

**UNIVERSITATY OF CRAIOVA**

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**THE RIGHT TO PRIVATE LIFE IN ROMANIAN CIVIL LAW**

**ABSTRACT**

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The evolution of internet technology and communication and telecommunication has led to many touches of the fundamental, social and moral rights and freedoms of man, dignity, image and the right to privacy being the most exposed. We have chosen as a doctorate topic the study of the right to private life, a complex right through its content, with multiple valences in national law: the right to private life is a fundamental right of man, private life is a fundamental protected legal value and a fundamental freedom.

At the national and legislative level, the right to private life is expressly stipulated in the Romanian Constitution and the NCC.

Thus, the present Constitution of Romania affirms the right to private life as a fundamental and complex right, aspect of respecting the personality of man, proclaimed as supreme value in its first article.

In the New Civil Code, the legislator regulates the right of private life in the provisions of Article 71, and in the following two paragraphs refers to the content of the right to private life: *intimate, personal, family, domicile, residence, correspondence*.

By law no. 30/1994 on the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols to that Convention, Romania ratified the European Convention on Human Rights which, in Article 8, regulates *the right to respect for private and family life, domicile and correspondence*.

*Figure 1: The content of lato-sensu private life*

<b>Constitution art.26, art.27, art.28</b>	<b>New Civil Code Art.71</b>	<b>Convention Art.8</b>
- intimate life	- intimate life	
- family life	- family life	- family life
- private life stricto-sensu	- personal life	- private life stricto-sensu
- domicile / residence	- domicile / residence	- domicile / residence
- correspondence	- correspondence	- correspondence

Analyzing the terminological content of these legal texts, we note that they are slightly different in the sense that the Constitution refers to *intimate, family and private life, domicile and residence, secret of letters, telegrams, other postal items, telephone conversations and the other legal means of communication*, while the Civil Code refers in paragraph 1 of Article 71 to *private life*, and in paragraph 2 of Article 71 to *the intimate, personal or family life, domicile, residence or correspondence*, and the Convention regulations refer to *private and family life, home and correspondence*.

Other observations that come out of the analysis of legal texts are:

- the marginal name of art. 26 of the Constitution is *intimate, family and private life*, and the regulation refers to private life in its broad meaning. From this first observation we could establish that there is a *lato-sensu private life* concept and a *private life stricto-sensu*.

- the marginal name of Article 71 of the N.C.C. is *the right to private life*, a concept which is also reflected in the provisions of the first paragraph, and in the second paragraph there appear other notions which seem to explain the meaning of the private life of the first paragraph, namely *intimate, personal or family life*. So, again, we can talk about a *private lato-sensu* concept of life and a *private life stricto-sensu*. Moreover, we notice that the notion of *personal life*, which, alongside the intimate life and the family, home and correspondence life, completes the private life from the marginal name of the article. And these aspects result in the existence of a private notion of *lato-sensu*, meaning *private life stricto-sensu*. But, corroborating the two legal texts, Article 26 of the Constitution and Article 71 of the N.C.C. and stressing the lack of the strict sense of *private life* in civil code regulations, we could ask the question: is there a sign of equality between the notions of *private life stricto-sensu* (Constitution) and *personal life* (NCC)? Are these notions included? Do they complete each other? We will answer these questions in the continuation of the scientific approach.

-no reference to the notion of intimate life appears in the regulation contained in the Convention. In chronological terms, the text of the Convention was first adopted, following the Constitution and then the NCC; the question as to from where the Romanian legislator took over this notion arises. Is it possible for intimate life to be a component of privacy stricto-sensu? We will answer this question in our later approach.

To answer the questions, we have organized the analysis of the investigated right, the right to privacy, from the perspective of three major law institutions: **the legal regime of the investigated law, the content of the investigated right and the means of defense of this right.** Going on such an organization of the content of this paper, the work *The Right to Private Life in Romanian Civil Law* is structured in three parts, each developing the three major institutions that we have decided to address.

Thus, **Part I** is entitled **The General Theory of the Right to Private Life** and is also developed in two chapters.

**Chapter I - The Coordination of the Right to Private Life in Romanian Civil Law** - presents an analysis of the regulations contained in the New Civil Code in the chapter *About persons* and establishes the place of the right to study among all the rights of the individual. In **Section I** of this chapter we have developed **The Personality Rights Chart**, with an emphasis on the classification of these rights, and we have established that, being connected to the individual, the right to privacy is integrated by the legislator into the category of personality rights, non-patrimonial civil subjective rights. In **Section II**, we have set **The Place of the Right to Private Life Amongst the Rights of Personality**, trying to define it, without deviating too much from the definition of the gender in which we have framed it. Thus, *the right to private life can be defined as the total of the prerogatives recognized by the civil law of every person - an active subject of law - to claim from the other subjects of law - passive - to have a proper conduct in relation to private, intimate, personal or family life, with domicile, residence or correspondence, manuscripts or other personal documents, as well as private life information, subject to the use of the coercive force of the state when the limits of the exercise of this right are attained.* By this definition we strengthen the conception of the legal nature of the right to private life, that the studied law is a right of personality, a non-patrimonial civil subjective right, which protects the private life of any person and highlights the features of the right to private life: the right to private life: - jurisprudential law, - legal human right, public freedom, fundamental and citizenship right, - substantial right, - negative right.

By analyzing the regulations contained in the legal texts, we can establish that the scope of the right to privacy encompasses a wide range of personal interests: personal identity, physical and moral integrity, sexual life, the environment, family, marriage, relationships between parents and children, correspondence, domicile. Another aspect of the place of the right to private life

among the rights of personality is also the dimension of this right. From the analysis we have concluded that the studied law has a physical and psychic dimension that refers to the respect of physical integrity, freedom of movement, the freedom of thinking of the person as well as the respect of the mental aspect of the individual's life, a social dimension that is considering the analysis of private life from the perspective of many social aspects: family, friends, working relationships, and a moral dimension. It is moral to respect the intimate space of the individual. It is moral to respect our family, friends, social life, it is moral to respect the individual and everything related to his human being. Private life implies an individual's ability to exclude or exclude self-information and to reveal it only selectively. It is moral to respect this decision. When moral rules are not observed, legal regulations can be applied to balance social order.

Establishing all these general coordinates, in **Section III** - we have established which are **The Characteristics of the Right to Private Life**, analyzing in detail the holders of the law studied, in particular between the holders - physical persons and holders - legal persons. We have appreciated that the sphere of the right to private or family life is not limited to the individual being viewed individually or as a member of a social group. The legal person can borrow those attributes that are not strictly human and can be considered to be the owner of an interest similar to the individual.

The subject of the right to private life is inherent to the private life of a person, and this study is detailed in Part II of the thesis. The object of the right to private life, being a fundamental social value regulated by the fundamental law, confers upon this right a fundamental, superior legal force and, in the matter of subjective civil rights, the right to private life, being governed by the Civil Code, establishes the legal status force of this right. As far as the scope of the right is concerned, the right to private life will last as long as the person is alive, it will extend beyond death if, during the lifetime, the deceased referred to the secret keeping of the aspects of his private life, or if there may be aspects which lead to its memory, reputation or image damage beyond death. Moreover, considering the attainment of the right to private life regulated by the provisions of art.74 let. g, we can establish that respect for private life must be granted beyond death.

We have reserved **Chapter II** of the paper to the **Context of the Regulation of the Right to Private Life** by analyzing, in **Section I - First International Legislation on the Right**

**to Privacy, in Section II - First European Legislation on the Right to Private Life, and in Section III - National Legislation on the Right to Privacy.**

The **intermediate conclusion** we showed relates to **Modernization of National Legislation**, the right to privacy becoming one of the most important human rights in contemporary society, internationally recognized, once the entry into force of the new Civil Code in October 2011, in the sense that this normative act brought a novelty not found in the old Civil Code, meaning the express regulation of the rights of personality, then by the entry into force of the New Criminal Code, which transposes the provisions of art.8 ECHR, art. 7 EUFRC (the EU Fundamental Rights Charter), for the purpose of expressly defining the violation of privacy life - art. 226, the criminal lawmaker, thus, succeeds in granting an express criminal protection to the observance of the right to private life.

The provisions of art.74 and art.75 of the NCC refer to privacy and to the limits of this right of private life, expressly establishing the situations in which the right to private life is attained, as well as the situations in which this right is not considered to be achieved.

A novel piece of legislation on privacy is that on 12 March 2014 the European Parliament adopted the reform package on personal data protection and the report on the impact of mass surveillance programs on EU citizens. These votes are an important contribution to the protection of the right to privacy and the completion of the long-awaited reform proposed by the European Commission in January 2012, which will also have an impact on national legislation by aligning it with the European human rights standards.

As I mentioned, in **Part II** we studied the Content of the Right to Private Life, developed in 4 different chapters.

In **Chapter III**, we examined the **Right to Privacy Stricto-sensu** in six sections: the right to intimate life, the right to personal life, the right to moral integrity, the right to social life, the right to a healthy environment, and life-related issues as an object of protection of the right to intimate life.

For each of these substrates of the right to private life stricto-sensu we started the analysis from the meaning of the notions of the name of the law under consideration, retaining only the legal connotation of the notions, we established the definition, starting from the general definition of the right to private life and we have analyzed common and differentiated aspects of each sub-branch.

Inside the section on the right to intimate life, we analyzed the legal and jurisprudential dimension of this sub-category in relation to the category of persons to whom it relates. We concluded that the public individuals have a right to intimate life and that, by *lege ferenda*, there should be either regulated mechanisms so that the distinction between privacy breaches and their observance will not be made unevenly by court judgments in terms of life intimate public statements, or the current regulations to list all situations in which privacy may be considered violated. As far as the private life of private individuals is concerned, it is less in the public eye, it is more respected, and the courts have not had many opportunities to analyze the manner in which the intimate life of these people has been affected. Regarding the deceased person and the right to intimate life, simply photographing a deceased person and then publishing it without the consent of the deceased's family is a violation of the intimate family life. However, the interest of such a publication should be considered. If the photograph has historical or scientific connotations and therefore the public interest is satisfied, then it is no longer the question that such publication is detrimental to the intimate life of the deceased's family. Similarly, if the deceased had been a public figure and the public showed interest in funerary events, such publication is not an attack on intimate life. We have also analyzed separately those who have problems with the law in different ways and their right to intimate life.

The analysis can be made on the basis of the same criteria: consent and public interest. Respect for the right to privacy is recognized by any person, the criteria that apply to the weighing of public life and the right of the public to be informed on the basis of respecting the principle of public interest being not tangential in any situation. We also analyzed separately people who have problems with the law in different ways and their right to intimate life.

In close connection with the right to intimate life, we also looked at issues related to sexual life.

- the right to make decisions about whether or not to have sexual intercourse, regardless of the partner's wishes;
- the right to make decisions about birth control and protection against sexually transmitted infections, regardless of the partner's wishes;
- the right to make free and responsible choices about the reproduction of the human species;

- the right to stop sexual activity at any time, including during or even before sexual intercourse;
- the right to ask the partner proof that he has been examined for sexually transmitted infections and sexual intercourse, or if the infection is proven;
- sexual integrity and sexual safety;
- sexual intimacy;
- right to sexual fairness;
- the right to sexual emotional expression;
- the right to sexual education;
- the right to sexual information based on scientific research;
- the right to the protection of sexual health.

All of these components that derive from the right to intimate life are aspects of private life. Any violation of these rights is a violation of privacy.

With regard to the right to personal life, we made a case study, the situation of a public figure caught in the public space with a private manifestation. The national courts held that, by publishing the photographs without consent and without satisfying a public interest, the person's right to life was infringed, with moral damages to the complainant.

The right to moral integrity was also presented on the basis of a case study, given that the ECHR judgment was final and with important connotations for national legislation and jurisprudence. Thus, the analysis of the famous case *Bărbulescu vs. Romania* has led to the formation of a personal opinion related to its implications in the matter. Thus, the private life of any individual exists and must be respected, including during working hours, issues related to the morality of each person, regardless of the relationship that is created between them. Correspondence issues as part of private life will also exist during working hours. Therefore, in the Internal Regulations or in similar documents of each institution, there should be explicit mention of monitoring. These should include: the monitoring mode, the object of the monitoring, the time and space delimitation of the monitoring, the procedure for limiting the access to the monitoring result, even the provision of the ways of deleting the information from the personal life, obtained after the monitoring, although there is no interest in its subject.

This case also affects the right to social life, as in Romania there is no explicit regulation of the violation of private life in the form of correspondence at the workplace. Therefore, the employee and the employer are mutually defrauding. The employer supervises beyond the legal



provisions on the employee, the employee uses for personal benefit the equipment of the employer and the working time for his / her own use. It is recommended that a decision be issued, an order of the minister on workplace monitoring that clearly sets out the conditions under which an employee can be monitored, the procedure for monitoring, evaluation and sanction be transparent, the limits between the use of personal and professional correspondence, a body that has a role and attributions in investigating violations in this area. The right to a healthy environment is analyzed through the interpretation of the most important international human rights acts and includes - the right to live in an unpolluted environment, by an unpolluted environment understanding an environment that is not degraded by activities that can affect the health, the welfare of individuals, the environment and sustainable development, - the right to the highest level of health from the point of view of non-harm to the environment, - the right to access to healthy food and water resources, - the right to a healthy working environment, - the right to housing in a healthy environment, - the right not to be unjustifiably expropriated for environmental causes, - the right to assistance in the event of natural or man-made disasters, - the right to the sustainable resilience of nature, - the right to conserve representative elements of nature , - the right of the individual to prevent pollution, to end the polluting activity and to repair the damage.

The content of the right to a healthy environment so established by the international documents will be guaranteed by the state authorities by taking legal, administrative and any other measures regarding its implementation, as well as by cooperating with other authorities for the prevention and combating of environmental pollution.

**Section VII** analyzes the **Corresponding Obligations** of these rights, distinguishing between positive obligations and negative obligations.

Concluding, *stricto-sensu* private life is the whole of its components: personal, intimate, sexual, social, moral integrity and healthy environment, and, together with family life, the domicile and correspondence of a person, form the private life of *lato-sensu* protected by the right to private life expressly provided for in the legal acts mentioned.

**Chapter IV - The Right to Family Life** is developed with reference to the definition of this right, the object, the holders, the legal force and the time limits of the family life, as well as the state's obligations to respect the right to family life.

The analysis of the observance of this right or the breach of the correlative obligations is done by applying some principles. Thus, we can prioritize the interests on which the observance or violation of the right to family life will be analyzed: the superior interest of the child in relation to the parent's interest, the parent's interest in referring to the child's interest in the general interest, and, ultimately, the general interest of the community. All minor child's interests also prevail in situations where criminal legal provisions apply when parental rights are forbidden as a measure to protect the health, education and morals of the child, to the detriment of taking such measures as a means of punishing the convicted parents.

While the Civil Code establishes with no doubt that the family is founded on the marriage of a man with a woman, the Court establishes that the family does not only stop at marriage relationships, and the right to respect for family life is recognized by married, but also to families formed outside of marriage. For this latter situation, the Court establishes a criterion in relation to which the provisions of Article 8 apply: the existence of an effective family life in families born out of wedlock, which the Romanian Criminal Code makes conditional on the existence of cohabitation.

**The Right to Respect for Domicile and Residence** is dealt with in **Chapter V**. Considering the general context in which we study the right to respect for domicile, as a component part of the right to privacy, we can say that this right *protects the secret nature of life within the home*, the main place being where a person manifests his freedom and lives his private life.

Following the analysis of the **Right to Compliance with the Secrets** of Correspondence, in **Chapter VI**, a series of questions were born: Does the content of correspondence fall under the scope of the right to respect for correspondence? Is the quality of the sender or the recipient decisive for the protection of this right? At the same time, by analyzing the content of the correspondence regulation in Romanian law, we find the answer to these questions.

The Romanian Constitution guarantees the inviolability of the secrets of postal items, letters, telegrams, telephone conversations. It is to be interpreted that the fundamental law refers to the secrecy of the content of these means of communication, and not to their existence as such, any postal factor, for example, taking notice of the sending of a letter, telegram or other postal item. What protects the fundamental law is both their existence and their content.

In view of the Court's judgments in this respect, we could say that it is clear from the analysis of the A. case against France that all telephone conversations concerning criminal activities are not protected by the provisions of Article 8 (1).

There is no explicit answer to the first question from the regulations contained in Article 71 of the NCC, but by interpreting the notions of using correspondence, manuscripts or other personal documents in conjunction with the interpretation of the notion of private life information, it is obvious that not only their content is protected, but also themselves as means of correspondence. But from these regulations, we can answer unequivocally to the second question, in the sense that every person must be respected the secret of correspondence, regardless of his quality or qualification, without discrimination.

An eloquent answer also offers the offenses incriminated in the criminal law by the provisions of art.302. Actions such as the destruction, opening, retention, interception, or evasion of any correspondence or conversation of any kind are incriminated, thereby protecting the means of communication; and actions such as the disclosure of the content of a call or correspondence, their transmission or dissemination or presentation are incriminated precisely to protect the contents of the mail.

For the second question, the New Criminal Code provides a supplement, in the sense that a qualification of a person that does not respect this secret attracts a greater sanction than if the deed had been committed by an unqualified person.

Thus, by correspondence is meant both the means of communication and its content and, regardless of the ways of legal communication, as well as their content, their secrecy is protected by law. As we have already mentioned, the fundamental law ensures the secrecy of correspondence through the provisions of art. 28, NCC protects the privacy and, with reference to the intimacy of a person's correspondence by means of the provisions of art.71 paragraph 2 and par.3, the criminal law ensures the punishment of those who commit offenses related to the secret of correspondence.

With the evolution of social life and technology, the meaning of the notion of correspondence will be extended to enjoy the protection of the secret of all communication methods

**Part III - The Means of Protecting the Right to Private Life** analyzes in three chapters  
**The Border between the Exercise of the Right to Privacy and its Violation - Chapter VII,**

## **Defense of the Right to Private Life by the Constitution - Chapter VIII, Defense of the Right to Privacy through Actions in the Courts - Chapter IX.**

The specialized literature classifies the individual rights and freedoms regulated by the Convention in two broad categories: intangible rights and conditional rights, the right to private life being integrated into the latter category. EU Member States may make specific amendments to these rights, limit them or restrict them. Thus, under domestic law, conditional rights, and thus the right to private life, enjoy relative protection.

The right to private life is generally exercised in the private environment of its holder and in all aspects of private life, as we have shown in the first part. It protects the private interests of its owner when he is in the private environment, whatever the right holder is.

When private life unfolds in public space, those principles that we have outlined above and which will make a distinction between what is protected and what is not protected with respect to the right to private life will interfere. Based on their interpretation and application, the boundary between the exercise of the right to private life and its violation will be established. Thus, the private life of a private person is also respected when it manifests itself in the public space. There can be no justification for a public or legitimate interest of democratic society in knowing aspects of the private life of a non-public person.

The private life of a public figure in the public space is respected and guaranteed. If private activity in the public domain is of public interest, it may be disclosed to the public, even without observing the consent of the subject, provided that it does not affect the reputation or dignity of the person concerned and is done in good faith.

It is also necessary to conclude on how to regulate the legal attentions of the right to privacy. Article 74 of the NCC lists the facts that can be civilly sanctioned when verifying the conditions for civil liability, and the Criminal Code lists about the same facts that may be offenses and sanctioned as such. There are two legal texts that qualify the same thing once civilly unlawful, once an offense. Even if the investigation of the form of guilt or the concrete ways in which the facts occurred, it is possible to determine which law is applied, whether criminal or civil, it is recommended that the New Criminal Code regulates explicitly the situations that distinguish a criminal offense from the civil, for unambiguous classification of that one. As regards the protection of the right to private life, by providing this right, in its lato-sensu

meaning in fundamental law, the right to private life thus becomes a fundamental right, protected at national level, primarily by guaranteeing the provisions of the Constitution.

The Constitutional Court, through its main attribution to guarantee the supremacy of the Constitution, carries out a constitutional review of legal norms. Thus, according to the provisions of art. 146 (d), the Constitutional Court examines and decides on the legality of the normative acts brought to the courts by the exceptions of unconstitutionality. Thus, any person who considers that the right to privacy in any of its components has been violated by various legal provisions of laws or ordinances may apply to the Constitutional Court and may, exceptionally, request the Court to rule on constitutionality those normative provisions in force. If found unconstitutional, those provisions will be suspended by law and shall cease to have effect 45 days after the publication of the Court's decision. In this respect, in the extenso paper, the **Decision no.17 of 21 January 2015 on the unconstitutionality of the provisions of the Cyber Security Law of Romania** was analyzed.

The right to privacy applies to the fundamental principle of civil law, according to which a subjective right is protected and guaranteed by the legal order. Thus, the holder of the right to private life can enjoy the exercise of this right in a legal framework of protection. The main remedy recognized by civil law is legal action. Any legal action requires the existence of a civil subjective right to be protected. Therefore, any person who considers that rights or freedoms recognized by law or legitimate interests have been violated by various acts of public authorities or individuals may act in court and seek the recognition of the injured right, freedom or interest. In relation to the type of act whereby the rights, freedoms or interests were violated, the person addresses the civil, administrative or criminal court. When a right is violated, the action is sanctioned with the restoration of the right, that is to say, the reparation of the damage caused by the violation of the right or by ending the injurious action of the right. The defense of non-patrimonial rights is carried out, according to the provisions of art. 252-257 of the NCC, through civil actions in the realization of the right, civil actions in damages and criminal actions.

Action in the realization of the right to private life may have as its object the cessation of the action that violates the subjective right to private life and the prohibition for the future of the respective offense, as well as the finding of the illicit character of the respective activity. The holder of the right can request the court and establish measures to help restore the right. They depend on the judge and may consist of measures to stop the unlawful deed and remedy the

damage caused. Paragraph 4 of Article 253 is the legal basis for the action for damages. In the case of the action for the realization of the right to private life, the condition to be fulfilled, as well as the general-valid condition for legal action, besides the capacity, the procedural quality and the formulation of a claim, is that the the applicant must justify an interest. As far as the right to privacy is concerned, the interest must be especially born and present, having regard to the actions by which such a right can be achieved, according to the provisions of Article 74 of the NCC.

The attention in the injury repair analysis obviously falls on the moral prejudice, since few of the legal touches provided by Art. 74 of the NCC may be likely to cause patrimonial damage. In this latter situation, it is possible to take the action of taking from a person's home an object, an action that can damage the person in proportion to the value of the obsolete object. It is precisely because of the moral, non-patrimonial damage caused by the non-respect of the right to private life that the current legislator has regulated a mixed sanctioning regime, with non-patrimonial, prioritized and pecuniary sanctions, which will only apply if the premiums are not sufficient for the recovery of the damage. This creates a hierarchical system for the implementation of these measures, with repairs being a priority. When the prejudice is brought to the person by means of acts on the human body, the legislator provided, in the provisions of art. 69, measures that the court may order simultaneously with others, that is to say, those regulated in the provisions of art. 253 par. 3.

Of course, besides civil actions, including provisional measures, the holder of the right to private life can also have criminal actions at hand, preventive measures which are ordered by the court in order to protect the right and the legitimate interests of the right holder, as we will analyze in the next paragraphs.

A discussion must be made of the perpetual nature of the right to privacy as a personality right relating to the person and the prescriptive nature of the action for compensation for the damage resulting from the attainment of that right.

The provisions of art.2502 para. 2 (1) stipulate that unless the law provides otherwise, the right to defend a non-patrimonial right is impracticable. The experts have mastered this legal aspect, using as an argument that a person's right to personality is linked to the person and endures in time at least as long as his owner lives, even beyond death.

However, the legislator stipulates in Art. 253 paragraph 1 of the NCC that the action for the patrimonial repair of the damages, even non-patrimonial, is subject to the extinctive prescription.

In short, the action for repair of the right to private life is imprescriptible, while the action for repair of the prejudices resulting from the attainment of this right is subject to extinctive prescription. The imprecise character of the first action, as well as the existence of the right to private life beyond the death of the person, entitles the heirs to start or continue the action for the restoration of the violated personal right, as regulated in art. 256 paragraph 1 NCC.

For criminal liability it is necessary that the deeds stipulated by the criminal law fulfill the conditions of the existence of the offenses of: violation of domicile - art 224 NCCP, violation of the correspondence secret - art. 302, violation of private life - art. 226. The criminal law also protects the private life of the legal person, by criminalizing the facts that constitute the offense of violation of the professional headquarters and the disclosure of professional secrecy, which also protects the individual.