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Violations of Private Life

Gabriela NEMȚOI¹

Abstract

Private life it is essential is a right, along with other rights, shapes the human being, giving it value and identity. In this consensus, the legislator through the Romanian civil code sought to impose a series of deeds aimed at infringing on private life.

Thus, the listed facts can be considered as violations of private life only subject to the presented of Civil Code (Romanian Civil Code, 2009). This means that the facts indicated in art. 74 of Civil Code they cannot be qualified under any circumstances as violations of private life, but only if they are not among the violations allowed by the international conventions and pacts ratified by Romania. More specifically, those acts do not attract civil liability (payment of compensation, etc.) if they have infringed the particular life allowed under the Convention and the jurisprudence of the ECHR.

The private life must be protected and guaranteed by establishing and identifying actions that are prejudicial. The article is a study that in of regulations standards demonstrate violations of the right to life. Comparative development of ECHR case law pointed out that although there is a solid legislative framework, the right to life can be violated.

Keywords: *Right to life, violations of the right to life, the crime of home invasion, unlawful interception of a conversation.*

1. Introduction

The right to life is a absolute human right, which through its essential aspect goes beyond the sphere of personal interest, exposing its overall image, especially in the social framework.

According to its position, this right acquires a guaranteed social dimension, this guarantee being given by a series of international treaties that support the importance of this right. As a continuation of international treaties, national regulations require state institutions to provide a solemn framework of guarantee by which the right to life is imposed authoritatively as a fundamental right for any citizen.

Constitutional, civil or criminal regulations demonstrate a clear interest on the part of the legislator in ensuring a range of rules in all branches of law that call

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into question the right to life.

It is important to see the right construction time to life, a moment that suggests in different legislations the incrimination of some acts that could lead to the extinguishing of life.

2. International and national regulations on the right to life

Consecrated through a series of national and international normative acts, the right to life actually enshrines human existence in the social context.

In this spectrum, the right to life from a national perspective is protected by art. 26 of the Romanian Constitution, public authorities are instruments through which the natural person is protected.

A first factor that should engage in ensuring and protecting life, is the state through its authorities. Life is respected by establishing a necessary balance offered by the state to individuals in the relationship they create in perfect actions or inactions.

Also, in article 22 par. (1) of the Romanian Constitution, the legislator mentions the fact that “the right to life as well as the right to physical and mental integrity of the person are guaranteed”. With regard to possible restrictions on the opposite of the right to life, namely death, the legislator notes that the intentional death is excluded, because the death penalty by issuing a court decision has been repealed (law nr.6,1990) and paragraph (3) of Article 22, prohibits the death penalty.

The Criminal Code through the Special Part Title I insert the offenses against human the section I, even targets offenses against life, such as art. 188 “murder”, art. 189 “qualified murder”, art. 190 “killing at the request of the victim”, art. 191 “determination or facilitation of suicide” or even art. 192 “culpable homicide”. The finding that any crime that leads to the suppression of life, is sanctioned and demonstrates a major protection that the state regulates in order guaranteeing the right to life.

To determine these facts and their correct classification, it is necessary to establish the moment from which the protection of the right to life ceases and the invocation of the person’s death as suppression of the right.

In art. 71 of the Civil Code specifies that “every person has the right to respect for his private life. No one may be subjected to any interference in intimate, personal or family life, nor in his home, residence or correspondence, without his consent or without respecting the limits provided in art. 75” (Romanian Civil Code, 2009).

And the Civil Code is a defining argument by which the right to life represents the phenomenon that occurs only in the context of a social life. Giving consent to enter the intimate, family or private life of a citizen is the ultimate guarantee by which any person manages in his own name without prejudice to the right to life in its complexity.

The law of life cannot be discussed singularly but only in the context in which this right functions, namely in the context of individually life, family life, domicile or correspondence.

According to art. 8 point 1 of the ECHR, "every person has the right to

respect for his private life, home and correspondence".

Protecting the right to life is an imperative and it is a priority of the natural person whose protection is closely linked to other components of the person such as: bodily integrity, physical and mental health, freedom of privacy, access to correspondence and at a home. Ensuring the protection of life means ensuring or removing mixtures that may come from the state or other persons in disturbing this right to privacy with all possible connections that it develops.

Human life must be seen as a conglomerate of rights assisted by rules that it does to protect human beings.

Thus art. 3 of the Universal Declaration of Human Rights states that "every being has the right to life, liberty and security of person"(Law no. 30, 1994). By "security" we should mean the related elements that complete the right to life.

The European Convention on Human Rights ensures the right to life of the individual but also monitors cases in which he or she may be harmed. Article 1 states that: "The right to life of every person shall be protected by law. Death may be caused to a person intentionally, except in the execution of a death sentence handed down by a court where the offense is punishable with that penalty by law". The provisions of Article 2 are supplemented by stating that "death shall not be deemed to have been caused by a violation of this article in cases where it would result from an absolutely necessary use of force: to ensure the protection of any person against unlawful violence; a lawful arrest or to prevent the escape of a lawfully detained person; to punish, in accordance with the law, violent disturbances or an insurrection".

The justification in case of admitting possible interventions that can end with the obstruction of the right to life emphasizes the fact that although it is enshrined as a fundamental right, there are situations in which the right to life cannot be secure, that the correct functioning of society is a priority.

We mention in this sense the case of McCann and others against Great Britain (ECHR, 1994) , by which the use of lethal strength was examined for the first time in detail in the present judgment, art. 2 does not allow situations other than the right to life except when the use of force is "absolutely necessary", these terms indicating that a situation and imperative criterion of need must be applied than that normally used to determine find state intervention is "necessary in a democratic society" in the sense of art. 8–11 §§ 2 of the Convention (§ 149). The request concerned the deaths of three IRA members suspected of terrorism. They were killed in the alley by Special Air Service (SAS) soldiers in Gibraltar. In that case the Court found Article to be infringed. of art. 2 of the European Convention on Human Rights, on the grounds that the operation it would have been managed without the result of the death of the insurgents.

The Court has not always accepted that the justification of state actions can lead to obstruction of the right to life, in this respect Case Andreou v. Turkey (ECHR, 2009) refers to the request by which a British national, Mrs. Andreou, was wounded by gunfire fired by the Turkish armed forces during the conflicts in the buffer zone controlled by the United Nations in Cyprus. Violation of art. 2 of the

European Convention on Human Rights: the use of a potentially lethal force against the applicant was neither “absolutely necessary” nor justified by one of the authorized exceptions.

The use of violence by state institutions must be carried out in accordance with operations authorized and handled by the state. In the case of *Nachova and Others v. Bulgaria* (ECHR, 2005) where the applicants’ relatives they were killed by army agents’ officer who were hoping for arrest. In this regard, the Court reiterated that people of power must be learn to be able to check it out whether or not the use of firearms is absolutely necessary not only in accordance with the relevant regulations but also in accordance with the aspect of respect for human life, as an essential value of life, the violation of the right to life is inherent.

From the practice of the European Court of Human Rights, it results that the interference of a public authority in the private life of a person is lawful only if it satisfies the conditions imposed by paragraph 2 of art. 8 namely: whether it was “provided for by law”, whether it pursued one or more of the legitimate aims and whether it was “necessary in a democratic society”.

However, the enshrinement of the justification for the violation of the right to life has always created circumstances in which state authorities have abused their exercise of the right to life under the auspices of the international legal framework.

Article 6 of the International Covenant on Civil and Political Rights states: “The right to life is inherent to human person. This right must be protected by law. No one shall be arbitrarily deprived of his life.”

The most known definition given to the notion of “privacy” by Western literature is the definition in which the right to personal life is the right of the individual to a restricted and anonymous life (Lindan, 1974, p. 16).

Also, on the content of the concept of “private life” was manifested the Consultative Assembly of the Council of Europe which on January 23, 1970, adopted Resolution 428 which states: “Within its essential limits, the right to respect for private life consists in the possibility to live his life the way he wants, with a minimum of interference.

Article 8 of the European Convention on Human Rights provides for the right to respect for private life, family life and prohibits the interference of public institutions in its exercise, except for the intervention of the state in the defense of public order or situations expressly provided by law to establish democratic values.

Privacy has become, if not a value, at least a characteristic of contemporary civilization.

3. Violations of private life

Sometimes, the notion of private life can include the most diverse aspects of the individual’s existence.

The renowned professor Corneliu Birsan, considers that “the notion of private life, in the sense of art. 8 of the Convention, as interpreted by the European court of contention, includes the right of the person to intimate, personal private

life, to a healthy environment” and deals with “traditional aspects - such as the right to an image, a person’s marital status, identity, health, religion, physical and moral integrity, emotional life, etc., but also modern aspects related to new perceptions in social life - regarding abortion, homosexuality, transsexuality, as well as certain developments of means of communication” (Birsan, 2018, p. 123).

In this context, the Civil Code sets out the possible violations of the notion of private life.

According to art. 74 of the Civil Code, subject to the application of the provisions of art. 75, may be considered as infringements of private life:

”a) Entering or remaining without right in the dwelling or taking from it any object without the consent of the one who legally occupies it;

b) The unlawful interception of a private conversation, carried out by any technical means, or the use, knowingly, of such interception;

c) Capturing or using the image or voice of a person in a private space, without his consent;

d) The dissemination of images that present interiors of a private space, without the consent of the one who legally occupies it;

e) Keeping the privacy under observation, by any means, except for the cases expressly provided by law;

f) Broadcasting news, debates, investigations or written or audio-visual reports on intimate, personal or family life, without the consent of the person concerned;

g) Dissemination of materials containing images of a person in treatment in health care units, as well as personal data on health, diagnostic problems, prognosis, treatment, circumstances related to the disease and other various facts, including the result of the autopsy, without the consent of the person concerned and, if the deceased, without the consent of the family or of the entitled persons;

h) Using, in bad faith, the name, image, voice or likeness of another person;

i) The dissemination or use of correspondence, manuscripts or other personal documents, including data on the domicile, residence, and telephone numbers of a person or members of his family, without the consent of the person to whom they belong or who, as the case may be, has the right to dispose of them.” (Romanian Civil Code, 2009).

The interferences mentioned in the civil regulations are part of the personal rights related to the individual and his relationship with the society in which he operates. As we mentioned, “entering or remaining without right in the house or taking from it any object without the consent of the one who legally occupies it”, is an action that is also found in criminal law by criminalizing crimes that harm the home and privacy, art. 224 violation of domicile, art. 226 violation of privacy, the fact itself proving the guarantee that the state provides to the citizen.

Moreover, the right to privacy includes adjacent: right to an image, the right to information, the right to correspondence, the right to a domicile, etc.

Anyone who has the right to life violated or threatened may go to court.

Where private rights have been violated the injured party may request the

court to oblige the court the perpetrator of the damage caused.

Compared to those presented above, the injured party may seek compensation or, where appropriate, reparation pecuniary patrimonial type or non-patrimonial in the event of damage is imputable the perpetrator who caused the damage through fault of his own. In this situation, the civil action is subject to the extinctive prescription.

As you can notes the right to life conceives three fundamental rights of the human being, life physical integrity and mental integrity. In the protection and guarantee of life, the state has a negative general obligation not to harm and a positive obligation to protect the individual from actions harmful to other individuals or groups of individuals.

Consecration of art. 74 of the Civil Code, presents two aspects of the individual, the person's behaviour but also his anonymity.

4. Conclusions

The issue of fundamental rights is a matter subject to perpetual scientific research due to the importance of protected social values, the perspective on them can be very diverse, with tools specific to public law and private law. Our attention stopped on the study of the right to personal life in view of the influence of external factors, which determine the classification of this right in the fourth generation of rights.

Considered a right of inviolability, it is an inalienable attribute of the person and represents the supreme value in the hierarchy of human rights.

It's a right essential for human beings, whether it is their intimacy, physical or moral integrity, development in relationships with peers or personal information that characterizes it. Integrated in both the category of inviolability and legally enshrined rights in the fourth generation of rights (Muraru & Tanasescu, 2011, p. 145) the right to private life gained a special place in the regulations, particularly after World War II, when the human community became aware the importance of respecting the individual and the set of values that he represents or characterizes.

This right can be considered from various perspectives depending on the branch of law to which it may be associated (for example, as a subjective civil law or from the perspective of criminal liability) but can also be considered from interference which may influence this right.

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