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## **Resolution 1165 (1998)**<sup>[1]</sup>

### **Right to privacy**

1. The Assembly recalls the current affairs debate it held on the right to privacy during its September 1997 session, a few weeks after the accident which cost the Princess of Wales her life.
2. On that occasion, some people called for the protection of privacy, and in particular that of public figures, to be reinforced at the European level by means of a convention, while others believed that privacy was sufficiently protected by national legislation and the European Convention on Human Rights, and that freedom of expression should not be jeopardised.
3. In order to explore the matter further, the Committee on Legal Affairs and Human Rights organised a hearing in Paris on 16 December 1997 with the participation of public figures or their representatives and the media.
4. The right to privacy, guaranteed by Article 8 of the European Convention on Human Rights, has already been defined by the Assembly in the declaration on mass communication media and human rights, contained within [Resolution 428](#) (1970), as "the right to live one's own life with a minimum of interference".
5. In view of the new communication technologies which make it possible to store and use personal data, the right to control one's own data should be added to this definition.
6. The Assembly is aware that personal privacy is often invaded, even in countries with specific legislation to protect it, as people's private lives have become a highly lucrative commodity for certain sectors of the media. The victims are essentially public figures, since details of their private lives serve as a stimulus to sales. At the same time, public figures must recognise that the position they occupy in society — in many cases by choice — automatically entails increased pressure on their privacy.
7. Public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain.
8. It is often in the name of a one-sided interpretation of the right to freedom of expression, which is guaranteed in Article 10 of the European Convention on Human Rights, that the media invade people's privacy, claiming that their readers are entitled to know everything about public figures.
9. Certain facts relating to the private lives of public figures, particularly

politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.

10. It is therefore necessary to find a way of balancing the exercise of two fundamental rights, both of which are guaranteed in the European Convention on Human Rights: the right to respect for one's private life and the right to freedom of expression.

11. The Assembly reaffirms the importance of every person's right to privacy, and of the right to freedom of expression, as fundamental to a democratic society. These rights are neither absolute nor in any hierarchical order, since they are of equal value.

12. However, the Assembly points out that the right to privacy afforded by Article 8 of the European Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media.

13. The Assembly believes that, since all member states have now ratified the European Convention on Human Rights, and since many systems of national legislation comprise provisions guaranteeing this protection, there is no need to propose that a new convention guaranteeing the right to privacy should be adopted.

14. The Assembly calls upon the governments of the member states to pass legislation, if no such legislation yet exists, guaranteeing the right to privacy containing the following guidelines, or if such legislation already exists, to supplement it with these guidelines:

- i. the possibility of taking an action under civil law should be guaranteed, to enable a victim to claim possible damages for invasion of privacy;
- ii. editors and journalists should be rendered liable for invasions of privacy by their publications, as they are for libel;
- iii. when editors have published information that proves to be false, they should be required to publish equally prominent corrections at the request of those concerned;
- iv. economic penalties should be envisaged for publishing groups which systematically invade people's privacy;
- v. following or chasing persons to photograph, film or record them, in such a manner that they are prevented from enjoying the normal peace and quiet they expect in their private lives or even such that they are caused actual physical harm, should be prohibited;
- vi. a civil action (private lawsuit) by the victim should be allowed against a photographer or a person directly involved, where paparazzi have trespassed or used "visual or auditory enhancement devices" to capture recordings that they otherwise could not have captured without trespassing;
- vii. provision should be made for anyone who knows that information or images relating to his or her private life are about to be disseminated to initiate emergency judicial proceedings, such as summary applications for an interim order or an injunction postponing the dissemination of the information,

subject to an assessment by the court as to the merits of the claim of an invasion of privacy;

viii. the media should be encouraged to create their own guidelines for publication and to set up an institute with which an individual can lodge complaints of invasion of privacy and demand that a rectification be published.

15. It invites those governments which have not yet done so to ratify without delay the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

16. The Assembly also calls upon the governments of the member states to:

i. encourage the professional bodies that represent journalists to draw up certain criteria for entry to the profession, as well as standards for self-regulation and a code of journalistic conduct;

ii. promote the inclusion in journalism training programmes of a course in law, highlighting the importance of the right to privacy vis-à-vis society as a whole;

iii. foster the development of media education on a wider scale, as part of education about human rights and responsibilities, in order to raise media users' awareness of what the right to privacy necessarily entails;

iv. facilitate access to the courts and simplify the legal procedures relating to press offences, in order to ensure that victims' rights are better protected.

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[1] Assembly debate on 26 June 1998 (24<sup>th</sup> Sitting). See Doc. 8130, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Schwimmer), Doc. 8147, opinion of the Committee on Culture and Education (rapporteur: Mr Staes) and Doc. 8146, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Mitterrand). Text adopted by the Assembly on 26 June 1998 (24<sup>th</sup> Sitting).