

# THE CONTENT OF THE RIGHT TO PRIVATE LIFE AND THE INFRINGEMENTS OF THIS RIGHT

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## **ABSTRACT**

*THIS PAPERWORK ANALYZES THE RIGHT TO PRIVATE LIFE IN THE NEW CIVIL CODE REGLEMENTATION, BY ILLUSTRATING THE MOST IMPORTANT ASPECTS OF THIS ISSUE. THE RIGHT TO PRIVATE LIFE IS A PART OF THE PERSONALITY RIGHTS, NEXT TO OTHER ESSENTIAL HUMAN RIGHTS, SUCH AS THE RIGHT TO OWN IMAGE, THE RIGHT TO HONOR AND THE RIGHT TO DIGNITY.*

*THE CONTENT OF THIS PIECE OF WORK IS TO HIGHLIGHT THE LEGAL PROVISIONS CONCERNING THIS RIGHT, AS THEY ARE EXPOSED IN THE NEW CIVIL CODE AND THE LEGAL LIMITS OF THIS RIGHT.*

## **1. Introductory aspects**

The private life of the individual [1], became in recent years a feature of contemporary civilization[2], began to be protected through specific and more explicit legal rules.

Although people’s law was a fairly long period, dominated by inequality and dependence, nowadays, by subject of law we mean that which is entitled to multiple powers and, particularly, subjective rights, it being nothing more than person depicted in its legal function.

Personality rights [3] (also called primordial rights of the human person or fundamental human rights [4]) are those inherent rights of the person, i.e. the quality of the human being, are subjective, so non-patrimonial rights [5] endowed with legal action [6], acquired by any person by the very fact of his birth.

Because it is extremely difficult to specify a definite definition, we confine ourselves to mentioning that they are those powers on the holder recognizes faculty to enjoy and to be defended attributes and interests of primordial and inherent in its own people. In another perspective, the personality is considered overview of property belonging to a person in the mere fact of its existence, thus each 'good' of the personality them corresponding a right that that person is in possession in his own name.

Regarding the attributes of these rights, they are not likely to change the holder, pursuant to article 58. para. (2) of the NCC are non- transferable — meaning that shall be extinguished at the time of death of the holder, they are not susceptible of pecuniary value, are imperceptible- meaning that the creditors of that person cannot be traced forced, are imprescriptible [7] and are opposable erga omnes, being absolute rights.

The new Civil Code [8] brings a novelty in the field of personality rights, regulating those rights expressly in art. 58 para. (1) of the NCC, which states that everyone has the right to life, to health and to physical and mental integrity, to dignity, to their own image, to respect for private life, as well as other rights provided by law.

As regards the division of these rights in many categories, it should be mentioned that there are many different opinions, but this paper will focus only on the new Civil Code legislator's considerations to split these into two categories. Thus, the new Civil Code-taking over aspects of the Civil Code of the province of Quebec- divides personality rights into two branches: the first contains rules concerning the right to life, to health and physical integrity of the person (art. 62-68), the second category refers to the respect of privacy and dignity (articles 70-77).

In another perspective [9], the new Civil Code is considered to be the first regulatory action that imposes in the Romanian law the notion of personality rights [10] devoting them detailed regulations, in the content of chapter II [11] - respect due to the human being and its inherent rights, of title II of Book I. Of the multitude of personality rights, highlighted by the doctrine, the new Civil Code has understood to cover those listed [12] in the first paragraph of art. 58- the right to life, to health, wholeness, dignity, private life (as a complex, consisting of several contents), the right to his own image and the protection of personal data, adding attributes to identify an individual (art. 59 NCC) and the right to dispose of himself (art. 60 NCC).

In above lines, we will present an analysis on the right to private life, which, together with that of respect for the dignity of the person is an extremely important aspect inside of the regulations of the new Civil Code.

## **2. The right to privacy in the new Civil Code regulations**

The new civil code regulated the right to private life in art. 71 and art. 74, and in art. 73 introduced provisions related to the right to own image. In one of the concepts presented in the doctrine is shown that the right to privacy tends to protect the peace and tranquillity of personal life and result from the notion of freedom [13].

As expressed earlier, doctrinaires opinions we agree with, the right to respect for private life belongs to the moral heritage of the said individuals, representing an extension of his personality.

From the wording of para. (2) and (3) of the art. 71 of NCC, it follows that in the content of the concept of private life, enters 'intimate life, personal and family life, home, correspondence, manuscripts, personal documents, as well as data from an individual's private life [14], this side of his life being distinct from his public life and the public side of his professional life.

Also, in order to have a complete image of the notion that illustrates the title of this study, we should report to the provisions of art. 74 NCC, which, regulating violations of privacy, indicates also indirectly aspects of the person's life that they consider to be private [15].

Not only the authorities, but also private individuals have the obligation to respect private life, which translates via an 'obligation to refrain from any interference or interference in the affairs of another person and from any intrusions into the private life of a person [16].

Because it protects rights so intimately related to the person, the right to privacy is not the same for all, the legislator deciding that the extent of this right is tenuous, where

the person puts in contact his private life with the public one, for example, in the case of politicians.

It is also necessary to mention that the law limits the scope of the right to private life in art. 75 NCC.

### **3. The content of the right to private life**

The right to private life of the human being is one of personality rights stipulated by the Romanian legislature in the new legislation, in addition to other rights such as the right to freedom of expression (art. 70 NCC) or to human dignity (art. 72 NCC).

In another perspective, private life assumes the existence of a sphere 'of self-determination, on the one hand and one of exclusion, on the other hand [17].

It should be noted that the right to private life is regulated separately in the new Civil Code art. 71, Section 3 (Privacy and respect for the dignity of the human person), Chapter II (respect due to the human being and its inherent rights), Title II (Natural Person) from the Book I (Of persons) of the new Civil Code.

The article in question (art. 71 NCC [18]) comprise 3 paragraphs of major significance with regard to the regulations relating to the rights of the individual.

We believe that it should be specified that 'the interpretation of this article must be made by reference to the provisions of art. 8 [19] of the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights [20]. Also, the Romanian Constitution includes in art. 26. provisions related to the right to private life.

Firstly, it should be pointed out that respecting the right to privacy of the individual is an integral part of the individual's moral heritage and constitutes a form of extension of her personality. In this case, we consider that it is absolutely appropriate to give the person a secret sphere of life inside us that it should have the power to remove third parties. The right must recognize the character of individual's private life and its compliance. We opinate that it might be rightly said that respect be entitled to assert respect for private life means the right to be left alone, the right to be alone [21]. This right has complex content, including for instance, personal life, family life, sentimental life, health, protection against sexual violence.

Respect for privacy must contain, in our vision, in a certain degree, the right to establish and develop relationships with the people around him. Furthermore, a person (victim) may oppose the indiscreet zeal of benevolence, she may prohibits to be opened a public subscription for his benefit, or she may deny that his personal life is, even with changing names, to be expressed by a writer in a clear manner.

Under negative aspect, respect this right means the debt of abstention through out the zone of privacy: not to be watched for, described, requested, not be disclosed wealth status, his biography.

The first paragraph of art. 71 establishes the right of any person to respect for his private life, and para. (2) provides that no one may be subjected to interference in intimate, personal life or family, domicile, or correspondence, without his consent or without compliance with the limits imposed by the art. 75.

Art. 71 para. (3) contributes to highlighting the obligation of 'non-genesis of which they are kept for their third parties being banned in the first place to use, in any way, correspondence or other documents of the holder [22]. Secondly, we specify that it is prohibited to use the information in the privacy of the individual, which have been obtained in other ways. After the way they are designed, the two categories of interdictions show that they are founded also in accordance with the limits to press freedom.

#### 4. Infringements of the right to private life

When we give private life protection, you need first to distinguish it from public life [23]. To establish the exact border between them, however, is quite difficult. For example, screen stars, politicians or artists beyond their public lives, they have a private life that, naturally, they care about. At the opposite pole, some people consider that in their case we should not distinguish between the two spheres of human life, because private life helps explain the public one, even more than that, according to many others, that person who sought conquest celebrity thereby giving the sphere of privacy [24].

Private life infringements are laid down in art. 74 NCC. According to it, may be regarded as infringements to private life:

a) to enter or remain without right into a home or taking out of this any object without the consent of the person who lawfully occupies;

b) interception without right a private call, committed by any technical means, or using, knowingly, such interceptions;

c) capturing or using image or voice of an individual situated a private space, without his consent;

d) dissemination of images showing the interior of a private space, without consent of the person who lawfully occupies it;

e) keeping under review the private life, by any means, apart from the cases expressly provided by law;

f) the dissemination of news, debates, surveys and reports by the audiovisual or intimate life, personal or family, without the consent of the person concerned;

g) the dissemination of materials containing images of a person under treatment in health care units, as well as personal data concerning health, issues of diagnosis, prognosis, treatment, causes disease, and other various facts, including the outcome of the autopsy, without the consent of the person concerned, and where that is deceased, without the consent of the family or of the persons so entitled;

h) use, in bad faith, of the name, image, voice or similarity with another person;

i) dissemination or use of correspondence, manuscripts or other personal documents, including data relating to domicile, residence, and phone numbers of a person or the members of his/her family, without the consent of the person to whom they belong to, or, where appropriate, shall be entitled to dispose of them.

We mention that the above list is illustrative. For one of the facts presented to be regarded as infringement of private life must be checked its actual circumstances of committing [25]. These circumstances will be considered infringements of private life subject to art. 75 NCC.

#### REFERENCES

- [1]. The man looked at individually, the topic of law-legal relations participant. Every human being has this quality. The notion of subject of law suffered from historically significant changes. In antiquity and the middle ages people were considered not all persons-subjects of law, holders of rights and obligations. Slaves, for example, were deprived of legal protection in terms of their own human nature, being considered as things.
- [2]. O.Ungureanu, C. Munteanu, *Civil Law. Persons in the New Civil Code*, Hamangiu Publishing House, 2011, p. 71.
- [3]. The term derives from Germanic language- Persönlichkeitsrechte.

- [4]. It is necessary to mention that when they have as their object the restriction of powers of the state, they are known under the concept of human and citizen's rights.
- [5]. There are doctrinals who prefer to catalog them as extrapatrimoniale rights.
- [6]. *Ibid.*, p 42.
- [7]. The justification of the imprescriptibility of such rights arises from their perpetuity and inalienability character.
- [8]. The civil code of 1864 did not regulate personality rights, the distinction being art. 998 Civil Code- the current art.1349 para. (1) of the NCC- and art. 54 of Decree No. 31/1954 concerning natural and legal persons.
- [9]. E. Chelaru, *Civil Law. Persons in the NCC Regulations*, Edition 3, Universitary course, C.H. Beck Publishing House, 2012. p. 20.
- [10]. Marginal title of article 58 NCC is that of personality rights .
- [11]. The chapter comprises four sections: section I (common provisions), section 2 (rights to life, health and physical integrity of the person), section 3 (Privacy and respect for the inherent dignity of the human person), section 4 (person and due respect after his death).
- [12]. This list made by the legislator is illustrative, being possible as other rights be characterized as rights of personality. This was the motivation for the title of the article has been modified with the one called "personality rights", and the content has been completed, in the category of such rights may be part and "such other rights recognised by law".
- [13]. O. Ungureanu, C. Munteanu, *work cited*,, p. 71.
- [14]. E. Chelaru, *work cited*,, p. 35.
- [15]. Quoted text includes the following content: subject to the provisions of art. 75, may be regarded as infringements upon private life:
- a) to enter or remain without right into a home or taking out of this any object without the consent of the person who lawfully occupies;
  - b) interception without righth a private call, committed by any technical means, or using, knowingly, such interceptions;
  - c) capturing or using image or voice of an individual situated a private space, without his consent;
  - d) dissemination of images showing the interior of a private space, without consent of the person who lawfully occupies it;
  - e) keeping under review the private life, by any means, apart from the cases expressly provided by law;
  - f) the dissemination of news, debates, surveys and reports by the audiovisual or intimate life, personal or family, without the consent of the person concerned;
  - g) the dissemination of materials containing images of a person under treatment in health care units, as well as personal data concerning health, issues of diagnosis, prognosis, treatment, causes disease, and other various facts, including the outcome of the autopsy, without the consent of the person concerned, and where that is deceased, without the consent of the family or of the persons so entitled;
  - h) use, in bad faith, of the name, image, voice or similarity with another person;
  - i) dissemination or use of correspondence, manuscripts or other personal documents, including data relating to domicile, residence, and phone numbers of a person or the members of his/her family, without the consent of the person to whom they belong to, or, where appropriate, shall be entitled to dispose of them.
- [16]. E. Chelaru, *work cited*,, p. 36.
- [17]. O. Ungureanu, C. Munteanu, *work cited*, p. 75.
- [18]. The provisions of art. are the following:
- (1) everyone has the right to respect for his private life.
  - (2) no one may be subjected to any interference in intimate, personal life or family, nor his domicile, residence or correspondence, without his consent or without compliance with the limits laid down in art. 75.
  - (3) it is also prohibited to use, in any manner, of correspondence, manuscripts or other personal documents, as well as information from the privacy of a person without its consent or without compliance with the limits laid down in article 75.
- [19]. The specified has the following structure: the right to respect for private and family life
1. everyone has the right to respect for his private life and family life, his home and correspondence its.
  2. it is not allowed the mixture of a public authority in the exercise of this right only in so far as

this is provided for by law and constitutes, in a democratic society, a measure necessary for national security, public safety, the economic well-being of the country, order and preventing criminal offences, the protection of the health, morals, rights and freedoms of others.

Currently, the notion of private life within the meaning of art. 8 of the Convention it benefited from an extension of the European Court, comprising a person's right to privacy, the right to personal privacy and a person's right to a healthy environment.

- [20]. The New Civil Code. Notes. Correlations. Explanations, C. H. Beck Publishing House, Bucharest, 2011, p. 72.
- [21]. This right implies the inviolability of domicile of the person concerned.
- [22]. E. Chelaru, *work cited*, p. 36.
- [23]. There is an opposition relationship between public life and private life. For instance, at the death of Balzac, Al. Dumas took the initiative of subscription for raising a monument in memory of the great novelist. His widow opposed, and in 1854, Seine General Court decided that "raising a monument in honor of a man who became famous does not affect the family, but is a tribute to the recognition or public admiration for the man who has honored the country". (O. Ungureanu, C. Munteanu, 'Civil Law. Persons in the New Civil Code', Hamangiu Publishing House, 2011, p. 74).
- [24]. In France, for instance, by the law of 17 July 1970, has been introduced a new art. 9 in the Civil Code according to which "everyone has the right to respect for his private life", and para. (2) establishes that "the judges may, in addition to repairing the damage, to prescribe all measures, such as seizure and others measures suitable to prevent or cease an infringement of private life".
- [25]. The New Civil Code. *work cited*, p. 73.