

On the Right to Privacy and Family Life in the Context of Globalization and the Digital Era

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Abstract

The paper assesses the importance of the UN in protecting the privacy right in the digital age and as a global leader in the privacy domain compared to other similar bodies. The study highlights the role of the UN rapporteur in increasing the level of comprehension on the topic and on monitoring the right to persons' privacy globally. The study can thus contribute to the achievement of national goals of improving the protection of this right, given that governments and international institutions are in a continuous race to keep the pace with technical progress and to regulate their impact on the said right. International treaties signal existing risks, and states' efforts to adapt legislation to the evolution of the digitization process must be sustained responsibly. The aim of the paper is to present through the methods appropriate to the research, the need for an evolution of the regulations in the field, because the current ones, have a too wide spectrum or are a few steps behind the new technologies that must be controlled.

Key words: privacy, family life, digital age, personal data, interference

J.E.L. classification: K40

1. Introduction

The topic of this paper can be included in the broader field of fundamental social (politico-legal) research, and the novelty in such a field, as well as the complexity of a topic about the right to have a private life and family existence presuppose the very mark of evolution and their dynamics essential for the development of the human personality. Today, globalization and digitalisation, the use of new technologies of information seem to put the guarantee and defence of the privacy right in a hopeless situation. Let us add here the context of domestic and international security strategies, the phenomenon of terrorism, the current pandemic and cultural differences in a multipolar world as well as legislative difficulties in this area, etc. Human capacity to store, transmit and manipulate information has expanded, the increased speed of technological progress allows people all over the world to use new information and communication technologies, so that the organization, regulation and protection of rights go through major changes in the digital era.

2. Study of literature and methodology

Therefore, in addition to the use of concepts, theories, paradigms and methodologies used in the legal field, some of philosophical and political inspiration have been used, especially regarding the trends that are manifesting globally regarding the protection granted to the rights within the right in question, but also human rights in general.

It is noteworthy that all solutions meant to defend human life depends on the state will determination. If democracy is acknowledged as value, the state is not obsessed with control; if democracy is not taken into account, the state attempts to take command of communications. Also, according to Marga, the way in which population, private sector and states treat the changes to come will depend on social rules, legal contexts and national specifics, whereas privacy will be

under siege. (Marga,2016, p. 2).

The novelty of the topic can be seen as a relative freedom of expression and the defence of to privacy, as a research topic, is being discussed in the literature – in Romania and abroad - but more from the viewpoint of constitutional law, even with certain aspects of interdisciplinarity (for example, the work of Daniela Valeria Iancu, *Libertatea de exprimare și dreptul la viață privată și de familie [Freedom of expression and right to privacy and family life]*, West University, Timișoara (thesis, coord. I. Vida), 2013; or the studies of Andreea Lisievici, Bogdan Halcu, Alexandru Stan, 2014, Vladislav Gribincea, Anastasia Pascari, Olivia Pîrțac etc.); (Alan Westin, Samuel D. Warren, Louis D. Brandeis etc.). However, there has never been an approach from the perspective of natural law science.

Obviously, no research topic can claim to be a complete approach, but each subject can in turn provide starting points for new and deeper developments. We consider that in the Romanian legal space as well as in the European one, it is necessary to have a more accentuated scientific preoccupation and approach, also in consideration of the natural law regarding the protection and guarantee of these rights in the digital age.

In order to clarify some aspects of the present legal regime of these rights, a comparative analysis was needed in several respects, including: highlighting similarities and differences, constant elements and variables between these two rights, and even to other rights and freedoms; comparison of different regulations in this area, and where appropriate, aspects of comparative law from the legislation of different European countries have also been used.

The research methods used in examining the issues under scientific analysis were based on the logical method (induction, deduction, etc.) and it was possible to deduce the character of fundamental rights regarding the right under debate here, deduced from the general principles applicable to the fundamental rights they have and some of their derivatives in some particular cases; the autonomous legal nature of the extensions of these rights, as in the case of the right to data protection. In the same way we proceeded to classify the aforementioned natural rights.

3. The right to individuals' privacy and life within the family. Several content issues

The above right consists of four distinct rights: *the right to privacy, the right to family life, the right to own domicile and the right to correspondence.*

On the other hand, some of these four rights have multiple values, some of which constitute independent rights, such as:

A. The privacy right refer to *personal image, sexual freedom, identity, physical and mental integrity, social privacy, personal data, environment;*

B. The family existence right protects the values related to:

1. the relationships that can constitute the life of one's family: a) the relations between the partners; b) the relations between parents and children; c) other family relationships;

2. the relationships that may arise from the right to the existence within the family in special situations: a) special situations of protection of the family life entitlement in the relationship between parents and children (custody of children, right to visit, placement, some restrictions imposed on parental rights, etc.) ; b) foreigners' life; c) detainees' life;

C. *Personal dwelling, secrecy and home inviolability guarantee* are defended by Convention's art. 8 (in the extensive interpretation of this notion - *dwelling, caravan, professional premises etc.* if in all these the person spends a large part of his or her private life). Within the particular right discussed, this protection has naturally been imposed, given that the home is a space of privacy whose protection is indispensable in any democratic society. The right to domicile is not to be confused with the guarantee granted to property and housing, but the latter can be indirectly protected together with that of home inviolability.

The defence of the inviolability of the domicile does not extend to the persons who establish their *home illegally* or in case of *terrorism*. As regards *domestic violence* we need to keep a balance between the diverse interests. However, the Human Rights European Court has combined *the home guarantee* with *the entitlement to decent living conditions*, and in many cases the problem has arisen of that *to a healthy environment* although the latter is protected and separated as a component of the right to people's secrecy of private life.

D. The mail secrecy and inviolability protection is a particular aspect of the privacy entitlement, which involves the defence of the secrecy of the relations established by individuals through all communication means. Like for domicile inviolability and the entitlement to the mail inviolability, it is expressly mentioned in the content of Convention Article 8. It should be noted that the protection afforded by the Human Rights European Court through the right to the inviolability of mail, has extended to various forms of correspondence and to a wide range of situations. As in the case of home defence, there is a series of confusions in terms, the jurisprudence of the European Court, through an evolutionary interpretation, has clarified both the content of the notion of correspondence and the situations in which this right can be invoked. Consequently, the protection extends both to classical written correspondence and to modern correspondence in the digital era. The freedoms protected are concerned both with the *interdiction to communicate* and with the *violation of the secret of thoughts expressed* between two or several persons. Particular attention is paid in practice to the correspondence of detainees - illegal interception or censorship – beyond the *ordinary and reasonable requirements* of life in places of detention. European jurisprudence has ruled that a control of the correspondence of detainees sentenced to life imprisonment for terrorist activities, without offering solutions to the cases where censorship may occur and without providing for an appeal against such a measure, violates the provisions of Article 8 of the said convention. The court always balances *the mail-related secrecy with the interest of defending public order and preventing crime* – estimated as a *necessary measure in a democratic society*.

4. Protection of the privacy entitlement in the context of globalization and digitalisation. Decision of the Council for Human Rights of the United Nations.

The United Nations Human Rights Council, noting the *huge technological leaps* occurred in the digital era, seeks to take some steps in order to identify and clarify standards principles, good practices as well as for the promotion and protection of the guarantee granted to privacy as well as to the life within the family.

In its Geneva Resolution (March 24th, 2015), the Council recalls *universality, indivisibility, interdependence and interrelationship of all the rights guaranteed to persons as well as to essential freedoms*. Notes the need to promote and protect all these rights in the context of the fight against terrorism, but in particular the entitlement to observance of private life, family, home and mail, as well as the protection of person's reputation and honour, etc. The Council considers the possibility of establishing and promoting a special procedure for this purpose, on the basis of international law, but also of procedural guarantees of effective internal accountability (provision of remedies, non-arbitrary examination of basic principles). on legality, assessing proportionality in relation to supervisory practices etc.) (Zbârcea *et al.*, 2015, pp. 4-5).

The Council reaffirms the entitlement of persons to private life, according to which no individual shall be subjected to arbitrary or unlawful interference with his or her privacy, as stipulated in Universal Declaration's article 12 and in Article 17 of the Civil and Political Rights International Covenant. Recognizes thus that the exercise of the privacy entitlement is important even for the realization of the right to freedom of expression and to have opinions without outside interference.

The Council noted that the rapid pace of technological progress enabling people all over the world to use these ICTs and, in parallel, increasing the capacity of governments, companies and individuals to undertake data surveillance, interception and collection, acknowledges that this could lead to human rights violations or abuses, in particular the right to people's privacy. Therefore, it turns out to be a more and more complex and serious problem, which needs to be solved accordingly. Whereas some types of metadata may provide security benefits, others may disclose personal information and provide a troubling perspective, with a negative impact on society subject to group surveillance and / or interception, (extraterritorial also). The gathering of personal data, especially when carried out on a large scale, in large numbers, may infringe the exercise of rights in many countries (often in the form of blackmail / threats or harassment that lead to uncertainty, illegality or arbitrariness).

The interference within the right of individuals to privacy, consisting of justified public security concerns, also needs the protection of certain sensitive information, and the states must ensure full compliance with these obligations as per the international freedoms of humans. The Council also notes that the prevention and elimination of terrorism is a matter of great public interest, while reaffirming that States must ensure that any measures taken to combat terrorism are in accordance with their obligations under the law international law, in particular refugee rights and humanitarian law.

Therefore, the Council for the Rights of Humans within the UN emphasizes the following objectives:

- reaffirming the privacy defence entitlement, according to which no person will suffer any illegal and arbitrary interference in his or her private affairs and in the person's family, home or mail, as well as the right to protection of the law against such interference;
- recognising the *global and open nature of the internet* and the rapid advancement of information and communication technology as a driving force in accelerating progress towards development in its various forms;
- the need for the same rights that *disconnected* people have they also be protected *online*, including the entitlement of private life secrecy;
- *the decision to appoint a special rapporteur on the privacy freedom*, for a period of three years, whose duties will include (synthetically) the following tasks:
 - ✓ gathering information on international developments in the entitlement to privacy, including challenges arising from the use of new technologies;
 - ✓ submitting recommendations to the Council on promoting better protection against privacy in the face of increasing challenges in the digital age;
 - ✓ reporting on any violations of the personal privacy provided for in Article 12 of the aforementioned Declaration on the freedoms people are guaranteed and in Article 17 of the Covenant discussed above dealing with the rights and liberties of all persons;
 - ✓ receiving and responding to information collected by the UN and all its agencies;
 - ✓ participating and contributing to any relevant international conferences;
 - ✓ submitting an annual report to the Council and the Assemblée Generale of the UN.

So as to conclude, this is the first time in the history of the UN - almost two years since the well-known Snowden revelations related to mass surveillance programs – when a *rapporteur - independent expert* receives the task to monitor and investigate privacy issues and alleged violations of this right by the world's states, pointing to the UN's growing concern in the privacy issues.

E-mail must also be discussed and considered, together with problems regarding the *protection*, in particular, of *inter-individual labour relations*, in the fair, well-founded opinion that even at work, the employee enjoys a certain sphere of privacy towards the employer, so that he must enjoy a similar protection with regard to his personal written or electronic correspondence. In Europe, employers intercept private correspondence of employees, using secret computer monitoring software illegally; In Romania, some employees claim that their employers used private information in emails to harass them and it is estimated that more than 40% of multinationals and large companies use special software to intercept and control the flow of information in their companies, including what employees might write on personal *emails* or download to *memory sticks*. According to official statistics, no company in Romania monitors its employees. Because another legal obligation of employers is to notify the National Authority for the Supervision of Personal Data Processing (ANSPDCP). But the authority claims that it has no notification in this regard, instead, the sales of spyware have boomed. The Romanian Constitution stipulates that all correspondence is confidential, but does not differentiate between *private* and *work-related correspondence*. As monitoring software tracks all employee activity on the computer, not just private or business correspondence, you can see exactly what sites an employee visited during the program, what content they viewed, and how much time the employee spent browsing the Internet, but the deed is a criminal one, which is a violation of the mail secret nature (Benezic, 2011, p. 6).

Secret monitoring of employees, banned by European law, has been the subject of huge controversy in other countries, especially Germany, where large companies have been forced to pay fines of millions of euros because of it. German politicians have debated a new law on the right

to occupational privacy at the place of work. In order to benefit from the protection established by Convention's art. 8, as a first condition, the employee who receives and sends private correspondence using the employer's computer, must mark this correspondence with the mention that it is private. Lawyers specializing in the field believe that national authorities have failed to implement data protection laws, forgetting to clarify to people what rights and responsibilities it has, considering that domestic legislation is a mere copy of the European directive, as Manolea puts it (Manolea, 2015, pp. 1-2).

Another issue that arises is the one related to the effective search of professional offices and the mail inviolable character as well as the control of professional correspondence (lawyers, doctors, etc.). They are subject to general limits and special limits, in accordance with the legislation in force in the States.

5. Protection of health data

In a national legal framework, several notions can be found that are applicable to the concept of database, namely: register, personal data record system, etc. Thus, it can be said that databases are different, depending on the purpose and volume of information, which formed the basis for the creation of this database. For example, a database of patients belonging to a health unit, which provides a package of basic medical services and in which their personal data are processed, may contain information starting with name, surname, age, address, telephone, etc. ., until diagnosis, interventions and prescribed treatment, evolution, etc. Personal health data may only be processed for the purposes provided by law by or under the supervision of a medical professional.

Although, in most cases, stored personal information is used only for legitimate purposes, without other consequences, there are certain risks. If that information is inaccurate, outdated or disclosed to the wrong person, the damage caused can be quite serious (...). Data protection is a fundamental right, defended and ensured not only by the domestic legislation but also by European law. This right is described in the 8th article of the Charter of EU on Fundamental Liberties and Rights (the European Authority for Data Protection, 2009, p. 2).

As for the *European card and the national health insurance card* these are two distinctly regulated electronic documents. Personal information is usually printed on the card and stored in the card electronic memory: name and surname of the insured, the unique identification code in the social health insurance system, the identification number of the card, the date of birth, the term of validity of the card. Only at the request of the insured, the family doctor can write medical data on the health card. The activation and use of the health card is done approximately like in the case of the bank card. The pin code remains the property of the insured, which he must not disclose (National Office of Health Insurance, 2014, p. 1-8).

The Electronic Health Record (DES), according to (GD 34/2015) is an online document containing a collection of medical information about the patient, records of data collected nationwide from all providers of medical services with which the patient came into contact. The data is targeted for storage. It is performed, at the patient's request, by any doctor who has a qualified electronic signature. It takes about an minute to initialize an Electronic Health Record. Patients' access to DES data and information is provided in accordance with GD 34/2015. The file will support different data regimes depending on the user (doctor or insured) (Stan, 2015, p. 4).

At the same time, according to the automated information system, certain additional personal data can be stored in this information resource: biometrics data - blood type, sex, workplace or other data; the patient is the only person who has access to this file from anywhere, when the patient wants, by the passwords that the doctor who constitutes DES will hand to him. The patient can see who accessed the file, the time, the day and the IP of the computer from which this was done. The information in the electronic health record is structured in five modules: the Emergency Summary module, accessible to all doctors in order to perform the medical act, without the need for patient consent, and the Medical History, Patient Background, Documents and Personal data modules, accessible to doctors only with the consent of patients. In emergencies, the information in the Summary is very important to save the patient's life (RH, blood type, allergies to certain drugs, the diseases he suffers from, as well as any other necessary information), so that the doctor who provides first aid to make the fastest and most accurate medical decision. The electronic health

record is considered to be an instrument beneficial both for the patient and for the health system in Romania (Stan, 2015, pp.5-6.).

The interference in the secret nature of information and the compliance with the purpose aimed remain the fundamental principles in the evaluation of the data disclosure cases without the consent of the person regarding his / her state of health. Proportionality control will be accompanied by adequate safeguards against abuse in accordance with national rules.

6. Conclusions

Human rights, which include the entitlement to privacy and to have a protected life in the family, although they are natural rights, some of them defending many a value, can be limited by positive rules. The opportunities of the state to promote the identification of citizens with democratic, political and constitutional values increase as the defence of these values is done by sanctioning the acts of infringement of these rights, and limitation thereof by the most appropriate or fair measures, because these restrictive measures also raise the issue of interference with individual freedoms. The legal field addresses the issue of human rights in terms of protection, interference and responsibility in the field, more recently, and the issue of vulnerability of information and the risk of communication in the global information society. Although all human rights require a fair assessment in the global society, the entitlement to private individual life undoubtedly requires a new political and legal reconsideration and revalidation, being one of the most complex challenges in a global, cyber and intercultural space.

The European Court points out that privacy is the space where each individual is free to develop as regards his or her personality. Considering the new scientific discoveries and the advancement of high technologies, proper development and detailing of the subject matter of all human rights is required. The main problem is that in today's global societies, these new technologies should not be used against people and not to improve their quality of life or increase human access to knowledge. Without an appropriate culture in this area, there is currently this risk, and the rights of humans, especially the entitlement to freely express oneself, including on the Internet, the right to private life in the digital era, as enshrined in international law today, tend to be , practically emptied of content (Antonescu, 2013).

The Council in charge with the rights of persons under the aegis of the United Nations and the establishment of a new function (that of rapporteur - independent expert in charge of monitoring and investigating privacy issues) comes after the UN published the report *The Privacy Right in the Digital Era*, emphasize the negative impact of mass surveillance on the privacy defence. Not surprisingly, the resolution was promoted by Germany and Brazil, countries whose leaders were involved in alleged surveillance by the NSA (National Security Agency), and then supported by more than 60 other countries, but also by more than 90 NGOs. As a result, it is certain that the work of the Special Rapporteur will be an important one, constituting a UN concern, granting that appointed person a true global leadership in the field of privacy, with a much wider visibility than, for example the *Work Group for Article 29* from Europe or other similar bodies (LisieVICI, 2015, p. 3).

In the new world of mobile, social and convergent channels, accountability is the fundamental component of any strategy anchored in the digital-global reality. It is also the reason why it was noticed that Google did not choose its *Don't be evil* motto in vain because, in such a connected world, where information has come to flow freely - the so-called information democratization to which the free internet has led - it is very easy to do harm or profit by playing (Birzoi, 2012, p. 2).

The ability to use digital media, but also to choose accessible content, is currently an essential quality for each of us. The lack of culture start to signify another thing, and, according to Neneciu, critical thinking is becoming essential (Neneciu, 2015, p. 3). Anyone can become an image vector today, and the unprecedented ability to make information viral urges us to pay little attention to the concept of media education.

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