

The conformity to the provisions of the Constitution of Greece of the «anonymity on the internet»

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Introduction.

The issue of lifting the secrecy of communication is nothing new. On the contrary, it is as old as is the possibility to communicate via technology¹. However, in the recent years the debate has focused with great intensity on the issue of «anonymity on the Internet». The debate is about whether it is the inalienable right of every user of the Internet to act anonymously and, most importantly, whether or not it is legally possible to lift the anonymity when an offence takes place. There are many who argue that the right to anonymity must be absolute. But there are also many others who maintain that this right finds its limits where it overlaps with the protection of other civil rights.

In our country, the debate on the issue has become very widespread especially after the adoption of the 9/2009 Opinion of the Attorney General², followed by the 12/2009³ and 9/2011⁴ Opinions. According these Opinions, the traffic and location data of communication are not subject to the protection of confidentiality of communications under Article 19 of the Constitution of Greece while the expression of ideas and opinions via the Internet, if made publicly, do not constitute «communication» within the realms of the aforementioned Article of the Constitution. In each case, sufficient protection should also be provided to the victim of a crime committed via the Internet.

In order to be able to respond to the above questions, we need to define some basic concepts, and first of all the concept of «communication» and «privacy» in accordance with the Constitution. Also, we should distinguish which cases constitute «communication» on the Internet and which not, as to be able to respond when a case is covered by the protective scope of Article 19 of the Constitution and which not. So, it is always crucial that the meaning of «communication» in each case is in accordance with the Constitution. For example, the communication that occurs between two or more people online with emails or in the inbox of social networks, etc. should be treated, as to the matter under consideration, in the same way with the publication of an article or a comment on a website or blog?

Thus, we will subsequently attempt to respond to these questions, trying to interpret the will of the constitutional legislator concerning the protection of communication under Article 19 of the Constitution, regardless of the rest of the legislation regulating the relevant issues.

Article 19 of the Constitution of Greece

In order to be able to interpret the will of the constitutional legislator we should first of all know the historical development of the provision of the Greek Constitution regarding the protection of communication. Thus, from the foundation of Greek democracy until the present, the relative provision of the Constitution has assumed the following forms⁵:

Article 14 of the 1844 Constitution: *«Confidentiality of correspondence shall be inviolable».*

Article 20 of the 1864 Constitution: *«Confidentiality of correspondence shall be absolutely inviolable».*

Article 18 of the 1925/1926 Constitution: *«Confidentiality of correspondence shall be absolutely inviolable».*

Article 18 of the 1927 Constitution: *«Confidentiality of correspondence, telegrams and phone calls shall be absolutely inviolable».*

Article 20 of the 1950 Constitution: *«Confidentiality of correspondence and all other forms of communication shall be absolutely inviolable».*

Article 19 of the 1975 Constitution: *«Confidentiality of correspondence and all other forms of free communication shall be absolute inviolable. The guaranties under which the judicial authority shall not be bound by the confidentiality for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law.».*

Article 19 of the 2001 Constitution: *«1. Confidentiality of correspondence and all other forms of free communication shall be absolute inviolable. The guaranties under which the judicial authority shall not be bound by the confidentiality for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law.*

2. Matters related to the establishment, operation and powers of the independent authority ensuring the confidentiality of par.1 shall be specified by law.

3. Use of evidence acquired in violation of the present article and of articles 9 and 9A is prohibited.».

The historical retrospection⁶ in the forms that this provision of the Constitution of Greece has received constitutes an important tool for the detection of the will of the constitutional legislator, regarding the issue under consideration. We note that, as expected, initially the confidentiality concerned only «letters» (1864), then «telegrams» were added as well as phone calls (1927), and, finally, in order to protect every possible means of communication, the phrase «*all other forms of free correspondence*» was initially adopted (1952) and, subsequently, the phrase «*all other forms of free correspondence or communication*» (1975). This means that in tandem with the evolution of technology, the intention of the constitutional legislator has been to ensure that every form of communication, by any means, that may currently exist

or be discovered in the future is protected by the Constitution. Another equally important factor is that from as early on as in 1862 the adverb «absolutely» was added to the confidentiality of communication, which has been used until today. In contrast, the addition in the Constitution of 1975 of the second section in the Article 19 (which remains the same until today) concerning the possibility to lift the confidentiality of communications, under certain specified conditions, can only be considered as a regression⁷.

The terms «communication» and «confidentiality» in Article 19 of the Constitution.

Before the broader term «communication» come the very specific term «letters» (which do not need any explanation) and the somewhat broader term «correspondence», which refers to communication from a distance, by means as instrument or a technique. Therefore within the term «**correspondence**» various forms and methods of communication are included⁸, as are those through which the dispatch of message that has the form of a written text or picture takes place, such examples include sms messages, emails, telexes, etc. Moreover, there is the correspondence through which dispatch of message that has the form of voice takes place, as for example communication through land lined or the satellite telephone communication etc. Finally, there is also the possibility of correspondence via a message in the form of a voice or moving, image like video calls or video conferences.

The term «**communication**» as specified in Article 19 of the Constitution, is much broader as it included all the afore mentioned regarding this term, as well as any other means that enables communication between two or more people. In particular, the term «communication» means transmission of human thought, ie the transfer of a message with some content between those who communicate, and it can be realised whether those who communicate are at some distance (using representational or other mechanical means, so we have «indirect» communication) or not (when there are no representational means of communication being used, so we have «direct» communication). Of course, one of the main forms of direct communication is the oral one. So, we can observe a course from the specific to the general: «letters» -> «correspondence» -> «communication»⁹.

As, therefore, results from the formulation of Article 19, the confidentiality of all forms of free communication is protected. The objects of this protection are both the freedom of communication and the confidentiality of all forms of communication, as above¹⁰.

However, the Article 19 of the Constitution does not protect any kind of communication between people, but only the confidential one, that is the one been realised within the context of intimacy¹¹. Indeed, the meaning of intimate communication is also in accordance with the European Court of Human Rights, which uses the term «intimacy» in the decision *Wisse v. France* of 20-3-2006¹².

This type of communication not only does not aim in being made public but wishes to remain confidential and known only to those who communicate. This desire stems from the fact that the special relations that grow selectively between specific

people in conditions of intimacy and trust, such as, eg, friendly, erotic, familiar and professional relationships (if they remain private¹³), are very important for people's lives and are distinguished from all other social relations. For this reason also, Article 19 of the Constitution protects the confidentiality of communication as an individual right. Consequently, it is very crucial to recognize the right of an individual to share with a person of his choice thoughts, ideas, feelings, without those being disclosed to third parties. For this reason the constitutional legislator in the most explicit way includes in the protective field of Article 19 only confidential communication.

It would also be interesting to examine at this point how the national legislator (besides the constitutional one) defines the term of communication. Thus, in accordance with Article 2 par.5 of the law 3471/2006 «Protection of personal data and privacy in the context of electronic communications and law amendment 2472/97», which incorporated the Directive 2002/58/EC of the European Parliament and of the Council «concerning the processing of personal data and the protection of privacy in the context of electronic communications» communication is defined as: «any information exchanged or conveyed between a finite number of parties through a publicly available electronic communications service. Not included in this is any information conveyed as part of a broadcasting service to the public over an electronic communications network except in cases in which the information can concern an identifiable subscriber or the user receiving it». Also, in Article 2 par.9 of the law 3471/2006, but also Article 2 prop.mz of the law 3431/2006 «concerning electronic communications and other provisions», the term of electronic communication services includes «the services normally provided for remuneration which consists wholly or mainly in the conveyance of signals to electronic communications networks, including telecommunications services». We note that in this context the concept of communication is further specified in the relevant laws in order to serve the goals set by each law.

Thereafter, it is crucial to establish each time when a communication is confidential, i.e. secret. A basic criterion is the intention of the dispatcher of the message¹⁴, which should be established clearly, informing the recipient of the communication that he/she wishes that their communication remain confidential.. However, the same should be desired by the recipient of the communication, which should also be stated clearly, or at least be inferred from the circumstances. For example, a kidnapper who calls the child parents asking for ransom, probably wishes the communication to remain confidential but this does not mean that the parents desire the same, even though out of fear they may assure the kidnapper that the communication will remain confidential. Thus, it is obvious that such a communication is not carried out within the realms of trust and intimacy, as is required by Article 19 of the Constitution mentioned above in order to be protected by it.

Therefore, the confidentiality of communication depends on the will of both (or more) parties participating in it¹⁵. Their will should indeed be established in a clear manner, taking the necessary steps to preserve the confidentiality of the content of the communication. Thus, a letter to the press by definition does not constitute confidential communication. The same applies to a letter left deliberately open which therefore can very easily be read by anyone¹⁶. In contrast, a letter placed in a sealed envelope obviously constitutes confidential communication.

On the contrary, if none of those who communicate wishes that their communication remains confidential, then there is no question of confidentiality but of freedom of expression¹⁷. Also, if confidentiality is desired by only the one and not the other, then the right that must be protected is the private life of the first one (Article 9 of the Constitution) or his personality (Article 5 of the Constitution)¹⁸.

Consequently, within the term «confidential» two elements are included¹⁹: **a)** the subjective one, according to which the one who communicates expresses his expectation that the content and the data of the communication will not be revealed to a third person and **b)** the objective-social element, according to which this expectation is such so as to be considered reasonable by society. Of course, it is correctly pointed out²⁰ that the confidentiality guaranteed by the Constitution is not protected “absolutely” between communicators. No matter how much somebody trusts his interlocutor, even if he has expressly requested to keep the communication private, he always accepts the danger that the content of their communication be made known to a third party. Otherwise, if we considered the protection of communication “absolute”, including the interlocutor, we would have an excessive restriction of his/her personality, since in that case he/she would be supposed to obtain the consent of the other party of communication, so that he could inform a third person, even many years later, not only of a part of the content of their communication, but even of the fact that they did communicate at all.

Certainly, on the other hand, the confidentiality of communication between two, or more persons can not be completely unprotected because, in this case, the freedom of communication would be significantly limited, since even the possibility of each party of the communication to record the other one, unbeknownst of the latter, and afterwards to make it known to an unknown number of persons would be allowed. For this reason the protection of confidentiality is also justified by the legitimate expectation that this communication will not be revealed to a third person. On this issue, the Supreme Court²¹ has expressed the following opinion: *«in this way, however, the freedom of communication would be limited, because then everyone would live with the depressing feeling that every thoughtless or exaggerated, at least, expression in the context of oral private discussion could be used afterwards under other circumstances as evidence against him, much more when the modern technical means provide wide possibilities of the alteration of the content of the recordings, alterations which are very difficult or even impossible to be diagnosed»*. For this reason, the protection of the privacy of the interlocutor is guaranteed by Article 370A of the Penal Code concerning “*Violation of confidentiality of phone calls and oral discussion*”, under which the recording of telephone or oral exchange without the knowledge or consent of other person, is punishable. However, it is correctly supported²² that in this case too what is worthy of protection is the confidentiality of communication, if those who communicate refer to privacy issues. Nonetheless, an abusive or threatening phone call can not be considered as “*private communications*” and consequently is outside the field of protection of Article 19 of the Constitution.

On the contrary, the protection of confidentiality of communication according to the Constitution is «*absolute*», excluding of course third parties²³, and more specifically, state authorities and investigators, provisions which are made in Article 19 of the Constitution and the conditions mentioned therein. Citing the term “freedom” of communication, the Constitution protects the freedom of every person

to engage in private communication, without being prevented from doing this from state authorities intervention²⁴.

Since, then, we have already defined the meaning of «communication» as protected by the Constitution, we conclude that when made public communication is not protected by Article 19 of the Constitution²⁵. Thus, an open/unsealed letter, a public advertisement, a published text, are not subject to the meaning of the terms “correspondence” and “communication” as above. In the old days, the example of “sealed letter”²⁶ was more often used. It was, that is, acceptable that the confidentiality of a letter was protected provided that the letter was sealed. Conversely, if a letter had been left unsealed intentionally and therefore could be read by everyone, then it was not protected by Article 19. Similarly, it is accepted²⁷ that each public communication, however it takes place, as for example via the Internet, it is not protected article 19.

Finally, the protection of confidentiality of communication occupies every stage from its beginning until its end, that, in cases of distant communication the recipient is informed of the content of the message²⁸. It includes all related preparatory actions of communication, as is the dialing on the mobile telephone, and finishes the moment the message reaches the recipient and can be read and do with it as he/she wishes. Certainly, in this form, it included also the traffic and location data of communication, to which we will refer in detail subsequently.

The traffic and location data of the communication.

The most discussed topic on the protection of confidentiality of communication concerns whether the traffic and location data of the communication are subject to the meaning of communication and, consequently, to the protection of its confidential character.

Firstly, by traffic and location data are meant all the other elements of communication, apart from its content, which are integrally connected with it²⁹. Traffic data is all processed information which aid to achieve communication via the telecommunication network or the Internet³⁰ and include the phone number, the number dialled, the identity of the connection, passwords, the time and the duration of communication, protocol information, etc. Location data is all processed information in the telecommunications network which indicate the location of the terminal equipment of a user of a telecommunications service available to the public.

Previously in theory it was acceptable that traffic/location data were not subject to meaning of communication and, consequently, its protection³¹. In fact, by majority, the same opinion is adopted by the jurisprudence³², with the recent example being the 9/2009, 12/2009 and 9/2011³³ Opinions of the Attorney General. In these Opinions it was held that the confidentiality of communication concerns only its content and not the traffic and location data and, as such, the disclosure of these data for those who commit offences is permitted.

However, the 924/2009 decree of the Supreme Court³⁴ changed the above opinion and held that lists of incoming and outgoing phone calls which are included in the case files and state names, dates, the beginning time and duration of every phone call

do not constitute legal evidence if they do not comply with the statutory procedure for the lifting of confidentiality (law 2225/1994) since the traffic and location data are subject to the protection of confidentiality of communications.

Also, the Hellenic Data Protection Authority has expressed the opinion that the traffic and location data of the communication do not constitute sensitive personal data³⁵, so they are not subject to the confidentiality of communication³⁶. Of course, an opposing opinion is expressed by the Hellenic Authority for Communication Security and Privacy, with the 1/2005 Opinion put forward on the issue, prompted by the fact that it had received several reports from companies providing mobile telephone services, according to which these companies accepted demands of public authorities to provide them elements of the communication of their subscribers (lists of incoming-outgoing calls, time of the conversation, etc.), without observing the procedure of the law 2225/1994 for the «*protection of the freedom of communication*». So with the above opinion the HACSP expressed the view that the traffic and location data of the communication certainly fall within the protective scope of Article 19 of the Constitution. As a key argument for this opinion the HACSP referred to the fact that Article 19 guarantees the inviolability of all kinds of communication, without making the distinction between traffic and location data from other data and the content. If, that is according to the HACSP, the constitutional legislator desired such a distinction, it would have been explicitly expressed.

The majority, however, in theory favours the opinion that the traffic and location data of communication are subject to the protection of confidentiality of communication according to Article 19 of the Constitution³⁷, because they function as an integral element of the terms “letter”, “correspondence” and “communication”. Indeed, this opinion is the most correct, according to the formulation of Article 19 of the Constitution, which does not make any distinction between “content of a message” and other data of the communication. Thus, it has correctly been pointed out previously³⁸ that the constitutional protection of confidentiality not only starts by the moment that it is posted, but it also covers the transport to the post office or the mailbox, since this is a part of the communication. It also covers all its process until it finally reaches the hands of the recipient and he takes cognizance of it.

To this interpretation of the desire of the constitutional legislator contributes also the fact that often the traffic and location data can have more importance than the content of a message, as far as it concerns the type of the relationship between those who communicate. Moreover, the rapid progress of technology has highlighted the importance of the traffic and location data of communication, as these with the suitable combination can lead to conclusions concerning specific aspects of an individual’s privacy and thus assemble his digital portrait³⁹, collecting all kinds of information from the communications he makes, even without the knowledge of the particular content of the communication. A typical case is the creation of a digital consumer profile, in which according to the web pages that a user of the Internet visits, through the use of cookies his preferences are registered and thus his consumer profile is created, so the advertising companies operating on the Internet are informed about this, so as to target this kind of consumer with specific advertisements for products he might be interested in.

Finally, in favour of the opinion that the traffic and location data of communication are protected from the confidentiality of communication contributes

also the probability that always exists for a mistaken estimate of the nature and particular characteristics of the person making the communication, especially when he/she is being monitored by investigative authorities. Such a mistaken estimate can lead to the violation of the constitutional evidence of innocence and to other offences of the rights of people who are being monitored. This means that as a reasonable condition, for the protection of confidentiality of communication we assume the freedom of its conduct, which does not happen when it is under control and in particular with the possibility of the imposition of sanctions⁴⁰.

Consequently, the traffic and location data are elements of the communication protected by Article 19 of the Constitution. This is also concluded from the social conditions. How can we imagine a world where anyone – much less the public authorities – knows who, when and how each citizen communicates, whether he/she is someone connected personally with him/her or some stranger? Who could tolerate that anyone can know when and with whom he communicates every day, even if they could not know the content of the communication. It is therefore obvious that the constitutional right for the protection of the communication can not include only what is being said but also when it is said and to whom. Otherwise, the right to privacy the Article 19 seeks to protect would face a dramatic limitation.

To this interpretation of Article 19 advocates also the customary jurisprudence of the European Court of Human Rights. Since 1984 the ECHR with its decision *Malone v. The United Kingdom* of 2-8-1984 pointed out that the recording of phone calls contain information such the called numbers, which constitute integral elements of communication, covered by the protective scope of Article 8 of ECHR⁴¹. Respectively the ECHR has also judged with other decisions, as *Heglas v. Czech Republic* of 1-3-2007 and *Copland v. the United Kingdom* of 3 -4-2007.

Finally, arguments in favour of this opinion are also drawn from the national legislation⁴². In a series of legislative acts the legislator has expressed the opinion that the traffic and location data are integral elements of communication. Thus, in accordance with Article 5 par.10 of the law 2225/1994 concerning the freedom of communication: *«the content of communication, which became known due to the lifting of the confidentiality as well as every other element related to it are prohibited, with a sentence of nullity, to be used and to be taken into consideration as direct or indirect proof...»*. Moreover, in accordance with paragraph 1 of Article 370A of the Penal Code *«... whoever illicitly traps or with any other way intervenes in an appliance, connection or network... or in a system..., with the intention for himself or another to be informed or record on a material carrier the content of a phone conversation between third parties or the location and traffic data of this communication is punishable.»*. The same conclusion is reached by anyone who reads the provisions of the Presidential Edict 47/2005 (Processes as well as technical and organisational guarantees for the lifting of confidentiality of communications and for its guarantee), Article 5 par.2 of the law 3783/2009 (Identification of holders and users of equipment and services of mobile telephony and other provisions) and Article 2 par.5 of the law 3471/2006 (Protection of personal data and private life in the sector of electronic communications and law amendment 2472/1997).

The anonymity on the Internet in particular.

While in telecommunications the answer to when a communication is subjected to the protective scope of Article 19 of the Constitution is relatively easy, in the field of the Internet things are much more complicated. In telecommunications there are usually only two persons who participate in it, while the technical methods that are used in order to achieve the communication are also easier to be identified. On the contrary, the system of communications via the Internet is much more complex while in the communication often more than two persons can be involved. Also, the anonymity on the Internet is certainly a more usual phenomenon from any other means of communication.

First, it is accepted that anonymity on the Internet is a right, based on Articles 5, 5A, 9 and 14 of the Constitution⁴³. Both the anonymous expression and the use of an alias constitute specific expressions of freedom of expression, privacy and the free development of personality in the frames of a broader right for the protection of «the digital privacy of the individual»⁴⁴.

However, the possibility of this anonymous expression on the Internet poses many dangers too. The rapid development of information technology and communication not only have made the right to privacy more vulnerable⁴⁵ but have also created the possibility to commit various crimes through the Internet, whose detection is very difficult and often impossible⁴⁶, so it has been noted correctly that we should avoid the abuse of the right to anonymity⁴⁷.

To answer, then, under what circumstances anonymous communication through the Internet is protected by Article 19 of the Constitution it is essential to determine when there is a «communication» under the meaning of the Article 19, according to what was mentioned above.

Firstly we have to accept that any communication via the Internet between two or more persons is subject to the term of communication by Article 19 of the Constitution provided that those who communicate have taken the necessary measures of safeguarding the confidentiality of their communication⁴⁸. Thus, e-mails⁴⁹, communication in the inbox of any electronic communication platform (social media) and any other means of online communication, according to which the persons who communicate have taken the necessary measures so as to keep their communication confidential, are subject to Article 19 of the Constitution. This position has been adopted by the Attorney General in the Opinion 9/2009, stating: *"It is certainly understandable that there is also privacy in communication via the Internet if a special procedure has been used to preserve confidentiality. This example applies when using a website someone has created a secret profile to which only himself and some of the persons chosen by him, who have the necessary passwords have access*⁵⁰». In fact, in this case, the constitutional protection of privacy begins when the electronic message has been written but has not yet been transmitted via modem and telephone line to the recipient, and continues for as long as it remains on the server of the recipient⁵¹. Also, in this case all the accompanying elements of electronic communication, such as the IP address of the user, the number and identity of the connection or the user's terminal equipment, passwords, traffic and location data, etc., constitute a part of confidential communication.

In contrast, whenever there is a direct public posting of a text, comment, etc, on the Internet by its author, according to everything mentioned above, there is no

confidential communication according to Article 19 of the Constitution. In this case are included the administrator of a web page or a blog that publishes directly (that is without the contribution of a third person) a text, the visitor of a website or a blog who is able to publish automatically (without the assistance of the administrator) a comment or an article, anyone who publishes anything in social media, in his or someone else's profile, and, generally, anyone who publishes anything on the internet directly. However, the predominant view, until now, has been that all these cases are protected by Article 19 of the Constitution, even if in this way an offence committed⁵². Nonetheless, we believe that these cases fall within the scope of protection of Article 5A⁵³ of Constitution concerning the right to information and not within article 19, since it deals with the transmission and distribution of information and not with communication in the context of intimacy, as mentioned above. Even if someone communicates publicly with someone else, as is the case in social media, once again it cannot be argued that this is "communication" within the context of Article 19, since it occurs in public, not in confidentiality.

Problematic is the case when you cannot directly post a text or comment on a web page, or in a blog, but it requires the contribution of a third person, usually the assistance of the administrator. This concerns those cases in which the author of the text or the comment will have first to "communicate" with the administrator (or whoever else is necessary) so he can publish the text or comment. In such a case there is not any kind of automated process. However, in this case too this is not «communication» in the context of intimacy, as required in accordance with what was mentioned above, in order to apply Article 19 of the Constitution, but a standard procedure which must be followed by the user in order to publish the text or comment he wants.

Of course, the above should be considered in the light of the given interaction and conflict of the right to protection of communication with other constitutional rights, such as the right to privacy by Article 9, the right to free development of personality by Article 5, the right to freedom of expression by Article 14, the right to information by Article 5A and informational self-determination right by Article 9A⁵⁴. And of course in relation to the right to judicial protection by Article 20 par.1 of the Constitution, which is often in a de facto conflict, when on the one hand we have someone who commits a crime against another, eg by threat or defamatory, and yet claims, effectively till today, the right to the confidentiality of communication, and on the other hand we have the one against whom the offence was committed, and who has the right to judicial protection under the Constitution, but he forfeits it, since up today has dominated the opinion that these cases are subject to confidentiality of communication, despite the above contrary Opinions of the Attorney General. Indeed, the ECHR with its decision K.U. v. Finland of the 2nd-12-2008, considering where the Finnish law of confidentiality, similar to ours, has prevented the discovery of the perpetrator of crimes via the internet against minor children, ruled as follows: *«Although freedom of expression and confidentiality of communications are primary considerations and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others. Without prejudice to the question whether the conduct of the person who placed the offending advertisement on the Internet can attract the protection of Articles 8 and 10, having regard to its reprehensible nature, it is*

nonetheless the task of the legislator to provide the framework for reconciling the various claims which compete for protection in this context. Such framework was not however in place at the material time, with the result that Finland's positive obligation with respect to the applicant could not be discharged. This deficiency was later addressed. However, the mechanisms introduced by the Exercise of Freedom of Expression in Mass Media Act (see paragraph 21 above) came too late for the applicant.»⁵⁵.

In conclusion, the protection of privacy on the Internet should be a primary aim of the legislator. However, the conflicting interests should be weighed every time, in order to adequately protect all parties and, of course, the victim of a crime. And the meaning of communication under article 19 of the Constitution should not be confused, as we explained above, with any action on the Internet, which does not meet the above conditions.

¹ See, inter alia, Karamanos, G., The confidentiality of telecommunication, Nomiko Vima, (Law Journal of the Athens Bar Association) 1968, p.1137, and Pavlopoulos, P., Technological development and constitutional rights, Modern adventures of confidentiality of communication, Nomiko Vima, 1987, p.1511.

² Online available at: www.areiospagos.gr.

³ Online available at: www.areiospagos.gr.

⁴ Online available at: www.areiospagos.gr.

⁵ Papadopoulos, N., Protection of the confidentiality of communication, Interpretative approach to Article 19 of the Constitution of Greece, Nomiki Vivliothiki publications, 2009, p.145 and 162.

⁶ See also Pavlopoulos, P., op.cit., Dagtoglou, P., Constitutional Law, Individual Rights A', Ant. N.Sakkoulas publications, 1991, p.349, Kaminis, G, The confidentiality of telecommunication, The Constitutional protection and enforcement of the penal legislature and the courts, Nomiko Vima, 1995/505.

⁷ Pavlopoulos, P., op.cit., p.1513, Kaminis, G., op.cit., p.506.

⁸ Papadopoulos, N., op.cit., p.169.

⁹ Papadopoulos, N., op.cit., p.171.

¹⁰ Tsolias, Gr., The telecommunication data in light of confidentiality: concerns in the view of the incorporation of Directive 2002/58/EC, Media & Communication Law, 2004, p.358, Chrysogonos, K., Individual and Social Rights, 3rd edition, Nomiki Bibliothiki publications, 2006, p.256.

¹¹ Tsakirakis, St, The confidentiality of communication, Absolutely inviolable or a blessing of the law, Nomiko Vima, 1993, p.995, Chrysogonos, K., op.cit., pp 256-257. The same point of view expresses and the Attorney General by the 19/2009 Opinion, op.cit.

¹² See point 29 of the decision: «...Si l'écoute par l'administration pénitentiaire des conversations tenues au parloir est effectuée dans un souci de sécurité de la détention, parfaitement légitime, l'enregistrement systématique de celles-ci à d'autres fins dénie à la fonction du parloir sa seule raison

d'être, celle de maintenir une « vie privée » du détenu - relative - qui englobe l'intimité des propos tenus avec ses proches. Les conversations tenues dans le parloir d'une prison peuvent en conséquence se trouver comprises dans les notions de « vie privée » et de « correspondance ».

¹³ Dagtoglou, P., op.cit., p.350.

¹⁴ Magakis, G.-A., On the criminal protection of the confidentiality of phone calls, Poinika Chronika XV, p.10.

¹⁵ Manesis, Ar., Constitutional Law, Individual Freedoms, Sakkoulas publications, 1978, pp 165-166, Tsakirakis, St., op.cit., p.998, Chrysogonos, K., op.cit., p.256, Karamanos, K., op.cit., p.1138.

¹⁶ Manesis, Ar., op.cit., p.166.

¹⁷ Chrysogonos, K., op.cit., p.256.

¹⁸ Tsakirakis, op.cit., p.998.

¹⁹ Papadopoulos, N., op.cit., p.172.

²⁰ Kaminis, G., op.cit., p.512.

²¹ Supreme Court, Decision No.1/2001, online available at: www.areiospagos.gr.

²² Chrysogonos, K., op.cit., p.260.

²³ Tsakirakis, St., op.cit., p.995, Papadopoulos, N., op.cit., p.182.

²⁴ Dagtoglou, P., op.cit., p.352, Manesis, Ar., op.cit., p.164.

²⁵ Chrysogonos, K., op.cit., p.257, Dagtoglou, P., op.cit., p.350, Magakis, G.-A., op.cit., Papadopoulos, N., op.cit., p.172, Tsakirakis, St., op.cit., p.997.

²⁶ Manesis, Ar., op.cit., p.166, p.166, Dagtoglou, P., op.cit., p.350, Karamanos, G., op.cit., p.1138, Tsakirakis, St., op.cit., p.997, Georgopoulos, K., Abridged Constitutional Law, 3rd edition, Ant.N.Sakkoulas publications, Athens-Komotini, 1991, p.501

²⁷ Chrysogonos, K., op.cit., p.257, op.cit., p.257.

²⁸ Dagtoglou, P., op.cit., p.351.

²⁹ European Court of Human Rights, Decision Malone v. the United Kingdom 2-8-1984, point 84 of the decision.

³⁰ Aleksandropoulou-Aigyptiadou, E., Legal safeguard of the confidentiality of mobile communications (The Greek legal regulation in view of the recent law 3674/2008), in Protection of Privacy & Information and Communication Technologies – Technical and Legal issues, Labrinoudakis, K., Mitrou, L., Gritzalis, S., Katsikas, S., eds., Papassotiriou Publications, 2010, p.658.

³¹ Manesis, Ar., op.cit., p.167, Georgopoulos, K., op.cit., p.501, Karamanos, G., op.cit., p.1137

³² Supreme Court, Decision No.570/2006, online available at: www.dsanet.gr.

³³ Op.cit.

³⁴ Online available at: www.areiospagos.gr.

³⁵ DPA, Decision No.19/2008, online available at: www.dpa.gr.

³⁶ DPA, Opinion No.79/2002, online available at:

³⁷ Papadopoulos. N., op.cit., p.184, Karakostas, I., Law & Internet, Legal issues of internet, 3rd edition, P.N.Sakkoulas publications, Law & Economy, 2009, p.154, Panagopoulou – Koutnatzi, F., On freedom of blogging, Sakkoulas publications, Athens-Thessaloniki, 2010, p.61, Tsolias, Gr., Protection of privacy and personal data in electronic communications, in Protection of Privacy & Information and Communication Technologies – Technical and Legal issues, Labrinoudakis, K., Mitrou, L., Gritzalis, S., Katsikas, S., eds., op.cit., p.681, Tsolias, Gr., The telecommunication data in light of confidentiality: concerns in the view of the incorporation of Directive 2002/58/EC, op.cit., p.360, Aleksandropoulou-Aigyptiadou, E., op.cit., p.657, Arkouli, K., Protection of personal data in electronic communications, Nomiki Bibliothiki publications, 2010, p.62, Chrysogonos, K., op.cit., p.258, Tsakirakis, St., op.cit., p.998, Iglezakis, I., Freedom of expression and anonymity on the internet: the example of blogs, Media & Communication Law, 2011, p.321, Papadopoulos, M., Legal problems in lifting of confidentiality of communication in Greece (Lifting the nonsense in the lifting of confidentiality in Greece), Media & Communication Law, 2007, p.38.

³⁸ Dagtoglou, P., op.cit. p.351.

³⁹ Papadopoulos, N., op.cit., p.185, Arkouli, K., op.cit., p.62.

⁴⁰ Chrysogonos, K., op.cit., p.256.

⁴¹ See point 84 of the decision.

⁴² See, inter alia, Tsolias, Gr., comments in the Opinion 9/2009 of the Attorney General, Criminal Justice, 2009, p.923.

⁴³ Iglezakis, I., op.cit.

⁴⁴ Moukiou, Xr., Music piracy, mobile phones and religious indoctrination, New reflections on the "digital privacy" within the European frames, Human Rights, 2010, p.352.

⁴⁵ Mavrias, K., The Constitutional right to privacy, Ant.N.Sakkoulas publications, 1982, pp168-169.

⁴⁶ Arkouli, K., op.cit., p.81.

⁴⁷ Tsolias, Gr., Anonymity on the internet: No to the excessive exercise, Eleftherotypia (Greek newspaper), 27-8-2011.

⁴⁸ Chrysogonos, K., op.cit., p.257.

⁴⁹ Athens Court of Appeals, Decision No.9099/2005, Media & Communication Law, 2005, p.561.

⁵⁰ As mentioned above, this Opinion received strong criticism. See, inter alia, Panagopoulou – Koutnatzi, F., op.cit., pp 55-56.

⁵¹ Karakostas, I., op.cit, p.155, Opinion 6/2008 of the Attorney General, online available at: www.areiospagos.gr.

⁵² See, inter alia, Panagopoulou – Koutnatzi, F., op.cit., p.65.

⁵³ Papadopoulos, N., op.cit., p.232.

⁵⁴ Tsakirakis, St., op.cit., p.1003, Tsolias, Gr., The telecommunication data in light of confidentiality: concerns in the view of the incorporation of Directive 2002/58/EC, op.cit., p.358, Papadopoulos, N., op.cit., pp 229, 236.

⁵⁵ See point 49 of the decision.

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