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**The Right to Respect for Private Life:
Domestic and Community Regulations**

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Abstract: The impact generated by numerous conceptions regarding human rights has been noted since antiquity, in the works of philosophers such as Socrates, Aristotle, Plato. Man, as a product of society and at the same time, producer of society, can be characterized according to its interests, because the human being is a social being. Accepting the specific character of everyone constitutes the principle of respecting his life and being. The right to private life was mentioned for the first time in 1890, in the United States, by Samuel Warren, a lawyer from Boston, together with his friend, Louis Brandeis, a professor at Harvard University, in the work entitled “The right to private life”. It was defined by them as the right to be left alone. “The right to respect for private life”, “the right to privacy” or “the right to private life” represents a fundamental right of society, human dignity, and freedom, both in national and international legislation. In Romania, the New Civil Code requires respect for private life. Its provisions mention the facts that constitute violations of the right to private life, but also the legal means that the individual benefits from to defend his right to privacy. At the European level, the protection of the right to private life is guaranteed by art. 8 of the European Convention on Human Rights, but also by the practice of the European Court of Human Rights (ECHR). Considering the aforementioned, I started in this article from explaining the term private life approached in the European context, I described how private life is protected both by European legislation and by Romanian legislation aligned with the European one, I emphasized the importance of protection personal data in this context, concluding with the description of art. 8 of the Convention for the Respect of Human Rights, an article so requested in the European Court, even by the citizens of our country.

Keywords: privacy; guarantees; data; breaches; legislation

1. The European Context of Privacy

The European model places respect for private life in the context of individual rights and freedoms that support the limits imposed by the exercise of the rights and freedoms of others.

The right to private life is based, from this point of view, on the weighted balance between the interests of individuals and the general interest. This is, moreover, the idea-leitmotif of the judgments of the Court of Strasbourg pronounced on the side of art. 8 of the Convention (Jugastru, 2004, p. 1).

The notion of “private life” does not have a legal definition, although it is enshrined both in the Constitution and in other special laws. The situation is the same in other legal systems, and the texts of international conventions do not add additions in this regard.

The Romanian Constitution affirms the right to life as a fundamental and complex right at the same time, an aspect of respect for human personality, proclaimed as a supreme value in its first article.

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Public authorities have the obligation to respect and protect intimate, family, and private life. The three notions are not confused, although they are inextricably linked, which is why the legislator mentioned them separately. As a concept, private life includes both family and intimate life, the latter being the narrowest form of personal life. The relationships that configure family life, the role and functions of the family can only take place in a private setting, sheltered from intrusions.

In principle, the right to respect for private life consists in the possibility of the person to lead his life as he wishes, with a minimum of interference. This right refers to private life, to his family life and to that of the home, to physical and moral integrity, to honor and reputation, to the fact of not being presented in a false light, to the non-disclosure of useless and embarrassing facts, to the unauthorized publication of private photos, to protection against espionage and unjustified or inadmissible indiscretions, to protection against abusive use of private communications, to protection against confidential information communicated or received by a private individual. People who, through their own activities, have encouraged the indiscretions they complain about, cannot claim the right to the protection of their private life.

As I said, the protection of private life is enshrined both at the national level (Art. 71 of the Civil Code, Art. 26 of the Constitution, Art. 156 of the Code of Criminal Procedure), and at the international level.

In article 71 of the Civil Code, Respect for private life and the dignity of the human person is regulated. This article provides that “every person has the right to respect his private life, and no one can be subjected to any interference in his intimate, personal or family life, nor in his domicile, residence or correspondence, without his consent or without observing the limits provided for in art. 75”. Paragraph 3 of the article cited above states that it is also prohibited to use, in any way, correspondence, manuscripts or other personal documents, as well as information from a person's private life, without their consent or without observing the prescribed limits to art. 75.

The limits provided for in Article 75 are clear: it does not constitute a violation of the rights that are allowed by the law or by the international conventions and pacts regarding human rights to which Romania is a party. At the same time, the exercise of constitutional rights and freedoms in good faith and in compliance with international pacts and conventions to which Romania is a party does not constitute a violation of the rights provided for in this section.

Another legal text from the national plan that mentions private life is article 156 of the Code of Criminal Procedure which, in paragraph 2, provides for limits on home, physical, computer or vehicle searches, in the sense that this can be implemented with respect for dignity, without constituting disproportionate interference in private life.

Internationally, the Charter of Fundamental Rights of the EU, Convention 108 of the Council of Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms, Directive 95/46/EC of October 24, 1995, Framework Decision 2008/977/JHA of Council of November 27, 2008, European Data Protection Authority, etc.

Articles 7 and 8 of the EU Charter of Fundamental Rights recognize that respect for private life and the protection of personal data are closely related but separate fundamental rights. The Charter is integrated into the Treaty of Lisbon and has binding legal force on the institutions and bodies of the European Union, as well as on the Member States when they implement EU law.

Convention 108 of the Council of Europe for the protection of individuals regarding automated processing of personal data of January 28, 1981, is the first international instrument with binding legal force adopted in the field of data protection. Its purpose is “to guarantee [...] to each natural person [...]

the respect of his fundamental rights and freedoms and, in particular, the right to private life, with regard to the automated processing of personal data concerning him”.

2. Protection of Personal Data in Respect of Privacy

The evolution of society, as well as of information technology, has created the conditions for individuals' personal data to be processed by many operators, state or private, simultaneously with the increase in vulnerabilities regarding unauthorized access to these data. In the online environment, individual information is provided by users, but, often, personal data operators use it to create user profiles or to monitor their access.

Protection must cover not only the virtual space, but other environments as well, and the guarantee of citizens' rights to private life and the protection of personal data must be done by state actors, through internal normative acts that ensure a democratic framework for the exercise of rights and fundamental freedoms.

The member states of the Council of Europe adopted the Convention for the protection of individuals against automated processing of personal data, no. 108, approved in Strasbourg on January 28, 1981, and entered into force on October 1, 1985. The need to adopt such a Convention stems from “the need to reconcile the fundamental values of respect for private life and the free circulation of information between peoples”, respectively the right to information, without borders, with the protection of fundamental rights and freedoms for everyone, especially the right to respect for private life¹.

The convention was signed by Romania on March 18, 1997, and ratified by Law no. 682/2001,

Law no. 677/2001 regarding the protection of individuals with regard to the processing of personal data and the free movement of such data, provides in art. 8 paragraph 1 that: “the publication (...) of other personal data having an identification function of general applicability can only be carried out if: a) the data subject has expressly given his consent or b) the processing is provided for expressly by a legal provision”.

Law no. 677/2001 also represents a transposition of the Council Directive no. 95/46/CE of the European Parliament and the European Council of October 24, 1995, regarding the protection of natural persons regarding the processing of personal data.

Regarding the field of personal data protection, with the ratification of the Convention for the protection of individuals against the automated processing of personal data, no. 108, Romania made statements, in the sense that the provisions of the convention do not apply to the processing of personal data that are part of an evidence system, when they are carried out within the activities in the field of national defense and national security (carried out within the limits and with the restrictions established by law, when the processing concerns data obtained from documents accessible to the public, according to the law) or when the processing is carried out by natural persons exclusively for their personal use (if the data in question is not intended to be disclosed).

As of May 25, 2018, Regulation (EU) 679/2016 entered into force on the protection of natural persons regarding the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, known as Regulation General Data Protection Regulation (RGPD/GDPR). It regulates the

¹ Law no. 682/2001 regarding the ratification by Romania of the Convention for the protection of individuals against automated processing of personal data, adopted in Strasbourg on January 28, 1981, published in Official Monitor, no. 830, 21.12.2001.

processing by a natural person, a company, an organization, including public institutions of some personal data relating to natural persons in the EU.

As I mentioned, EU Regulation no. 679/2016, known as GDPR, and which replaces EC Directive no. 46/1995, refers to personal data, i.e. any information relating to a person and which can lead to his direct or indirect identification, regardless of whether the data entry takes place manually or through an automated means, such as an online form.

According to art. 4.1. from Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data, the term “personal data” means any information regarding an identified or identifiable natural person (“data subject”); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more many specific elements, specific to his physical identity, physiological, genetic, psychological, economic, cultural or social. Thus, these data are divided into two categories, as follows:

- Personal data: name, CNP, geographical location, IP address, cookies, email address.
- Sensitive personal data: health status, biometric information, genetic information, race, sexual orientation, or political orientation.

In the Regulation, the responsibility for data protection rests with the operator (mainly) and the person authorized by the operator. According to art. 4.7 of the Regulation, the operator is the natural or legal person, public authority, agency, or other body that, alone or together with others, establishes the purposes and means of personal data processing. According to art. 4.8 of the Regulation, the person authorized by the operator is the natural or legal person, public authority, agency, or other body that processes personal data on behalf of the operator.

Thus, the provisions of the GDPR apply to Operators and Authorized Persons established on the territory of the European Union (EU), regardless of the place where the data processing takes place, for example the provisions apply to an online social media platform based in Romania, but which owns servers in Hong Kong.

Moreover, it also applies to Operators and Authorized Persons who are not established in the EU, if:

- Provides goods and services to the EU, regardless of whether they are paid for or not;
- Monitors the behavior of natural persons in the EU.

By way of exception, the GDPR does not apply to persons who process data for national security purposes, or the processing carried out is exclusively for personal or household activities. The European regulation stipulates that data should not be kept longer than is necessary for the fulfillment of commercial purposes. By way of exception, personal data may be stored for longer periods if they will be processed exclusively for the purpose of archiving in the public interest; scientific or historical research; statistical analysis.

Given the way in which the legal provisions were formulated, there are several main obligations incumbent on operators.

The first obligation requires the solicitation of informed and free consent from the customer, consent which must be expressed by a clear affirmative action, and which is distinguishable from other aspects, an example would be firm and express adherence to a set of Terms and Conditions. However, it must be emphasized that the inclusion of a link to the GDPR or related legislation does not coincide with the valid receipt of the client's consent, the text must be transparent, accessible, and clear.

The second obligation requires the employment of an officer to deal with the protection of personal data or Data Protection Officer (DPO). This obligation concerns the following entities: public institutions, except for courts; companies that carry out processing operations and that require periodic and systematic monitoring on a large scale of data subjects; companies that process sensitive personal data or data related to criminal convictions and offenses on a large scale.

The third obligation requires companies to implement reasonable protection measures and, if the protection measures are violated, to be reported within 72 hours to the National Supervisory Authority for Personal Data Processing (“ANSPDCP”). Also, for clarity, all operators are obliged to keep a register of internal records of personal data collected and processed, which they must fill in regularly.

Finally, and perhaps the most important obligation involves the registration of Operators and Authorized Persons as storing and processing personal data at ANSPDCP.

EU personal data protection regulations ensure that this data is protected whenever there is a need to collect it – for example, when shopping online, applying for a job, or applying for a loan. These rules apply to both EU and non-EU companies and organizations (public and private) that provide goods or services in the EU, such as Facebook or Amazon, whenever these companies request or re-use personal data of EU citizens.

Everyone's data protection rights must be respected, regardless of how they are collected – online, in a computerized system or on paper, in a structured file.

Examples of various situations provided for in the Regulation (RGPD), in which a company or organization is allowed to collect or reuse the information of a natural person with a personal character:

- the company/organization has a contract with a person – for example, a contract for the supply of goods or services (online shopping) or an employment contract;
- the company/organs;
- the company has a legal obligation to process personal data - for example, when the employer provides information about the monthly salary to the social security authority, so that the employee benefits from the social security system;
- the performance of a public task - especially with regard to the attributions of public administrations (schools, hospitals, municipalities);
- the existence of a legitimate interest – for example, when the bank uses the personal information to check whether the customer is eligible for a savings account with a higher interest rate.

In all other situations, the company or organization must ask for consent (consent) before it can collect or reuse personal data.

3. Respect for Private Life in the Context of the Provisions of the Convention on Respect for Human Rights

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950¹ introduces the right to respect for private and family life, proclaiming the following: “Everyone has the right to respect for his private and family life, his home and of his correspondence”. Then, it is stipulated that “the interference of a public authority in the exercise of this right is not allowed except to the extent that this interference is provided for by law and if it constitutes a measure that, in a democratic society, is necessary for national security, public safety, the economic well-being of the country, the defense of order and the prevention of criminal acts, the protection of health or morals, or the protection of fundamental rights and freedoms.”

Thus, it is noted that art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms vehemently protects private and family life, a protection that imposes the impetuous need to defend the secrecy of the word, revealing the importance of spaces where private life takes place: “it is also the reason why the general rules with regarding the domicile and correspondence are very protective, even if the imperatives of public order are not forgotten (Micu, 1998).

First, private life includes the right to live sheltered from prying eyes, the right not to make public aspects of a person's personality, the protection of anonymity, the protection of professional or social reputation, the confidentiality of health status. When, due to external causes, a person's life is seriously affected, this principle of privacy protection comes into play.

To be mentioned here is the judgment of Taskin and others, an interesting case because the application of the protection of private life was established, although the damage to the plaintiffs' health did not occur. In fact, in the area where the plaintiffs lived, a gold mine was to be developed that used potassium cyanide in the technological process, and many independent reports established major risks to the health of the inhabitants resulting from the use of these techniques (ECtHR, Taşkin and others v. Turkey, November 10, 2004, 2005). Because the European legislation has a direct effect on the national level, the domestic courts ordered the closure of the mine.

His right, which is inviolable, corresponds correlatively to the state's obligation to guarantee it by all the means it considers appropriate and consistent with the European legal order.

The Romanian constitutional provisions (art. 27 para. 2) stipulate the situations in which it is possible to derogate from the provisions respecting the inviolability of the domicile and residence. These situations are: for the execution of an arrest warrant or a court decision; for removing a danger regarding a person's life, physical integrity or assets; for the defense of national security or public order; to prevent an epidemic or its spread.

However, under the aspect of the right to privacy, in the case of Rotaru vs. Romania, the European Court found a violation of these provisions by the authorities of the Romanian state. The plaintiff cited in his complaint, among other things, the violation of the right to privacy, due to the possession and use of a file containing personal data by the Romanian Intelligence Service².

In law, the international court noted that the possession and use by S.R.I. of some information regarding the plaintiff's private life (which is confidential) were not measures “provided by law” (which refers not

¹ The Convention for the Protection of Human Rights and Fundamental Freedoms (adopted in Rome on 4 November 1950 and ratified by Romania by Law no. 30 of 18 May 1994, published in the Official Monitor, no. 135 of 31 May 1994, amended by Law 79 of June 6, 1995, published in the Official Monitor, no. 147 of July 13, 1995.

² ECHR, judgment of March 29, 2000, in the Rotaru v. Romania case, para. 41-63 (M. Of. No. 19 of 11 January 2001)

only to a certain legal basis, but also to the quality of the law in question), thus finding a violation of art. 8 of the European Convention by the state authorities and revealing that the Romanian system of collecting and archiving information does not provide sufficient guarantees against abuses nor sufficient procedural guarantees, since Law no. 14/1992 regarding the organization and operation of S.R.I. it does not provide for any control procedure during the application of the measure or after it has ceased.

The provisions of the civil Code must be corroborated with those of art. 8 point 2 of the Convention, which admit some exceptions, compatible with a democratic society. The limitation of this right is legal if the interference of the state authorities is provided for by law and is necessary in a democratic society for the achievement of legitimate objectives. The Court specified that the state has decision-making power regarding the assessment of the conformity of the restrictive measures it has.

These restrictions are subject to international control regarding the verification of the necessary character of the measures. The margin of appreciation of the state is different from case to case and depends on the nature of the activity in question as well as on the reasons invoked. The reasons invoked to justify the goal pursued by the state are assessed by the Commission and the European Court of Human Rights in accordance with their pertinent and sufficient character (Micu, 1998, p. 167).

Although the Court stated that the surveillance of the actions and gestures of a person in a public place by technical means does not in itself lead to a violation of his private life, but the recording of the data may lead to a contrary conclusion, especially if the recording is carried out in a manner systematic or permanent, and the provisions of the Convention sought to protect us against a “big brother”, the Romanian legislator adopted, in the context of some worrying social realities (such as acts of terrorism, generalized corruption), at the limit of legality, Law no. 235/2015 for the amendment and completion of Law no. 506/2004 on the processing of personal data and the protection of private life in the electronic communications sector. This provides that traffic data relating to subscribers and users, processed, and stored by the provider of a public electronic communications network or by the provider of an electronic communications service intended for the public, must be deleted, or transformed into anonymous data¹.

Returning to the provisions of the current Civil Code, they brought a novelty in the legal regulation of the right to private life by establishing the presumption of consent. Thus, according to art. 76, a written agreement is not necessary when the person to whom an information or material refers makes it available to a natural person or legal person that he knows is carrying out his activity in the field of public information.

Social relationships that are of interest from the point of view of protecting and respecting a person's private life are subject to regulation, especially by criminal legislation. The criminal concept of intimate life can be deduced, among others, from Title I, Chapter VIII of the Special Part of the Criminal Code, dedicated to crimes against sexual freedom and integrity, in the doctrine of criminal law it is argued that the individual freedom of the person also includes sexual freedom, respectively her right to freely dispose of her body in terms of sexual life, taking into account that legal and moral norms must be respected, in the sense of not harming the interests of others.

The criminal legislator understood to also protect the sexual integrity of the person, which implies the exclusion of any attempt to interfere in the sphere of sexual relations by imposing sexual relations, sexual acts or acts of a sexual nature.

¹ Published in the Official Monitor, Part I, no. 767 of October 14, 2015

4. Conclusions

After analyzing the regulations in force, all people, without discrimination, have the right to respect their private and family life, the articles guaranteeing this right covering a wide range of related and derivative rights. In order to protect these rights, state authorities have both negative obligations not to infringe on the right to private and family life, at home and correspondence (not to do anything to prevent their exercise by the holders to whom they are recognized), as well as and positive obligations to protect these rights against unjustified interference by the authorities or other private persons, their scope being assessed according to the circumstances of each case. In recent years, there has been a growing awareness and concern for respecting the conditions under which personal data is processed. Fortunately, the protection authorities at the national level place an increasing emphasis on the obligation to inform, so that the persons concerned by the processing can find out, in simple and clear terms, what data they are being asked for and for what purpose. However, there are many gray areas that require case-by-case analysis.

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