Introduction

I will address three points. First, I will show that the development of science and technology, while enhancing human potential like never before, challenges those concepts and intellectual frameworks which have been instrumental in conceiving and building our modern democratic societies. The concept and the value of human dignity has been one such central concept. Second, through the lens of Article 8 case-law I will address the question of the challenges that the digital age brings to human dignity. Finally, I will provide a few comments on what lies ahead for the courts. It is true that there are by now a number of initiatives and studies carried out to assess the impact on human rights of the developments of science and technology but a lot of questions will have to be solved in practice and not least by the courts while using the concepts and methods that we have developed so far.

Human dignity in digital age

There is one fundamental value placed at the very centre of our liberal worldview – dignity of each human being. In this respect privacy is an essential element of human dignity. It is a necessary part of a person’s self-determination which is one of the qualities that drives human evolution. The ECHR, while always acknowledging that there is no exhaustive definition of the notion of private life under Article 8 of the Convention (see Niemietz v. Germany1), among its many aspects has defined the right to personal autonomy and self-determination (see, e.g., Pretty v. the United Kingdom).2 The case-law of the Court is extensive in the field of inner and outer space of a human being which attests that in the European worldview the protection of that space is very important for who we are and how we evolve as personalities and societies.

The 21st century has arrived together with the realization that technology, especially digital technology, not only opens up new possibilities for individuals and societies but that it also

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1 European Court of Human Rights, Niemietz v. Germany, no. 13710/88, 16 December 1992, para. 29.
2 European Court of Human Rights, Pretty v. the United Kingdom, no. 2346/02, 29 April 2002, para. 61.
allegedly blurs the borders of, and even challenges, the behaviour and concepts that we have developed as democratic societies in the 20th century.

If, on the one hand, the Internet was hoped to be the new public place where all opinions could meet, today, on the other hand, the algorithm-driven social networks and other phenomena are putting us into bubbles, ultimately preventing a transparent and all-inclusive discussion.

Although our societies benefit greatly from technological tools, they are simultaneously creating more and more vulnerabilities. Cyberspace, which is a non-hierarchical system with no clear points of control, creates a platform where in fact hackers and analytical systems enjoy their rights to privacy much more than we do, because they are anonymous. The fact is that our societies and social behaviours can be easily manipulated, since technologies offer individuals, governments and businesses growing possibilities to collect and analyse our personal data. Analytical systems collect information on our personal choices, habits, interests and intimate preferences.

If technologies reduce our privacy or make us believe that privacy is something obsolete, is that also not affecting a person’s self-determination? Somebody else might own our personal data at such a level that, first, it raises question about the mere possibility of our right to privacy, and ultimately that of human dignity. In a post-liberal technology driven world are we still the masters of our inner self? In the world of algorithms using our data questions about the changed scope of the right to privacy arise and may reasonably suggest that we ought to look at subtle changes in the concept of human dignity.⁴

**Importance of Article 8 case-law**

The Court, too, has been driven into these processes of the increased opportunities of access and control of personal information available in cyberspace. It is equally true for national courts. Certainly, the Latvian Constitutional Court has had to answer questions on the impact of the development of technologies on legislative work of the Parliament and the Cabinet of Ministers. It has pointed out that “as a result of developments of technologies and relations in the society […], rules that were compatible with the Constitution may become outdated and eventually violate human rights”.⁵ The ECtHR has defined that the internet is part of the exercise of freedom of expression, and part of the means of access to information. It has struggled, e.g., in the *Delfi* case⁶ with the issue of protection of honour and reputation which is evidently more difficult to ensure on the Internet. If one reflects on such judgments as *Delfi*, *Magyar Helsinki Bizottság*,⁶ *Roman Zakharov*,⁷ *Szabó and Vissy*⁸ one sees the growing tension between the value of freedom of expression and the right of privacy which tension is heightened by technological developments. The Internet has brought this tension to the extreme for reasons of its character (speed, spread, removed possibilities of control).

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⁷ European Court of Human Rights (Grand Chamber), *Roman Zakharov v. Russia*, no. 47143/06, 4 December 2015.
Article 8 case-law has often generated a criticism as to its casuistic character. For example, after the *Delfi* judgment when the judgment in the *Magyar* case was adopted, it was difficult to explain and to distinguish the Court’s approach in these two cases for general public. Both cases show the heightened tension between freedom of expression and the right to privacy on the Internet.

In the context of the challenges and changes described above, I would take the view that *clarity* of the position of the Court becomes of a particular importance. By *clarity* I mean a clear view of the Court on what values are confronted and on distinguishing carefully between individual cases where the need arises.

**Conclusions**

What is ahead? On the issue of whether privacy should be given up in the epoch of science and technology I am strongly arguing that from the point of view of human dignity that is not an option. Privacy in terms of private space, freedom of choice, free will is intricately linked to human dignity. The underlying philosophy of cases such as *S. and Marper v. the United Kingdom* and, more recently, *Bărbulescu v Romania* is good law in this broader context. In the *Bărbulescu* case, the Court took the side of the importance of privacy with the following words in this judgment: “an employer’s instructions cannot reduce private social life in the workplace to zero. Respect for private life and for the privacy of correspondence continues to exist, even if these may be restricted in so far as necessary.” That is the position of the Court on privacy as a value in a controversial setting.

The epoch of science and technology has increased the burden of responsibility of the courts, both national and international. Legislators will be lagging in legislating on these matters and on new paradigms of human relationships that will emerge due to the possibilities created by science and technology. Interestingly, comparative-law material presented in the *Bărbulescu* judgment attests to this point. Based on the practice at the Constitutional Court, I can see that also in continental legal systems more responsibility for reiterating the values and choosing among them in the circumstances of Internet-dependent relations will lie with the courts. This may also revitalise the question in the ECtHR on how the Court looks at the job done by national courts in upholding human rights concerned. This was the point of distinction between the Estonian and Hungarian cases. However, courts should be aware and ready that often it might not simply be a decision on rights enhanced by opportunities provided for by technologies. It may also be decisions on vulnerabilities and threats posed to existing rights by the developments of science and technology. Since Europe is a space of common minimum values among which human dignity has a central place, it is important that courts within the common European legal space take similar approaches on values. The age of science and technology reinforces the importance of judicial dialogue in Europe.

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9 European Court of Human Rights (Grand Chamber), *S. and Marper v. the United Kingdom*, nos. 30562/04 and 30566/04, 4 December 2008.

10 European Court of Human Rights (Grand Chamber), *Bărbulescu v Romania*, no. 61496/08, 5 September 2017.

11 Para. 80.