

## PRIVACY AND THE PRESS. A PRACTICAL APPROACH TO ART.74 OF THE ROMANIAN CIVIL CODE

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### Abstract

*By this paper, the author aims at establishing guidelines for practical enforcement of art. 74 of the Romanian Civil Code, departing from national regulation, and from the practice of the European Court of Human Rights, regarding the relation between the freedom of speech and the right to private life.*

*Equally, a clear delimitation between the area of regulation for each provision in the concerned article will be made. The last part will consist of a brief overview of the relevance and importance of art. 74 of the Romanian Civil Code.*

**Key Words:** *freedom of speech, private life, family life, intrusive press, protection of privacy.*

**JEL Classification:** [K38]

### 1. Introduction

Freedom of expression is one of the main guarantees of a free society, based on ideological pluralism and equality before the law. Respect for privacy is another pillar of a contemporary free society, being considered both a fundamental right and a civil right of the human personality.

In the present paper we will define the two notions starting from the works of the Romanian authors and from the incidental texts of law at national level, coming both from the sphere of domestic sources of law and from the sphere of international sources.

In this regard, some authors (Iancu, 2007, p. 166) defined freedom of expression as "the ability of the individual to express his thoughts, opinions, religious beliefs and spiritual creations of any kind by word of mouth, writing, images, sounds or other means of public communication". Compared to the definition given, we consider that the meaning of the notion "public communication" is the usual one, of information brought to the knowledge of the public namely of an indeterminate receiver, either directly at the time of communication or indirectly by subsequent means.

Regarding privacy, some authors (Bîrsan, 2010, p. 602) showed that it cannot be defined precisely, being a variable notion depending on the social context to which it is related, the specificity of the community or social group to which the protected person belongs. Other authors (Iancu, 2007, p. 141) approached a

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simplified way of defining privacy, which they circumscribed to the secret sphere of the individual, respectively to the field in which “the individual has the right to be left alone”.

The European Court of Human Rights has deliberately avoided defining the notion of privacy, considering that such a definition is neither necessary nor possible<sup>1</sup>.

In a concise manner, for the purpose of this paper we note that privacy is a human right, whose limits cannot be accurately drawn, but which circumscribes the legitimate right of a person not to allow the interference of the public or state authorities in certain spheres of his life.

Undoubtedly, the criteria for determining the non-public spheres of a person's life differs from one society to another and from one culture to another, which makes it impossible to establish the actual limits of the right to privacy.

Combining the two fundamental rights, we find that the freedom of expression of one person may violate the right to privacy of another person. In order to make a clear delimitation between the two rights, national legislation and the European Convention on Human Rights, alongside the case-law of the E.C.H.R., have established a set of rules for indicating the extent to which certain conduct violates the privacy of others.

Given the role of the press as a “watchdog” of democracy, as the European Court of Human Rights itself noted in the *Observer and Guardian v. the United Kingdom*<sup>2</sup>, the sphere of interest of the public and journalists can collide with the private life of other people. Within certain limits, legal rules allow interference with a person's privacy, but those limits are almost impossible to draw in a precise manner.

A courageous instrument by which the Romanian legislator tried to prohibit the intrusions in private life, by qualifying them as illicit, is represented by art. 74 of the Civil Code which is the subject of analysis in the fourth section of this paper.

## ***2. Sedes materiae***

### ***A. Freedom of expression***

Freedom of expression finds its counterpart in both national and international regulations applicable to Romanian law.

At European level, for the first time, freedom of expression was found in Article 11 of the Declaration of Rights of Man and Citizen, the concept being associated, as a genesis with the time of the French Revolution (1789) (Stoicescu, 2019, p. 17). It was subsequently enshrined in Article 19 of the Universal Declaration of Human Rights (1948).

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<sup>1</sup> Case of *Pretty v. The United Kingdom*, judgment of 29.04.2002, cited by Stoicescu, 2019, p. 43.

<sup>2</sup> E.C.H.R., judgment of 26 November 1991, Series A no. 216, pp. 29-30, para. 59, available online at: <https://www.ucpi.org.uk/wp-content/uploads/2018/03/The-Observer-and-The-Guardian-v-United-Kingdom-Application-No.-1358588-1992-14-EHRR-153.pdf>, last accessed on 17.04.2021.

At national level, the relevant texts, by reference to the purpose of this paper, are represented by art. 30, paragraph 1 and paragraph 6 of the Constitution (entitled "Freedom of expression")<sup>3</sup>.

Legal literature (Iancu, 2007, p. 166), starting from the Constitutional provision, held that freedom of expression comprises three dimensions: (i) freedom of expression itself, (ii) prohibition of censorship and (iii) legal liability. Our assessment is that the last two, in reality, appear as guarantees of the freedom of expression.

At international level, freedom of expression is guaranteed by Article 10, paragraphs 1 and 2 of the European Convention on Human Rights (entitled "Freedom of expression")<sup>4</sup>, applicable before the national courts, together with the entire conventional case-law, directly.

Some authors (Stoicescu, 2019, p. 19), based on international regulations, respectively Article 10 of the European Convention on Human Rights, noted that freedom of expression has three components: (i) freedom of opinion, (ii) freedom to receive information and (iii) freedom to communicate information, and ideas.

Regarding the freedom of opinion, it goes without saying that a free communication can only be preceded by the free analysis of the ideas on which it is based. We also consider that freedom of opinion should not be confused with freedom of conscience, the first concerning the possibility of a person having his own position on an event or on a factual situation, while the second concerns the right of the person to have its own beliefs or principles, in a general sense, either in the social field, or in the religious or moral field, etc.

The freedom to receive information is an inherent dimension of any public debate, respectively of any exchange of ideas, but as a component of the freedom of expression it concerns the right to access information and data either transmitted by others or found in public registers. The purpose of receiving information is to allow the formulation of a free, concrete, informed opinion.

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<sup>3</sup> According to art. 30, par. 1 and par. 6 of the Romanian Constitution: „(1) The freedom to express thoughts, opinions or beliefs and the freedom of creations of any kind, by word of mouth, by writing, by images, by sounds or by other means of public communication, are inviolable. [...] (6) Freedom of expression cannot prejudice the dignity, honor, private life of the person nor the right to one's own image”.

<sup>4</sup> Article 10 of the European Convention on Human Rights provides: “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

We appreciate that the third component, regarding the freedom to communicate information and ideas, is particularly relevant to the purpose of this paper. Unlike the regulations in the Constitution, which refer to the expression "in public", international regulations aim at communicating information or ideas, without limiting them to public or private communication.

### *B. Privacy*

Similar to freedom of expression, we note that the right to privacy benefits from both national and international regulations.

Thus, at internal level, the relevant provision is represented by art. 26 of the Constitution, entitled "Intimate, family and private life"<sup>5</sup>.

We notice that the text refers to three distinct notions, namely intimate, family and private life. Although the notions seem to overlap and are not defined in any way by the constituent legislator, some authors (Muraru & Tănăsescu, 2008, p. 247) appreciated that in reality the text describes two components of intimate life, namely (i) family intimate life and (ii) private intimate life. We appreciate that there may be overlaps between the spheres of intimate life, for example, the exposure of some achievements or failures of family members of a public person can be an intrusion into the privacy of all the people in question.

The second paragraph sets out the limits within which a person may dispose of himself or herself, that is to say, to the extent that the rights and freedoms of others, public order and morals are not violated. In this particular case, we appreciate that the extent to which a person can dispose of himself is represented by his consent to expose aspects of his private life.

Violations of privacy in the absence of the consent of the person concerned, or in violation of Article 53 of the Constitution, which establishes the conditions under which a right may be restricted, are likely to attract civil, criminal or misdemeanor liability, as appropriate, of the perpetrator.

At international level, privacy is protected by Article 8 of the European Convention on Human Rights, entitled "The right to respect for private and family life"<sup>6</sup>.

First, we note that the regulation of the European Convention on Human Rights combines privacy and family life protection with the protection of domicile and correspondence, which are, in fact, components of privacy expressly reaffirmed

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<sup>5</sup> According to art. 26 of the Romanian Constitution: "(1) Public authorities respect and protect intimate, family and private life. (2) The natural person has the right to dispose of himself, if he does not violate the rights and freedoms of others, public order or public morals".

<sup>6</sup> In accordance with Article 8 of the E.C.H.R.: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

to emphasize their importance and the interdependence between privacy, family, domicile and correspondence.

Secondly, we note that paragraph no. 2 of Article 8 of the European Convention on Human Rights sets out the limits of the right to privacy, which are subjected to a manner of regulation similar to the limits of freedom of expression mentioned above.

Given the coexistence of a national and an international regulation, for example regarding the freedom of expression, that may present inconsistencies, the question of choosing the right regulation in a concrete situation arises. The answer to the potential conflict lies in the provisions of art. 20, paragraph 2 of the Constitution<sup>7</sup>, according to which, in case of inconsistency between regulations, the international standard can be applied with priority to every Romanian citizen, unless the national standard creates a more favorable situation in terms of protection. In other words, every citizen has the right to benefit from the application of the most favorable regulation, either national or international, respectively the one that offers him a higher degree of legal protection.

### **3. General criteria for publishing information that affects a person's privacy**

Starting from the fundamental provisions previously presented, we note that three general rules can be identified regarding the publication, by the press, of information regarding the private life of a person. We mention that the indicated rules have an eminently principled nature, being developed both deontologically<sup>8</sup> as well as legally. The boundary between freedom of expression and a person's right to privacy is relative and very difficult to draw given that the margin of appreciation belongs, firstly, to the journalist and, secondly, to the national authorities.

The first rule regards the pre-existence of the consent of the person or persons concerned by the publication of the information. We note that certain elements of a family member's life, once made public, can have negative consequences for other members of the same family (such as the existence of mystical practices, rules of conduct within the family, including a medical or epidemiological situation hidden until that moment, etc.), which will also determine their prejudice. In such a situation, the consent must come from all the injured persons.

The second rule concerns the existence of a general interest in disclosing the facts, which is superior to the private interest in concealing them. This situation is incidental if the disclosure of information contributes to a legitimate, objectively

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<sup>7</sup> According to art. 20, paragraph 2 of the Constitution: “if there are inconsistencies between the pacts and treaties on fundamental human rights, to which Romania is part, and domestic laws, international regulations have priority, unless the Constitution or domestic laws contain more favorable provisions”.

<sup>8</sup> Based on the Guide to Best Practices on Privacy in the Press, developed at Council of Europe level, available online at: <https://rm.coe.int/prems-guidelines-on-safeguarding-privacy-in-the-media-2018-/168090289b>, consulted on 17.04.2021.

justified, debate of public interest. For example, the medical condition of a senior official in the performance of his or her duties may contribute to a public debate to the extent that its performance in office would be impaired by the medical problem disclosed. Equally, the European Court of Human Rights ruled that the publication of a photograph regarding a member of an old German noble family during a ski holiday did not constitute an infringement of its private life, as long as the substance of the article concerned its father's health<sup>9</sup>.

The third rule regards the existence of a public interest in information made public or in material already published. If a photograph, an audio or video recording capturing elements of a person's private life has already been made public, with the consent of the protected person, it may be reused under the existence of the consent. In its absence, the material may not be used unless it falls within the scope of a general public interest. In this regard, the European Court of Human Rights held that taking a photograph of a politician from Parliament's website for use in an article on possible fraud by him does not infringe the right to privacy of the person in question<sup>10</sup>.

#### **4. Special rules for the protection of privacy, found in art. 74 of the Civil Code**

In an extended manner, art. 74 of the Civil Code regulates nine actions that can be qualified as violations of privacy<sup>11</sup>.

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<sup>9</sup> E.C.H.R., *Von Hannover 2 v. Germany*, judgment of 07.02.2012, available online at <http://hudoc.echr.coe.int/fre?i=002-98>, consulted at 17.04.2021.

<sup>10</sup> E.C.H.R., *Krone Verlag GmbH & Co. KG. KG v. Austria*, judgment of 26.02.2002, available online at <http://hudoc.echr.coe.int/eng?i=001-60173>, consulted at 17.04.2021.

<sup>11</sup> According to art. 74 of the Civil Code: "Subject to the application of the provisions of art. 75, may be considered as infringements of privacy: a) entering or remaining without right in the home of another or taking from it any object without the consent of the person 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) broadcasting images that present interiors of a private space, without the consent of the one who legally occupies it; e) keeping privacy under observation, by any means, except in cases expressly provided by law; f) broadcasting news, debates, written or audiovisual investigations or 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 healthcare facilities, as well as personal data on health status, diagnostic problems, prognosis, treatment, circumstances related to the disease and various other 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".

The text is inspired by art. 36 of the Quebec province Civil Code, which stipulates six specific cases, similar as a regulatory area with the provisions of art. 74, letters a, b, c, e, h and i of the Romanian Civil Code.

The normative provision enunciates a series of violations of privacy. By using the phrase "can be considered", we appreciate that the legislator intended a non-limitative approach.

Essentially, the qualification as illicit of the listed conducts has as a premise the inapplicability of art. 75 of the Civil Code<sup>12</sup> regarding the limits of privacy. Thus, if any of the violations of privacy is committed in the exercise of a constitutional right or freedom, in good faith, in compliance with the international conventions to which Romania is a party, that conduct will not be prohibited by law.

For the correct understanding of the regulation, a punctual analysis of each of the nine prohibited conducts, found in art.74 Civil Code is necessary:

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

Firstly, we note that the text prohibits two alternative conducts, namely (i) entering or remaining unlawfully inside the home and (ii) taking an object out of the dwelling without the consent of the person legally occupying it. Both normative variants correspond to some crimes, regulated by the penal code, thus, the first deed can be subsumed to the crime of home invasion, provided by art. 224, paragraph 1 of the Criminal Code, and the second normative variant constitutes a species of the crime of theft, incriminated by art. 228, paragraph 1 of the Criminal Code.

We appreciate that the purpose of the text is to protect a social value distinct from the criminal norms, which are limited to the protection of the inviolability of the person's home, respectively to the protection of the patrimony.

The effect of this double regulation consists in the dimensioning of the tortious civil liability of the perpetrator, towards the injured person. Thus, strictly with regard to the civil side, the perpetrator will be cumulatively liable both for the damage caused by the criminal act and for the damage caused by the illicit civil act directed against private life. The qualification of the deed as illicit results from its prohibition by art. 74, letter a of the Civil Code, but the meeting of the other conditions of tortious civil liability, regarding damage, causational link and guilt will be verified on a case-by-case basis.

At a first analysis, I did not identify a hypothetical situation in which a person can enter the home of another without the consent of the latter, or can steal a property from him, and for that conduct to be considered legitimate, as arising from the exercise of a right in good faith, or a constitutional freedom, in compliance with

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<sup>12</sup>According to art. 75 of the Civil Code: "(1) The violations that are allowed by law or by the international human rights conventions and pacts to which Romania is a party do not constitute a violation of the rights provided in this section. (2) The exercise of constitutional rights and freedoms in good faith and in compliance with the international pacts and conventions to which Romania is a party does not constitute a violation of the rights provided in this section".

the international conventions to which Romania is part. We cannot imagine, in any way, that the exercise of freedom of expression allows the journalist to enter a person's house or to steal goods from that house, given that the facts are criminalized under national law. In these conditions, the premise regarding the inapplicability of art. 75 of the Civil Code appears as useless.

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

The text prohibits two alternative actions, namely: (i) the unlawful interception of a private conversation and (ii) the use of such an interception. The first normative variant corresponds to the constitutive content of the crime of violation of privacy, in the standard form provided by art. 226, paragraph 1 of the Criminal Code, and the second corresponds to the constitutive content of the crime of violation of privacy in the form provided by art. 226, paragraph 2 of the Penal Code.

The above considerations regarding the sizing of civil liability in relation to the different social values protected are not incidental. Unlike the previous text, we note that the main legal object of the crime provided by art. 226 of the Criminal Code is the same as the social value protected by art. 74 of the Civil Code, respectively private life. Thus, if the perpetrator's deed will be qualified both as a crime and as an illicit civil deed, based on different legal texts, the injured person will be compensated only once, as only one social value has been harmed.

In the present situation, an extremely interesting problem results from the analysis of the conflict of qualifications on the same conduct. Namely, the act of intercepting a private conversation is incriminated by the criminal law as a crime and by the civil law as a tortious act (civil offense). Specifically, we consider that we cannot be in the presence of a real conflict of qualifications, as the text of the Civil Code is a rule of private law, applicable, horizontally, between people situated at the level of legal equality. Therefore, since the criminal regulation has a public law nature, it will be applied with priority in the relations between the state, as the holder of the right to prosecute, and the perpetrator as the person who violated the normative prescriptions.

The relevance of the overlap between the two regulations consists in stipulating a special form of civil liability for the situation of committing the crime of violation of privacy in the aforementioned ways, the qualification of the deed as illegal being presumed *ex lege*.

*c) capturing or using the image or voice of a person in a private space, without its consent;*

Similar to the previous provision, the text of the law provides for two normative variants, respectively (i) the capture and (ii) the use of the image or voice of a person, and both variants, under limitative conditions, can be subsumed to the crime of violation of privacy in the forms provided by art. 226, paragraphs 1 and 2 of the Penal Code. Essentially, the actions of capture or use must be carried out without the consent of the injured person.

Previously, we note that the normative version of using the image or voice is inaccurate. In order for an act to be expressly prohibited, it is necessary for the perpetrator to know the prohibited conduct. In this sense, the prohibition of the use of a person's image appears to be too vague, as use can mean both broadcasting and archiving in a non-public register or switching from one electronic device to another, without allowing public access to that image or recording.

We notice that the Romanian civil legislator offered a special protection to a person's voice, a fact corresponding to the notion of "personality right", and the criminal legislator incriminated the "audio recording" of a person in a house. Specifically, any capture of the voice involves processing it to be perceptible to others, but it does not essentially involve storing the information. Thus, the simple listening, without recording, of the conversation or monologue carried by a person falls under the scope of the law in question.

Regarding the capture of a person's image, we take into account that both the Romanian legislator and the European Court of Human Rights regularly offered protection to a person's image, as a component of the right to privacy<sup>13</sup>. Unlike sound capture, which is distinct from recording, capturing an image, both by analog and digital means, essentially involves recording it, the act being correlated to the material element of the crime provided by art. 226, paragraph 1 Criminal Code, previously mentioned.

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

Unlike the first three conducts, previously analyzed, which are found, in a similar form in art. 36 of the Quebec Civil Code, the provision of art. 74, letter d of the Civil Code is an innovation of the Romanian legislator.

The prohibited deed consists in disseminating, respectively bringing to the public's attention in any way, images "that present interiors of a private space". We include in this category photos of the interior of a house, of another building not intended for public access, of furniture or art objects or personal objects inside it.

If the image does not target the interior of a private space, but a person in the private space, we consider that, as a rule, only art. 74, letter c of the Civil Code, previously analyzed, will be incident, in the form of using the captured image.

Assuming the subsequent capture and dissemination of an image captured inside a home, that includes both a determined person and elements circumscribed as interiors of a private space, we consider that the exceptional situation in which both variants can be retained is the existence of different owners of the protected social values. Thus, if images are distributed in which a person appears inside a private space that does not belong to it, and in the same image an atypical statuette, made by the owner of the private space where the photo is taken is captured, we will be in the presence of two people, that suffered different prejudices, the first

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<sup>13</sup> In this regard, the E.C.H.R., Von Hannover v. Germany, judgment of 24.06.2004, available online at <http://hudoc.echr.coe.int/eng?i=001-61853>, consulted at 17.04.2021.

being regulated according to the provisions of art. 74, letter c of the Civil Code, and the second one according to the provisions of art. 74, letter d of the Civil Code.

Some authors (Ungureanu & Munteanu, 2013, p. 55) considered that this text is a beginning of the regulation of the image of goods in Romanian law.

*e) keeping privacy under observation, by any means, except in cases expressly provided by law;*

The indicated text aims at the prohibition of any form of supervision, respectively control of the way in which private law is carried out, except for the cases provided by law. The provision is of particular interest in the recent period, in the context of the Sars-Cov-2 pandemic, triggered in 2020. The related restrictions imposed the restraining of a person's freedom of movement, also by declaring the purpose of travel between certain hours. Specifically, measures were taken to restrict privacy outside home, but all these restrictions had a legal basis, so the previously mentioned article is not applicable.

The area of incidence of the above provision concerns the prohibition of the surveillance of a person, either by electronic means or through other persons, such as private detectives.

We believe that private life should not be strictly limited to life inside private spaces (housing, buildings and other places inaccessible to the public) but also include activities in a public place, such as having a telephone conversation on a park bench or serving meal in a public restaurant. The essence of keeping privacy under observation is the persistence of tracking and documenting a person's activities, no matter where they are carried out.

*f) broadcasting news, debates, investigations or written or audiovisual reports on intimate, personal or family life, without the consent of the person concerned;*

The above text contains an interdiction for journalists. Specifically, its purpose is to provide protection against intrusions into intimate, personal or family life. We notice that the legislator further detailed the forms of private life, strictly referring to certain dimensions of it. We note that intimate life is the most hidden component of private life, and its meaning appears as taken from the provisions of art. 26 of the Constitution. Regarding personal life, we consider that it covers the spheres strictly related to the person to whom we refer, being determined by the totality of his traits and choices. Family life is an extended form of personal life, and includes family relationships or those similar to family relationships.

The main merit of this text consists in the fact that it prevents the production of press materials, which may be devoid of photographs, audio recordings or video recordings (the use of which was in any case prohibited under the conditions of art. 74, letters c and d of the Civil Code), however, which through the content may harm the privacy of the persons concerned.

*g) dissemination of materials containing images of a person in treatment in healthcare facilities, as well as personal data on health status, diagnostic problems, prognosis, treatment, circumstances related to the disease and various other facts,*

*including the result of the autopsy, without the consent of the person concerned and, if deceased, without the consent of the family or the entitled persons;*

The text in question is intended to provide protection for vulnerable people and the memory of deceased persons. Similar to the previous provision, it contains an interdiction addressed directly to journalists, but not exclusively. The law is indistinguishable in this respect, and the dissemination of materials containing images of a person in treatment can be done for purposes other than information, for example, for advertising purposes.

The placement of the regulation in the Civil Code is commendable, given that an identical text was found in a normative act of inferior force, but mandatory for journalists working in the field of audio-visual media, respectively art.46, paragraph 1 of the National Audiovisual Council Decision no. 220/2011 on the Code for regulating audio-visual content<sup>14</sup>.

In the absence of a special regulation for the content of materials in written press, the provisions of art. 74, letter g of the Civil Code constitutes the common law, regarding the protection of vulnerable people on medical criteria against intrusions into private life under this aspect.

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

The aforementioned provision is partly taken from Article 36 of the Civil Code of the Province of Quebec and involves the use, in bad faith, probably for the purpose of misleading, the name, image, voice or likeness of another person. In this respect, we consider that the purpose of the regulation was to prevent the alteration of the information transmitted, by attributing them, unfairly, to persons not related to them.

In this case, the injury to the person consists precisely in borrowing its name, voice or image and using them either for the purpose of promoting a product or service, or for the purpose of misinforming public opinion. We appreciate that, in this sense, the identity of the individual is infringed, as a component of his private life.

In the recent practice of the Bucharest Tribunal<sup>15</sup>, it was noted that the publication of a person's photograph in an article on real estate fraud, although in the content of the text there were few references to that person, violates the right to its own image as a component of the right to privacy. We consider the solution fair, in reality being a use, in bad faith, of the name and image of the respective public person in order to popularize the article.

*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;*

<sup>14</sup> Published in the Official Gazette, Part I, no. 174 / 11.03.2011.

<sup>15</sup> Decision no. 648/10.03.2021 of the Bucharest Tribunal, civil section no.V, unpublished, consulted in the court decisions map.

The text in question constitutes an adaptation of the corresponding provision of art. 36 of the Quebec Civil Code. Prohibited conduct consists of two alternative actions, namely the dissemination or use of documents or personal data. We consider that it establishes obligations both for journalists and for other people, given the fact that the regulation does not distinguish in this manner.

Correspondence and personal documents are part of a person's private life, given that only he or she should have access to them. With regard to personal data, including the telephone number belonging to the subject and even family members, we appreciate that the law has made a slightly unpredictable extension of privacy protection, given that a person's telephone number is not a unique attribute of its identification, and in today's society, it is easy to find. This latter part acts as another innovation of the Romanian legislator, not being found in the correspondent provision of art. 36 of the Quebec Civil Code.

### Conclusions

*The relevance of art. 74 of the Civil Code in establishing the limits of freedom of expression through press regarding the violations of a person's private life*

In the analysis of this paper, we aimed to identify the relationship between freedom of expression, with express reference to the freedom of journalists, and the right of everyone to the protection of privacy.

Starting from the national standard, imposed by the fundamental provisions, respectively art. 26 and art. 30 of the Romanian Constitution, together with the international standard, resulting from the provisions of art. 8 and art. 10 of the European Convention on Human Rights, we identified the dimensions and components of the right to privacy and freedom of expression.

In view of these, taking into account the rules of deontological nature in the field of journalism, we have identified three principles underlying communication through the media, when privacy is subject to limitations.

In this context, we proceeded to the analysis of a national text, in this case, art. 74 of the Civil Code, which, for the first time in the Romanian legislation, lists, by way of example, a number of conducts which may constitute infringements of privacy.

Although, at first sight, the text appears to be unjustified, as each of the nine prohibited actions could be limited to the usual rules of privacy, in reality, it brings a number of innovations, with effects both in terms of substantive law and in terms of procedural law, regarding the civil side of the judicial process.

As we have previously shown, some of the regulations, respectively art. 74, letters a, b and c of the Civil Code, although they concern civil offenses, overlap with certain regulations of a criminal nature, generating a problem regarding the way of determining the amount of damage caused, depending on the social value of the damage.

As for the prohibition found in art. 74, letter d of the Civil Code, we note that this is an innovation of the Romanian legislator and provides protection to the image

of a private space, including things found in private spaces, as they bear the personal signature, and even the intimate nature of the person that use them.

Regarding the provisions of art. 74, letters f, g, and i of the Civil Code, we notice that they establish relevant conduct, especially for journalists, part of the text being taken from special normative acts intended to regulate the content of audiovisual communications.

Overall, I think the analyzed legal text is a derived work of the Romanian legislator, as it is partly taken from art. 36 of the Quebec Civil Code, which regulates six prohibitions, and partly contains provisions from previous special legislation and an innovation that so far has not produced judicial practice.

Detaching, instead, from the legal perspective, we note that the provisions of art. 74 of the Civil Code consist in a specific set of rules, that also has a great deontological relevance, especially for public communication professionals.

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