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Private life as a fundamental right and the interception of communications

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Abstract

The convergence between technological development, political objectives, and economic interests causes the current world a notable tension to safeguard the privacy and intimacy of the person, recognized as fundamental rights, which condition the sufficient freedom and self-determination of the person. This text offers a conceptual analysis, to describe these rights in their current situation and in which aspects conflicts arise, which the Law has to resolve. For the social mindset, the violation of a person's intimate space is unacceptable, regardless of the context in which they are found. Moreover, there are various spheres in which it can occur: work, in activities within an organization, in obtaining evidence for trials, or in situations that interest public order. In Ecuador, the legal regime is configured by constitutional recognition and in various legal bodies: criminal, procedural, electronic commerce, and in the Communication Law, plus the corresponding regulatory development. Furthermore, there is a demanding international framework that binds our country. However, there is a fear of exercising the right to express one's own thoughts: the expression of opinions in areas reserved for general knowledge does not seem to have sufficient guarantees. The invasion of privacy on the internet, like on social media, is seen as a sufficient threat. The debate becomes necessary when, besides, it is opposed to the *right to information*. Following the conceptual contributions provided by the doctrine, the right to privacy in the face of interference by the political power and the media must be configured in its proper terms. This allows us to outline a conceptual framework with timely relevance for the consideration of privacy in the Ecuadorian legal regime.

Key words: Globalization, Law, Access to information, Right to privacy, Communication.

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Resumen

La convergencia entre el desarrollo tecnológico, objetivos políticos e intereses económicos provoca que el mundo actual una notable tensión para salvaguardar la privacidad e intimidad de la persona, reconocidos como derechos fundamentales, que condicionan la efectiva libertad y autodeterminación de la persona. En este texto se ofrece un análisis conceptual, para describir estos derechos en su situación actual y en qué aspectos se presentan conflictos, que el Derecho ha de resolver. Para la mentalidad social, resulta inaceptable la vulneración del espacio íntimo de una persona, sin importar el contexto en el que se encuentre. Y son variados los ámbitos en que se puede producir: el laboral, en actividades dentro de una organización, en la obtención de pruebas para juicios, o en situaciones que interesen al orden público. En Ecuador, el régimen legal viene configurado por el reconocimiento constitucional y en diversos cuerpos legales: penales, procesales, comercio electrónico y en la Ley de Comunicación, más el correspondiente desarrollo reglamentario. Además, existe un exigente marco internacional que obliga a nuestro país. Sin embargo, cabe apreciar un temor al ejercicio del derecho a expresar pensamientos propios: la manifestación de opiniones en ámbitos reservados al conocimiento general parece no contar con la suficiente garantía efectiva. La invasión a la privacidad en internet, como en las redes sociales, se ve como una amenaza efectiva. El debate se torna necesario cuando, además, se contrapone con el *derecho a la información*. De acuerdo con los recursos conceptuales que aporta la doctrina, se ha de configurar en sus justos términos el derecho a la intimidad frente a las intromisiones no solo del poder político, sino de los medios de comunicación. Esto nos permite perfilar un marco conceptual con relevancia oportuna para la consideración de la privacidad en el régimen jurídico ecuatoriano.

Palabras clave: Globalización, Derecho, Acceso a la información, Derecho a la privacidad, Comunicación.

Introduction

Seized by the tide, a vertiginous world, highly technological, and digitized, we have seen ourselves several times in the uncertainty of how to enforce our privacy and how to handle personal information within the private space. The vulnerability of information and personal aspects in the physical and virtual spheres increases rapidly, concomitant with technological development that, in addition to breaking distance and time barriers, also adds to individual privacy and intimacy. Modern globalization, in its stage of information and communication technologies (ICT), created a new world order, rapidly inserting itself into the economic, political, cultural, and social dimensions and stimulating permanent commercial processes that have led to building a highly interconnected society. These high levels of interaction contribute to the so-called information society. Where the physical and virtual world was articulated in a stylish way, it means overcoming individual boundaries, in their intimacy and privacy, and at the end, generating ignorance of those fundamental rights. Then the higher the interaction, the greater the risk, and it is there where the application of the right to privacy and intimacy becomes a subject of permanent discussion.

Departing from this viewpoint, some experts such as García (2015) state that there is a differentiation between privacy and intimacy. As he points out:

> Privacy is broader than intimacy, since the latter protects the sphere in which the singularly reserved facets of the person's life are developed; while privacy is a

> broader, more global issue of facets of his personality, which a person has the right to keep confidential. (p. 1).

Also, for others such as Gidi (2009), private life refers to "those aspects of a person's life that offer some connection with aspects of their social life related to the workplace, professional or commercial, which could exceed the scope of protection of the right to privacy" (p. 6). This author identifies two areas of private life: the interior referred to the individual that affects their morality and psyche; and, the external one, that attributes to the subject the same faculties as on itself but concerning the others. In both spheres, the subject has equal sovereignty and "the right to control their spaces" (Gidi, 2009, p. 5). Regarding privacy, this author refers to the idea of Americans Warren and Brandeis published in the article *The right to the privacy* and "identifies it with the right to be alone (…) not to be disturbed (…) associating it mainly as an impediment to intrusions to privacy in physical spheres" (p. 5).

Moreover, García explains that privacy within the variability of new technologies as a right that has had to be redefined for improving legal protection. Then he defines privacy as a right that is "considered more proper and hidden from the human being [it means a] faculty destined to safeguard a certain space exclusively and which consisted of an individual's right to solitude" (2007, p. 748). It could be understood then as the right of the individual from his own space to protect his thoughts, emotions, and his search for happiness.

The configuration of an adequate conceptual framework is necessary to define the problem, which consists in the violation of privacy and intimacy in society and by the public powers, and to consider how the response of the law must be, beyond formal recognition of liberties and rights.

The terminology itself to the scholars and the norms refer is not uniform *privacy* in English does not correspond to *intimacy* in Spanish, *private life*, *confidentiality* is used without a conceptual agreement in the doctrine. Other terms are also used in this context *solitude*, *anonymity*, *riservatezza* in Italian, or the German tripartite classification *privats-phare-vertrauenspharageheimsphare*. The private and public spheres converge in the determination of concepts, as Riofrío (2015) explains, which opts for the concept of *secrecy*. This Ecuadorian constitutionalist develops the idea of the *cone of secrets*, raised in the 1930s by García Morente. It is an explanation that sees private life as a cone with two extremes: the vertex is constituted by that part of private life, where there is "the solitude of the living self, to which no one but me can have access" (Riofrío, 2015, p. 140). Gradually the cone opens more and more towards the public, towards what is called to be *in contact with the world of public relations*" Later we abound in conceptual distinctions, on which Riofrío's study is an elaborate synthesis.

Therefore, inquiring into the concepts of privacy and intimacy displays a series of positions and interpretations that agree and contrast, from the trivial to the legal, on these terms that are protected by law as a fundamental right. Within this variety of uses and terms and to clarify our concepts, we are going to take a series of concepts as initials. In this sense, Toscano (2017) makes the first reference in time to an article by Samuel Warren and Louis Brandeis published in 1890. They, concerned about the invasion of their privacy, distinguished

between public life and the domestic sphere, a difference now generally recognized in the constitutional development of liberties. However, curiously, within contemporary democracies, these are in danger and even more so in the world of the new technologies.

> [Toscano understands] by private those personal matters that only concern us and about which it is up to us to decide without interference [and this leads to identifying the right to privacy with the *right to not to be disturbed* (the right to be alone). But] there are many ways to infringe the right (...) without violating your privacy [he points out]. (2017, p. 537).

Thus, for example, without being a physical attack, there are invasions that "strictly do not interfere with individual freedom [such as] if someone reads our emails or record our telephone conversations without our knowing it (Gavison, quoted by Toscano, 2017, p. 537). Nevertheless, it should not be ignored that yes, these constitute a form of threat to privacy, similar in dictatorial regimes or instability scenarios were interfering with privacy, invading workplaces or worse, invading and violating the reserve of their domicile, they become justified under the pretext of *social control* for the *common good*. However, the media is also co-responsible for this violation of law by stalking and disclosing details of people's lives without their consent.

The concepts of privacy and intimacy are related but have their conceptual differences; Toscano refers to Castilla del Pino, who makes this distinction and points out that there are:

> Three types of actions for everyone: public, private and intimate. What differentiates them is the scope or setting in which they take place [then states that] public actions would be necessarily observable (…) private ones may or may not be observed (…). The intimate corresponds to the interior of each one. (2017, pp. 541-542).

Furthermore, according to Díaz (2002) "Intimacy is applied to the deep and internal things of the human soul and, by extension, while privacy refers to the personal and the particular, that is, to that which is kept closed to public access" (p. 5). He deepens and points out that:

> The differences between the adjectives intimate and private must be transferred to the nouns intimacy and privacy [likewise, he explains that] intimacy is part of our privacy [and both are reserved, so] intimacy is the set of feelings, thoughts, and inclinations most guarded within-ideology, religion or beliefs-personal trends that affect sexual life, certain health problems that we want to keep completely secret, or other inclinations. [Finally,] intimacy may be unknown even to those closest to us, while private life is shared with them and, we intend to protect it from the gaze of those who are not part of our environment. (Díaz, 2002, p. 6).

Besides, the constitutionalist Salgado (2008), makes a clarification on the concept of private life indicating that:

> It has a relative character because it depends on various circumstances; thus, for example, of the cultural environment; of the situation in which people find themselves: if they are authorities, people who have excelled in politics, in sports, in general, those who have achieved notoriety. One of the starting points has been to differentiate private

> life from public life and, based on these differences, determine what private life would be. Family and home life enter into a concept of private life. (p. 71).

From the perspective of interests and political decisions to the conception of what encompasses the rights of individuals, the right to privacy has been the subject of different interpretative edges, conditioning its application of inalienability according to the context in which it develops, or to its time, according to the interest of the information, it contains. Thus, various oppositions arise in the framework of the natural rights of the human being versus rights acquired in society.

As Lastra (1998) stated in his book *Fundamental Legal Concepts*: "Fundamental rights are linked to the dignity of the person; they are the projection, positive, immediate, and vital of it; they constitute the condition of their freedom and self-determination" (p. 399).

That means, as Solozábal (1991) also supports: "fundamental rights are the basic, inescapable and inalienable nucleus of the legal status of the individual" (p. 88).

New discussions around the space that limits privacy and intimacy, influenced by the effects of ICT, have led to new conceptual configurations. Thus:

> This new concept of privacy comprises a new visibility regime that affects the configuration of the digital public space (EPD) that is constituted in four dimensions of the experience context that includes: 1) the impossibility of secrecy in cyberspace; 2) the development of a surveillance economy that has led to the fragmentation of the EPD and 3) the transformation of the visibility of this public sphere, and 4) the essentially reactive nature of this new concept of privacy". (Fernández, 2019, pp. 139-167).

In Ecuador, fundamental rights are expressed in the Constitution of the Republic, and within it, our values as individuals in society are explicit. The right and respect for private life is expressed in the current Constitution within the framework of freedom as the natural principle of every person. Thus, in the Sixth Chapter, Rights of Liberty, art. 66, num. 20, it states that "people are recognized and guaranteed (...) the right to personal and family privacy", so it is clearly shown that the right to privacy it is an inalienable right, individualized, protected and guaranteed by the State.

From this perspective, how the different interpretative factors play to the norm among those who have the power to apply and execute that right of absolute privacy and intimacy. In different instances, we have witnessed those who, with hierarchical power, violate this right of privacy in different institutional and personal contexts. It is widespread to hear organizations express fear of saying what they think, and worse still, writing what they think, according to the channel, out of suspicion of invasions and retaliation.

This research is prepared based on a qualitative methodology. The methodology followed consists of the conceptual precision of the rights relating to intimacy and privacy, to distinguish which elements are considered as constituting an intangible core and whether it is possible to distinguish other areas in which a weighting with other values can be established. Alternatively, interests also pursued by the law. The analysis starts from an observation of the legal consideration of the privacy and

intimacy of people in the organizational and particular contexts. The storyline presents a descriptive and narrative style that is based on primary sources such as books, articles, regulations, as well as records issued by the media, which allow to contrast and validate the problem raised. The questioning about the right to privacy and personal intimacy against the level of interference in the different levels aims to demonstrate the violation of this fundamental right.

Development

The framework of action of this fundamental right to privacy is legally questioned. It is argued that, in the institutional context, all information generated in that bosom belongs to that institution. So, everything that is assumed and written belongs to the employer (in the case of a labor dependency relationship); Therefore, invasive message and call identification filters are systematically deployed internally among employees.

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All these services have been motivated without excessive controls, protocols, or policies that are harmonized with those established in other labor relations. It is as these technologies have built a virtual and independent parallel universe, without rules or rights; however, from this scenario, two possible normative areas to apply are bifurcated: the one that corresponds to individual rights and organizational policies; and, the other to the regulations that governments should regulate internet technologies and service. It is undeniable that in this relationship, it is not clear to what extent privacy policies and their main foundation of the right to privacy and intimacy are applicable.

The problem arises from the imposition of the employer when the employee, before his contractual employment relationship, yields over his right to privacy, which is inalienable and non-negotiable. Giving these concessions places the employee at a disadvantage who starts subject to conditions on the handling of their information, which may be personal or work. It leads to a dangerous situation when the employer interferes with the personal life of the employees, under the pretext of accepted conditioning for using the technological business service.

Somehow a figure of legal concealment is glimpsed before the violation of a human right (right to privacy), where the user/employee is the main affected by the violation of their rights. Within said business regulations, the criteria that categorize and discriminate institutional information from that which is purely personal are also relative. It, therefore, merits starting from the principle of transparency and employee-employer relations based on respect and trust, with clear policies without violating, under any circumstances, the human rights of privacy and intimacy.

On the other hand, the violation of individual rights had been seen with recurrence in those judicial institutions that, for the purposes

of information treatment, execute actions under the authority and legal competence. Within the scope of legal investigations, people can consider themselves victims of this surprising and aggressive action if, in a specific procedural scenario involved the invasion of their privacy and intimacy spheres. Here arises a question about this procedural right to invade privacy to obtain illegitimate evidence, violating their space and right.

Then *justice* appears as one of the ignored constitutional values, delegitimizing based on law, the same reasons that support that right. It is the denial of the acceptance of justice from contemporary natural law that points to "justifies it as a demand for impartiality in the choice of the rules and principles of justice" (Cárdenas, 2009, p. 221). There is simply no justice in discriminating the application of the right to privacy, according to the perspective of the one who applies to whom it is applied, and according to the context in which it is applied.

Taking Lastra (1998) as a reference, how important is the dignity of the person, that to the detriment of his just freedom in society those rights that belong to him by his nature are conditioned? It is like tearing out our skin and being naked without protection.

They play against this controversy of opinions, the specific combination in the individual of feelings of fear, vulnerability, invasion, and lack of protection of their privacy. Then there is a deterioration in his personality, offense to his morals, and rupture of his privacy; and, consequently, a breach of their dignity. According to Cárdenas (2009) dignity "involves not only the guarantee that the person will not be the object of offenses and humiliations, but also supposes the positive affirmation of the full development of the personality of each individual" (p. 221).

Then, by violating a person's privacy, they are openly subjected to humiliation, and this is how our dignity is irreversibly damaged. A humiliation represents the reproach of living. As the Marquis of Sade (2002) stated "do not be surprised that man becomes criminal when he is degraded, although innocent; do not be surprised that he prefers crime to chains when in one or another situation he is attacked by shame" (p. 138).

Facing dignity, for many government politicians, it is a meritless discussion of the person's feelings in the face of the invasion of privacy and intimacy. This also merits remembering that the fundamental principles are a set of legal norms that respond to a set of moral and ethical values of the individual. Values belong *per se* to the human being. (Cárdenas, 2009, p. 221).

The human being is born with rights, such as the right to live, breath, among others, or rights that are ratified in their day to day "right to integrity, honor, own image, nationality, right to privacy, and others" (Cárdenas, 2009, p. 224). However, some of them are currently conceived as dignity, intimacy, as rights that apply from the relationship of the human being with other beings; without understanding it in a purely individual sphere. In other words, there is "an intersubjective dimension to determine the meaning and scope of the fundamental rights that have dignity as a genetic value" (Cárdenas, 2009, p. 224).

It is correct that the rights, and specifically the fundamental rights, have validity in society; however, the specific condition prevails to make them execute in that society. It has a particular meaning for a collective scope. It is preserving its inherent characteristic.

Thus, it is endorsed by several jurists such as Judge Cooley in the United States and author of Treatise on the Law of Torts, quoted by professor Saldaña (2011), who stated:

> The right to be alone that people do not know, see, hear, what is related to our life, and that we do not want it to transcend; in such a way that it is a consequence or derivation of the fact to the dignity of the human being. (p. 283).

Then Saldaña also explained that for Cooley, "individual's right to protect himself against invasions of his private sphere reaches as much against the illegal interference of government agents as it restrains the lewd curiosity of the general public" (2011, p. 284).

This is clearly specified by Carcamo (2010), who defines privacy as "the right that every human being has to maintain exclusively for himself and untouched the sphere of personal protection and to extend and communicate it, to whomever he deems or deems appropriate" (p. 97).

Adding to a correct criterion of the treatise writer Recaséns (1978), who maintains that "intimacy is synonymous with an awareness of inner life. Therefore, this field is entirely outside the legal field, since from every point of view, it is impossible to penetrate the privacy of others authentically" (p. 180).

This awareness of life also occurs in:

> The fact that human beings have a social dimension and live together collectively, where the relevance arises for each society to have models of political coexistence that seek to satisfy the basic needs of all and happiness. of the human being. The common good. (Cárdenas, 2009, p. 229).

Recognizing and ratifying the rights of individuals in society leads to the common good. Thus, returning to the susceptible interpretation against the right of privacy, the right to privacy, and consequently, the right to want or not to transcend that individual's reservation space is ratified in different ways.

Based on a humanistic, rational conception, a vulnerability to a person's intimate space is unacceptable, regardless of the context in which they are found. Others cannot invade this space, much less submit to public scrutiny, so we reiterate that respect for privacy is respect for dignity.

Unequivocally affirmed this right of the person to his privacy, it is possible to distinguish that, the legal system establishes different ways to protect him, based on the mentioned gradation that this privacy has concerning other values of the system. It is an individual right that implies an obligation of respect and action of public powers to protect it in different ways (Riofrío, 2008). This untouchable *space* encompasses the solitude of the individual at certain times, the inviolability of their documents and correspondence, as well as the minimum consideration regarding problems and circumstances that they wish to keep confidential. Regarding correspondence, the current Ecuadorian Constitution recognizes this right:

> People are recognized and guaranteed (…) the right to inviolability and the secrecy of physical and virtual correspondence; This may not be retained, opened or examined, except in the cases provided by law, after the judicial intervention and with the obligation to keep the secret of matters unrelated to the fact that motivates its

> examination. This right protects any other type or form of communication. (National Constituent Assembly, 2008, art. 66 num. 21).

However, faced with this right, there have been several experiences narrated by public officials or former officials, about the insecurity of their physical or virtual correspondence, and even more about the insecurity of those telephone conversations that are made or received in the institutional infrastructure.

The events about Edward Snowden and Julian Assange leave us revelations about espionage and how vulnerable we concern information privacy, as well as technological dependence. There are different assessments of the relevance and timing of filtering actions. For some it is interpreted as the exclamation of truth, justice and the principle of transparency; however, for others, it represented a clear violation of the right of privacy, and not only in terms of the protection of information from the State but also that involving the privacy and intimacy of people who saw their image, reputation, and even their integrity.

The page of leaks Wikileaks created by Julian Assange was for years the channel for hundreds of complaints and publication of top-secret documents that scandalized the world by the high public figures who were involved. For some a hero, a symbol of press freedom and for others a real headache, this is how the controversial image of Assange became, who did not hesitate to expose sensitive data under the shield of public interest. Then, to what extent is this invasion of virtual privacy justifiable? Although the internet aims to loosen the regulatory rope that regulates it for the purpose of free access and the massive benefits of new technologies, this leads to a high risk that seduces and affects millions of users who expose themselves with ignorance of privacy through cyberspace.

The massive leak of classified material from the US military, for example, exposed possible mistakes by the United States in Afghan territory and Iraq that killed civilians; However, this publication also caused irreparable harm to other people and put the rights and safety of citizens at risk. The case of Edward Snowden (2013), paradoxically raises two aspects to analyze around privacy since through "his revelations about the activities of the US security agencies, and especially the NSA (National Security Agency) (…) [demonstrated that the violation of privacy is a] genuine threat even in democratic societies" (Toscano, 2017, p. 538).

Globalization in its process of market opening has generated that, through new information and communication technologies, especially the internet, these private and collective interrelationships are opened and increased more and more, generating a vertiginous process of global virtual connection. The Internet has exceeded the limits of borders and connection times, and it is through the network that communication takes the form of a new paradigm: immediacy.

However, this multiplier effect also exposes the fragility of security. With hackers increasingly specialized; Millions of companies invest heavily in software to keep people's right to privacy and integrity unscathed. On the social level, networks have caused a communication boom that requires more excellent controls. Social networks such as Facebook, Twitter, YouTube, among others, have become the perfect target to violate people's privacy. Much is assumed

about the co-responsibility between the user and the network administrator. The law has reacted to these dangers. Perhaps with some slowness, which contrasts with the rapidity of the changes, but in the international arena, numerous initiatives have welcomed the need, on the one hand, to globalize the benefits of the digital society, but, on the other hand, to establish some criteria of "internet governance" (Villanueva & Díaz, 2012). An expression of this was the world summits on the Information Society that the UN-sponsored in 2003 and 2005 in Geneva and Tunisia. Previous was the International Convention on Cybercrime concluded in Budapest in 2001. There are a good number of works and agreements covered by the United Nations in different aspects of the protection of rights in the field of the information society.

Nevertheless, in some cases, uncontrolled and involuntary exposure to people's privacy has been exposed without obtaining an effective regulatory mechanism for supervision and control.

In Ecuador, the constitutional right to virtual privacy is complemented by the Electronic Commerce Act. (and its respective regulation), in which it is expressed in its article 5:

> Confidentiality and reservation. -The principles of confidentiality and reserve for data messages are established, whatever their form, medium, or intention. Any violation of these principles, mainly those related to electronic intrusion, illegal transfer of data messages, or violation of professional secrecy, will be sanctioned following the provisions of this Law and other regulations governing the matter.

As an emerging country, Ecuador has a technological lag of decades in contrast to industrialized countries, which implies a late coupling in terms of the usefulness and benefits of ICT. It manifests a culture of ignorance and fear of the implementation of technological tools as part of the daily development, as well as incompatibility in the respect and application of rules inherent to the person. A culture that lags behind in technology is even more exposed to the violation of their rights. We have seen it in the leak of images and videos that are of intimate exclusivity, as was the case of Lady Tantra, which absurdly went viral on networks and put the private life of a couple under public scrutiny. Other aspects of vulnerability derived from the innocence and ignorance of the user is that of phishing through which hackers request personal and private data that are used by scammers.

The right to privacy, included on the internet, has been a global debate. Within this network of possible espionage, those developing countries are those that are at a disadvantage compared to those that have the industrialization and control of technology. That is why Latin American countries, such as Ecuador, have been the ones who have most questioned the invasion of the privacy of citizens on the internet, as in the case above of social networks.

Similarly, art. 474 of the Organic Comprehensive Criminal Code (COIP, 2014) states the explicit right to privacy from the field of technology use:

> 1. The providers and distributors of computer and telecommunications services must retain the data of the subscribers or users based on a contract and preserve the integrity of the data on telephone numbers, static and dynamic IP

> addresses, as well as connection traffic, access to transactions and information on the wireless communication links of the service and the communication channel for a minimum time of six months, in order to carry out the corresponding investigations. The same precepts are followed as the interceptions of communications.
>
> 2. Subscribers of telecommunications services who share or distribute their data or voice interconnection to third parties commercially or free of charge must store the data related to a user based on a physical connection record and preserve the integrity of the data. on user identification, date, and time of initial and final connection, for a minimum time of six months with the application of video security camera measures, in order to carry out the corresponding investigations.

However, despite all regulatory measures, we lack control over information as the technological platform is starting against those in developed countries. It is important to note that the State cannot wish to understand the protection of rights alleging technological difficulties. The Constitution requires an *objective* response from the State, as Ávila (2012) explains precisely, this implies that the violation of a right, such as privacy, forces the State "to respond compensating damages and guaranteeing reparation" (p. 93). It does not occur, as in the sphere of private interests, where liability for damages is conditioned to the establishment of a link between the conduct, intentional or negligent, of the person responsible, and the catastrophic event.

Furthermore, for professor César Molinero:

> The interference of any person in the family's private life must be considered as trespassing; in such a way that it would be arbitrary and unlawful to invoke the right to information, in order to transfer the rights of personal and family privacy. (quoted in Falconí, 2015, p. 2).

On the normative scale, international treaties prevail over the constitution of any country. Thus, the International Declaration of Human Rights (IDHR, 2015) recognizes those rights linked to the intrinsic nature of the person; in that sense, it clearly expresses.

> Everyone has the right to freedom of thought, conscience, and religion; this right includes the freedom to change religion or belief, as well as the freedom to express their religion or belief, individually and collectively, both publicly and privately, through teaching, practice, worship, and observance. (IDHR, 2015, art. 18).
>
> Every individual has the right to freedom of opinion and expression; This right includes that of not being disturbed because of their opinions, that of investigating and receiving information and opinions, and that of disseminating them, without limitation of borders, by any means of expression. (IDHR, 2015, art. 19).

This right to information as a fundamental right has two spaces to be analyzed; one from the perspective of the journalists who produce and communicate information and the other from the angle of the citizens who access that information.

Furthermore, this debate opens even more between the frameworks of action of the right to information versus freedom of

expression. From the communicational point of view, we speak in one about the right of access to information and the other case about the right to pluralism in society, the freedom to speak our thoughts without coercion, with the right to express our public opinion; but also within a framework of co-responsibility with society, that is, within the limits of respect for another individual, without violating that space.

With the creation of the new entities for the regulation and control of communication and information in Ecuador, in addition to having certain advantages, governments limit these rights of citizens, avoiding the free flow of ideas and information. Even the State is located in the right to control information and its access, on the right to information and freedom of expression, stating as a legal proposal the need to establish information as a public service.

This increases vulnerability to the right to privacy, privacy, and the free right to information, leaving subjects unprotected and conditioned to the State's interpretation of the application of laws.

Now, taking up the right to privacy, we can say that several aspects can be dealt with around this topic. Without the desire to open up the review spectrum too much, we simply want to mention that, from criminal law, there is the invalidity of the evidence that arises from the invasion of privacy or intimacy; Thus, it is established that for the analysis of procedural truth it is done through legal evidence. This can be observed expressly in the current Constitution on the *Principle of the absolute prohibition of illicit evidence*, stating: "evidence obtained or acted upon in violation of the Constitution or the law will have no validity and will lack evidentiary efficacy." Instead, according to Zambrano (2008), the previous Constitution stated "the evidence obtained or acted in violation of the Constitution or the law will not have any validity" (p. 49).

Consequently, it is essential to establish that the right to privacy and privacy as a fundamental right is interrelated with the rights to dignity, liberty, freedom of expression, right to information, right to justice. These rights are given from the human perspective, and arise naturally, being also inalienable and inalienable. Furthermore, the State recognizes and guarantees it through the Magna Carta and is also supported by the Declaration of Human Rights.

For the case of a right to privacy, democratic systems seek to emphasize respect between individuals without violating their dignity. This privacy should be guaranteed both in the family, social, or work context, without violating that privacy under any circumstances.

According to García (2015), he states that this intimacy encompasses aspects such as physical intimacy, psychological intimacy; and from the doctrine, the right to privacy includes the following:

a. Respect for people's private lives;

b. Respect for people's public life;

c. Respect for the honor, honor or right name of the person and his family is assured; and,

d. The limitation to the right of publication. (p. 2).

Finally, from the principle of indivisibility, fundamental rights are interdependent and, at the same time, interrelated. In order to strengthen the right to privacy and its inner core, the right to inviolability of

correspondence and domicile has been developed. Each country must establish the limits for the effective execution of this right without abuses of its interference and, as previously stated, recognizing and guaranteeing it at all times. In Ecuador, as in other Andean countries, this duty of the public powers cannot be ignored. It is relevant since the obligation to respect rights is considered among the essential duties of the State, and implies that it is "responsible for its violation" (Ávila, 2012, pp. 92-93), which leaves open the avenues of constitutional action and the possibility that in this area the Ecuadorian courts have to compel the authorities to change their ways of proceeding.

Conclusions

The vulnerability of individuality and privacy, as well as the information we handle, has been increased with technology and new electronic means of communication. In the context of public or private dependency, it is a dangerous situation that, based on the institution's right to access data, limits are exceeded, and the rights of the worker are ignored in the context of their privacy and intimacy.

The guarantee of the privacy and the intimacy of the people have their base in the fundamental rights and in a rooted way in the human rights; therefore, it overcomes any dogma that the democratic flag is intended to carry as a right of access to information, which even involves a collision with some moral values. However, it is essential to differentiate and separate what is private and public life, as well as the personal information of the institutional information.

The right to privacy as a fundamental right is fully guaranteed by the Ecuadorian State and expressed in its Constitution. Nevertheless, what guarantees exist, hence that norm is ignored or applied in erroneous contexts, as is the case in the workplace where –according to the employer- everything that is written and developed in this framework belongs to the institution; or, in a procedural case, when a person is the victim of this surprising and aggressive action for justice investigation, leading to what some jurists call illegitimate evidence because their fundamental rights have been disrespected. Justice then appears as ignored constitutional values, since there is no justice whatsoever to discriminate its application of the right to privacy, opening a full path of jurisprudence for future applications that would also be an attempt on the dignity of the person.

By violating the privacy of a person, he is openly subjected to public humiliation, irreversibly cracking his dignity, an aspect that marks him within a public setting being pointed out, despite his innocence or guilt. It is an example of irreparable damage, opprobrium to life, that marks the individual in his development within society, in many cases limiting his participation in society and seeing his possibilities of professional, social, and economic growth diminished. Consequently, the right to privacy and intimacy, as a human right, is inalienable, regardless of the complexity of the scenario in which access has to be granted by the legal system. It imposes an awareness of life with respect for the best coexistence in the community.

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