France decides on this basis. For instance, the Paris Court of Appeal states: "anyone can see what happens in a public place. Accordingly, anyone can record or publish scenes of such events without the consent of those present in that place." (La cour d'appel de Paris, 13 Mar. 1986). This argument, however, can be criticized because observing a scene is completely different from recording it. Observing a scene is finished, but recordings remain. Therefore, a statement regarding the former does not hold for the latter. Nevertheless, the acceptance of the possibility of photography in public places has spread to other European legal systems. In Belgian law, it is stated that the right to image does not extend to people in public places because their consent is assumed. Also, the purpose of photography is to describe a situation (Helling, 2005) In Finnish law, there is no rule enforcing a ban on photography in public places and in normal conditions. That is, a photo taken in a street, park, or public marketplace does not necessitate the photographer to get the consent of those present (Korkeamäki, 2005). Swiss law takes the same stance (Tercier, 1984).

2) However, there have always been concerns that the presence in a public place should not violate people's rights. For example, the Paris court states: "The fact that a photo is taken in a public street does not mean that the image subject has no right to protest." (Tribunal de grande instance de Paris, 3 May 2002). The French legal system has considered an important condition on not needing the consent of the person being photographed in a public place; the photo should not focus on a specific

person. Accordingly, it should be proven that the purpose was not taking a photo of a particular subject and that their presence in the photo was accidental. Otherwise, the person may request to manipulate the before publishing so that their identity remains unknown. French courts prohibited the publication of the image of a sex worker on a public street because her face was recognizable (Brüggemeier & Authors, 2010). Similarly, the image of a tourist in front of the Pisa Tower was disallowed because that person was not in that image by accident (Cour d'appel de Paris, 26 Mar. 1965). In another case, the French court ruled against the photography of a person in a synagogue because the focus was on the person's face (Cour d'appel de Paris, 11 Feb. 1987). The photo of a child in a festival was similarly disallowed because it was taken out of the event contest (Cour de cassation (1ère Chambre civile) 12 Dec. 2000). German law allows photography of individuals in public places without their consent if the focus is on the place and not the people (Lauterbach, 2005). In Italian law, prior consent is required if the image is focused on a person rather than the place or event (Alpa, 1997) In one case, the law ruled against publishing the image of a married woman beside a man other than her husband in a sports event. Nevertheless, the image is legal if it is not focused on the person, even without their consent (Cass. 15 Mar. 1986 no. 1763).

3) Several legal systems have resorted to values such as privacy to define limits to the freedom of photography in public places. Privacy is not limited to private places and exists in public spaces. Therefore, the violation of privacy cannot be justified because people are in a public space. For instance, the law in Portugal says that people should not be denied privacy in public places, and taking a photo in public may damage privacy in certain circumstances (Brüggemeier & Authors, 2010).

4) Finnish law involves other conditions. In principle, a photo of an ordinary person in a public place can be published without their consent. However, publishing a photo taken in a public space is illegal if it depicts an individual in a degrading or unsightly manner. For example, publishing the image of a drunk and unfamous person lying at the corner of a street can be grounds for a compensation claim (Gendreau & Nordenmann, 1999). In Italy, publishing a photo of a woman working in the street on a TV report about prostitution is illegal as it violates her human dignity. However, publishing the image of someone dancing in a nightclub may not be illegal in an article on urban nightlife (Court of Rome, 6 Feb. 1993). The same stance is taken in France (Logeais & Schroeder, 1998).

5) It should be noted that permission to take photos in a public place does not allow for commercial purposes. In France in 1973, a photo was taken of a performer at the opening of a chain store, published in a local newspaper, and later replicated in-store advertisements. Both the newspaper and the store argued that the photo was taken on public premises during a public activity with news values. Also, the performer did not prevent the photographer from taking the photo, and the produced image did

not show him in an unpleasant or humiliating manner. The court argued that the explicit consent of people cannot be expected always and everywhere as it would mean no more news reports with images of people. However, it also argued that in such cases, the subject of a photo might be entitled to compensation if the image was used for commercial purposes unless that person had previously approved the commercial use of their image for a fee or free (Tribunal de grande instance de Nancy, June 8, 1973) (Ibid).

3.3. Famous people

1) Famous people attract public attention and interest, and ordinary people want to know everything about them (Helling, 2005). Politicians, athletes, artists, and models are examples of famous people (Civil Court Bruges 27 Jun. 1994). However, fame is like a spectrum, and famous people do not possess equal reputations. Also, fame is transitory and varies through time. The German legal system divides famous people into absolute and relative categories. People with absolute fame are those who are known permanently and whose fame does not depend on a particular event or a special case. The other category consists of people who are considered celebrities for a limited period and regarding a special event in history. For example, the relatives of public officials or high-profile criminals are relatively famous people. This legal system differentiates between these two categories in disallowing publishing photos of relatively famous people unless regarding the event through which they have become famous (Klink, 2003).

2) People are generally eager to know about the lives of famous people. They like to take their photos, keep them as mementos, and show them to others. Photos that reveal more of the privacy of famous people are more interesting. This tendency of ordinary people has perhaps led the legal systems to limit the extent of privacy for famous people, as their right to their images is more limited than ordinary people. For example, the law in Portugal explicitly inserts the right to image in Article 79 of the Civil Code, where it is prohibited to publish a person's image without consent. However, if the person has a significant reputation, social role, or position, taking and publishing their images is allowed even without consent (Brüggemeier & Authors, 2010).

3) Some legal systems maintain that photographing famous people is somehow of their own will. For example, American law considers a famous person as inherently eager for publicity, making their privacy difficult to maintain (Helling, 2005). This legal system also maintains that famous people dedicate their lives to the public and, subsequently, have forfeited their right to privacy (Blackshaw, 2005). In one case, a famous football player whose image was used in a calendar to promote an alcoholic beverage without permission filed a lawsuit. The court, however, ruled out

compensation as the plaintiff lost his right to privacy with the reputation he gained (Balcarczyk, 2010). In Greek law, respect for individual freedom and the fundamental right to freely develop one's personality means that everyone is free to decide which aspect of his personality to be disclosed to third parties and which one of his images to be presented to the general public. However, this right is also subject to specific conditions. For example, individuals should accept exceptions to this rule following their chosen lifestyle. Consequently, people who choose to participate in a public event or present their person to the public have accepted a degree of privacy violation (Karakostas, 2000).

4) Fame is usually earned through effort and dedication of time and money. However, this is not always true (Gorman, 2003). Sometimes people become famous inadvertently due to good or bad luck. Therefore, fame cannot be completely attributed fame to a person's will. A French Court of Appeal states that "being publicly known and famous does not mean that one has waived their right to their images." (Court of Appeal Aix-en-Provence 30 Nov. 2001). Accordingly, photographing famous people is not always self-intended, and another basis should be sought. This can be attributed to the public right to know about the lives of famous people. In Finland, the privacy of famous people is comparably limited because ordinary people have the right to know about them, giving higher freedom to people in taking photos of famous people. For example, if the photo of a politician or another famous person is taken drunk and later published, no illegal activity has occurred because people have a legitimate right to know such matters.

In German law, courts and jurists traditionally consider images of famous people as a part of contemporary history, and the significance of awareness of current and future members of society allows for taking and publishing photos of famous people. In this legal system, famous people are considered part of public life and should accept that society has a legitimate interest in accessing their images (Lauterbach, 2005). In Swiss law, there is a public right to be aware of the activities of other citizens (Tercier, 1984).

In Italian law, Article 97 of the Copyright Act maintains that permission is not necessary to take or publish the photo of a famous person (for being a public or prominent figure) (Court of Rome 12 Mar. 2004). This legal system accepts that people tend to know about famous figures. If an athlete is photographed while dancing in the transit hall of an airport, on the beach, or in a restaurant, it is legal to publish it. Things are completely different if that person is not famous (Tribunal Napoli 19 May 1989) (Martuccelli, 1999). The Supreme Court of Italy upheld the same position in Vote 4785 in 1991.

5) Some legal systems do not have a substantive approach to law. They do not distinguish between famous people and others in terms of consent and address the differences from a demonstrative point of view. For example, in Belgian law,

individuals have an exclusive right to their images. The use, reproduction, and publication of an individual's image are permitted only with their consent. This principle applies to both famous and ordinary people. However, the law is more lenient toward the consent of famous figures than ordinary people (Civil Court Bruges 27 Jun. 1994).

6) Nevertheless, people do not possess absolute freedom to take photos of famous people, and legal systems have attempted to limit it. Famous individuals, just like ordinary people, should have their privacy protected and enjoy the same level of protection (Reiter, 2001). Therefore, being famous is not an excuse to pry into someone's private life. In a case in 1997, the Australian Supreme Court stated that even famous people are entitled to privacy (Brüggemeier & Authors, 2010).

Accordingly, when an individual is in private spaces, taking their photo is a violation of privacy. Belgian law takes the same stance on the right of famous people to their images (Ibid). French law maintains no difference between famous and ordinary people in protecting their privacy. The difference is just in activities relating to their professional and public life. In their private lives, famous people have the same rights as ordinary people but not in activities related to their public status (Hauch, 1994). In Switzerland, taking photos of famous people while doing a public activity is permitted because the general public is interested in the activities of public officials. However, if the famous person does not want attention and wants to avoid publicity, taking their photo means a violation of privacy. Activities to avoid media attention, even in public spaces, are private (Tercier, 1984). The European Court of Human Rights endorsed this approach by issuing a vote on a popular case (von Hannover v. Germany) and arguing that "every person, including famous people, has a legitimate expectation that their private life is respected," ruled in favor of the privacy of these people.

7) Even if the famous person has not been on private premises, publishing a photo that damages their reputation is forbidden. The same stance is taken by the Italian legal system (Blackshaw, 2005). Similarly, German law maintains that images of famous people should not offend their person. If an image shows the subject in an undesirable position that is humiliating, it is forbidden to be published (Lauterbach, 2005)

8) In addition, the image of famous people cannot be used for commercial purposes. For example, the German legal system states that the commercial use of the image of famous people indicates a purpose other than attracting public interest and cannot be permitted (Ibid). In one case, a German football player complained about his image being used in a computer game without his consent. The Hamburg Court of Appeal ruled the use of his name and image without his prior consent as illegal. It stated that although a person in a public place should accept that their image could

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be used for the public interest, they have the right to forbid the publication of their image when their legitimate interest is compromised, e.g., when their image is used for financial purposes. Consequently, the publication of the footballer's image was disallowed, and the defendant was fined approximately € 500,000 (Ibid).

In a case in Italy in 1999, the plaintiff sued the defendant for producing and distributing goods with an image of the plaintiff. The defendant attempted to justify his action for informational purposes. The Milan court stated that Act 97 of the Intellectual Property Law permitted the use of the image of persons for informational purposes only, and the mentioned case used the image of the plaintiff for other purposes, namely to promote and sell the goods without prior notification (Blackshaw, 2005).

4. The basis of exceptions to the principle of the need for permission: The right to access information

1) In the previous section, the exceptions to the need for obtaining permission were examined. The first exception, the assumption that one's identity is unrecognizable, is mostly based on the impossibility of damaging reputation because an unrecognizable identity cannot be damaged. The other two exceptions share the same basis: the right to access information. People in society have the right to know what happens in public places or to famous people.

2) Article 10 of the European Convention on Human Rights addresses the provision and promotion of freedom of expression and information. The first paragraph states that "everyone has the right to freedom of expression. This right should include freedom to hold opinions and to receive and state information and ideas without the interference of public authorities regardless of geographical boundaries [...]." Accordingly, jurists in different countries concur that taking or publishing photos with news value is allowed without the consent of individuals (Logeais & Schroeder, 1998). For example, if someone is present at a demonstration or lecture, taking or publishing their image is permitted as it is justified through the right of citizens to access information and freedom of the press.

Some US states allow for similar exceptions. Section 3344 of the California Civil Code forbids the commercial use of others' images. Accordingly, jurists have inferred that the use of people's images for purposes of informing is considered noncommercial and thus permitted (Lauterbach, 2005). Most European countries have accepted this exception. In French law, based on judicial procedures, someone who attends an event with informational interest to the public forfeits his/her right to images in that context. Consequently, many courts allow the publication of images of individuals based on the right of a democratic society to information (La cour d'appel de Paris, Mar. 11, 1991). This exception was upheld by a Paris court in a case

on the release of photos taken in a bomb attack in a subway station (Tribunal de grande instance de Paris, 10, Sept.1996).

In Italian law, if an image is of a public event or a matter of public interest, its publication is legal (Court of Rome, 12 Mar. 2004). In a case known as Durtroux in Belgium, images of two girls who were kidnapped and murdered were published in a book without the consent of their parents. The parents stated in a press that they were against the publication of the images and claimed a violation of their privacy. The court, however, ruled against them as it believed that the public right to access information had priority over the concern of parents (Brüggemeier & Authors, 2010).

3) However, the freedom of individuals to publish images for informational purposes is not absolute and should follow certain conditions (Carnegie, 1998). The Supreme Court of Georgia, in one of its first votes on this topic, stated that the unrestricted freedom to publish images under the guise of freedom of access to information could result in unignorable mental anguish (Helling, 2005). Accordingly, various legal systems have attempted to impose restrictions on the publication of images for the purpose of information. Italian law states that an image cannot be displayed or sold if its publication damages one's reputation (Court of Rome 12 Mar. 2004).

Similarly, Belgian law has introduced restrictions based on privacy. Freedom of the press should be measured proportionate to the right to privacy. In a case in 1991, the Supreme Court of Belgium decided that although the media should strive to uncover the truth, they must protect the privacy of individuals and cannot publish articles violating the privacy of individuals.

4) Legal systems have attempted to measure the personal rights of individuals, similar to human dignity and privacy, against the public right and to prioritize one over another based on their importance. In Germany, the person's right to their image (based on their legitimate interests) is examined against the public right to awareness (krüger, 1982). Entering the privacy or exploiting the image of an individual cannot be exempt from obtaining consent (Balcarczyk, 2010). Other legal systems, including Romania (Peptan, 2014), Italy (Martuccelli, 1999), Switzerland (Blackshaw, 2005), Greece (Supreme Court Decision 411/2002), and the US (Pinckes, 1997) take a similar stance.

5) The European Court of Human Rights follows a similar approach. According to Article 10, Paragraph 2 of the European Convention on Human Rights, "the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining

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the authority and impartiality of the judiciary.” In a famous case, a German princess named ‘Caroline von Hannover’ petitioned German courts to prevent the distribution of two series of images from her private life as she believed that the publication of these images violated her right to privacy and image. Her appeal to the Federal Court in 1995 and the Constitutional Court in 1999 failed because she was deemed a famous person, and other people had the right to know about her as a public figure. She later appealed to the European Court, which stated that in her case, Article 8 of the Convention on privacy was violated because the German courts had failed to weigh the conflicting interests. The Court argued that although society had the right to know about public figures and, in certain conditions, about their private life, this case did not involve such right as the public could have no legitimate interest in knowing about the individual’s private life, even if they appeared in public and were well known. Even if these interests do exist, the Court believed that even if such interests existed, they could not be prioritized over the individuals’ right to privacy. 5) In addition to this limitation, images can only be published for informational purposes. If the image is used for commercial goals and profit, it no longer belongs to the freedom of expression (Carty, 2004). This view is maintained in American and Australian laws (Ibid; Gorman, 2003; Koziol & Warzilek, 2005)

5. The Position of the Iranian Legal System

Does the Iranian legal system allow taking photos of others and publishing them?

There seems to be no explicit prohibition on taking a photo of others in the current legal framework. Under Article 729 of the Islamic Penal Code, “anyone who, by a computer or telecommunication systems, publishes private or family audio or video or other private or family matters without the consent of the owners (except in legal cases), such that this act causes damage to the owners’ reputation, can be sentenced to imprisonment for 91 days to two years or a fine of five million Rials to forty million Rials, or both.” According to this article, simply taking a photo of a person is not forbidden. Publishing a photo, however, is subject to rules. In addition, if a photo is part of personal information, the Act of “Freedom of information and access to information” prohibits its disclosure but not its mere collection. However, if taking the photo of others violates their privacy (e.g., while at their homes), the prohibition mentioned in Principle 22 of the Constitution can be enforced. This principle states that “the dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.”

What about publishing a photo? It can be inferred that the image of individuals can be published if the motivation is informing others, and this happens through the press. According to the freedom of the press in the expression of content (Article 24 of the Constitution), the basis is permission to publish the image of others for informational purposes. In particular, Article 40 of the Constitution favors public

interest as a solution to remove the conflict between private and public rights. The principle could be regarded as a pretext if the publication of the images of others for the benefit of the public. Under Article Two of the Press Law, "clarifying public opinion and enhancing the level of public knowledge" is the mission of the press. In particular, "the acquisition and publication of domestic and foreign news to increase public awareness and preserve the interests of the community [...] are the legal rights of the press" (Article 5 of the same law). However, this right is not absolute and includes exceptions. For example, publishing images that are contrary to public virtues (Paragraph 1 of Article 6 and Article 28 of the same law), offensive to specific people (Paragraph 8 of Article 6 and Article 31 of the same law), or contrary to reality (Paragraph 11 of Article 6 of the same law) is forbidden. Also, the commercial use of the image of others without their consent may be subject to the prohibition mentioned in Paragraph 10 of the above Article.

The law of "publication and free access to information" can be used for permission. Paragraph B of Article 1 of this law states: "[considering] personal information: personal information includes the name, addresses, family life status, personal habits, physical diseases, disabilities, bank account number, and passwords." Public information is the opposite. According to the Paragraph C of the mentioned Article, "[regarding] public information: impersonal information, including rules and regulations, national and official statistics, office documents, and correspondences that are not included in the exceptions of Chapter Four of this law." Based on these definitions and the mentioned examples for personal information, an image that discloses personal information, such as physical impairments, place of residence, spouse, and children, can also be considered personal information (Helling, 2005).

Article 2 of the mentioned Act states that "every Iranian has the right of access to public information [...]." However, Article 6 of the same Act maintains that "the request for access to personal information is only accepted from real persons or their legal representative to whom the information is relevant." If the personal information of an individual is published contrary to this Act, the Note to Article 21 of this Act comes into effect: "real and legal persons have the right to claim damages following the general rules of civil liability." This way, publishing private images of others will result in civil liability for the publisher. Additionally, if the publication of an image harms or ruins an individual's reputation, the publisher will also have criminal liability. As provided in Article 729 of the Islamic Penal code, "anyone who, by a computer or telecommunication systems, publishes the private or family audio or video or other private or family secrets of a person without consent, except in a lawful manner, so that it damages that person's reputation, may be sentenced to imprisonment from 91 days to two years, or a fine of five to 40 million Rials, or both."

6. Conclusions

The right to image means people enjoy the exclusive right to their images, meaning that they have the right to decide on their images with complete freedom. There are three separate stages to the production and use of an image: taking a photo by others, publishing the image, and using it. Legal systems maintain that, basically, all these three actions should require the permission of the image subject. This rule, like other legal rules, is not without exceptions. Legal systems, though with some disagreements, have concluded that in some exceptional cases, taking or publishing a photo of an individual without their consent is allowed. These exceptions are based on the public right to access information. People have a right to know what happens in their community, e.g., in public places. Taking the photo of an individual in a public place is allowed without the need to obtain consent. Also, knowing about the lives of famous people has always been the desire, if not the concern, of many ordinary people. Therefore, many legal systems have concluded that taking the photo of famous people without their consent is allowed.

Despite the mentioned right, publishing an image for the sake of informing others is not universally allowed. The private rights of individuals, such as privacy and human dignity, should be weighed against the public right to awareness to prioritize one over another. In addition, the use of the images of others to gain profit is unjustifiable by the right to publish images for information.

In the Iranian legal system, merely photographing others is not prohibited unless there is a violation of privacy by taking photos, which will be subject to one of the prohibitions stated in Principle 22 of the Constitution. Also, under the assumption that the motivation is informing others when this happens through the press, the freedom of the press and prioritizing public over private interest permits the publication of others' images for the purposes of information. However, freedom of expression cannot be an excuse to publish images that are against public morals or offensive to an individual. Also, publishing private and family images of others is prohibited as these are considered personal information.

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