



ORIGINAL PAPER

**Social and Political Implications of the Infringement of the
Right to Private Life**

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Abstract:

The present paper aims to highlight the social and political failure of privacy. The privacy requires a complex content and any breach of its components can be some violations of this right. In this area, privacy is a fundamental right derived from the right to life, a social value which must be protected and a subjective right of personality. The work will focus on violations of fundamental and subjective rights of personality and its implications on society and breach of privacy as a social value, with the same impact on society and politics. We use analysis, comparison and evaluation methods and underline some violations of this trilogy with implications in society.

Keywords: *privacy, fundamental right, individual right, social value*

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General aspects regarding the right to private life

Originally defined as the "right to be let alone" (Brandeis, 1928: 438), the right to privacy had to ensure "the protection of the person in everything that involves the space reserved to beliefs, thoughts, emotions and sensations" (Dumitru, 2012: 45). Hence, private life was protected on the psychological side (Laurent, 2003: 197). Without going so far as to develop the American concept of *privacy*, European jurisprudence adopted another position regarding private life that does not concern only individual privacy. Therefore, we notice that privacy has always been a focal point of both the legislator and the court houses. And this interest is the fact that privacy in any of its meanings is likely to be affected by the "collision with aggressive ways of exercising freedom of expression" (Sudre, 2006: 315). The notion of privacy must be considered in opposition to public life. It consists of the individual's life singularly analyzed – personal life, with reference to health, leisure time, intimacy, feelings - family and married life - social life, embracing friendships, love affairs, professional relations at work. Interpreting the provisions of paragraph 2 of article 71, it means that correspondence and residence are considered private as well. Failure of the privacy components as we have shown above may have social and even political implications. In this paper we intend to highlight these, and the starting point of research will be represented by the regulation of the article 8 of European Convention on Human Rights and its additional protocols. As considered, article 8 argues that "the right to respect for private and family life. 1. Everyone has the right to respect for his/her private and family life, his/her home and his/her correspondence. 2. There shall be no interference by a public authority with the exercise of this right except to the extent that this mixture is stipulated by law and if it is a measure that, in a democratic society, is necessary for national security, public safety, economic well-being of the country, prevention of disorder and crime, protection of health or morals, or protecting the rights and freedoms of others".

Socio-political implications of failure of personal life – part of privacy

This component of private life aims to protect the privacy of the person's identity, intimate life, personal relationships, sexual freedom. Thus, overall, the Member States of the European Council, implicitly Parties to the European Convention regulated the identification of the nationals based on a national system. This practice does not violate art. 8 of the Convention, so that the duty of every person to have a national identity card and show it at the request of police does not constitute an interference with private life, prohibited by this text. It was also decided by the former Commission that the existence of video surveillance of public places or places where persons are deprived did not constitute an infringement of the right to image of people, if such images are not designed to be stored and are not made public. Information about the health of a person is covered by the concept of privacy. Therefore, the Court decided that the respect for the confidential nature of information on the person's health is an essential principle of the legal system of the signatory states of the Convention. What would the implications be in case of breaches of health state information?

Firstly, in the absence of such protection, those in need of medical care would not be willing to provide personal and intimate information required in order to prescribe appropriate treatment for their illness or to consult a physician, which would be likely to threaten their life, and in the case of contagious diseases, it would be a danger to society.

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Disclosing information about AIDS without the consent of the person concerned would oblige the courts to determine, based on a rigorous examination, guarantees for the protection of privacy. Not often, the personal lives of public figures are the subject of various discussions in various TV shows. Thus, Kanal D was fined 25,000 lei by the National Council of the Audio-visual (NCA) for the shows "Right on target" and "Kanal D News" where Cătălin Botezatu's right to privacy was violated. NCA decided on Thursday to summon B1 TV publicly for the show "World of Banciu" where the moderator Radu Banciu violated Ștefan Bănică and his family's right to privacy; on Tuesday NCA decided to fine Kanal D with 50,000 lei for two editions of the show "TV Cancan", in which the right to privacy of the television celebrities Simona Gheorghe, Andreea Marin Banica and of the producer Dana Mladin was infringed.

What would be the social implications of these infringements of the right to personal life? Maybe the decreasing of confidence that people can have in the media? Trust in the media is not at very high levels, according to a recently published study, conducted in December 2013. According to these data, only 1 in 5 claims that the Romanian press is *completely independent* or *rather independent*, while other 24% believe that *is neither dependent nor independent* and 52% consider it *rather dependent* or *dependent*. (<http://www.turdanews.net/bloggelu/un-interesting-study-cum-stay-with-confidence-in-media/> of 28 February 2014). Maybe the deliberate defamation of public figures in exchange for the payment of a fine? On the other hand, we can analyze the situation regarding the granting of fines easily to the media, based on a less detailed and less legally supported analysis regarding a real violation of the right to personal life, in order to increase the state budget.

To protect personal data, art. 33 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data (Law published in the Official Gazette no. 790/12 December 2001) refers to the offense of "infringement on privacy and application of security measures". Applying these rules, the President of the National Authority of Supervision of the Personal Data Processing (NASPDP) ordered the application of fines in the amount of 20,000 lei for the Public Notary Office OOP for breach of its obligations for the implementation of security measures and confidentiality processing of personal data.

The social implication of such a measure made public can be a positive one, which refers to boost confidence that people have in state institutions, namely the National Authority of Supervision of the Personal Data Processing. It can also be an example to consider for other notary offices and other public institutions of public interest to comply with the law on personal data processing.

Socio-political implications of the infringement of social life – part privacy

The right to privacy includes not only the right to be stuck in its own "universe", with the exclusion of others, namely personal privacy, but also the right to exit this "universe" to go to other members of society, i.e. social private life (Marguenaud, 1999: 66). Consequently, the notion of "private life" also covers the area in which people interact and develop social relationships. Moreover, "there are times when one can carry out professional activities in his/her home and in an office or commercial space, business-related activities" (Bârsan, 2005: 619), which causes the sphere of privacy to extend to the professional or business activities. It is therefore necessary to protect the individual's right to develop relationships with the outside world. Establishing and maintaining social

relationships is achieved through many ways. The summary under consideration is the phone calls. It has been often called into question the legal nature of wiretaps of all kinds. Given modern technical means of investigation in criminal proceedings, respect for privacy has gained increasing importance. An eloquent proof in this regard is the fact that, in practice, the parties frequently invoke violation of Article 8 of the European Convention on Human Rights to request the annulment of evidence produced by a party or by an act of administration of the sample. Both individuals and public authorities and agencies must respect the privacy of the person when managing evidence. In this respect, art. 8 paragraph 2 of the European Convention provided an exception to the rule, a faculty member state to authorize an "interference by public authority in the exercise of this right" provided that it is needed. As noted in doctrine, intimacy protection of privacy is ensured by the creation of the legal framework for taking evidence itself, possibly evidence obtained by violation of the privacy to be censored through the principle of legality. For example, search, legally executed, does not involve, in principle, any excessive violation of privacy. The possibility of wiretapping by state authorities is practically provided in all states signatories of the Convention, being generally related to the fight against crime. According to art. 190 of the New Penal Code, it is charged the act that consists of "violating the right to privacy of a person through the use of remote means of interception of data, information, pictures or sounds from the places indicated in Article 189 paragraph 1, without consent of the person using them, without permission of law and is punishable by imprisonment from 2 to 5 years. The same punishment applies to the dissemination of data, images and sound information obtained by the means set out in paragraph 1". Any deviation or abusive exercise of legal norms in this matter is an infringement of the right to social life and is punishable as such.

Some examples are presented. The European Court of Human Rights in Strasbourg passed judgment on Romania, on Tuesday, November 27th, 2012, for violation of the right to respect for private and family life in the case of a judge who was arrested and sent to court improperly by the National Prosecution Department Oradea, for a so-called bribery, in a case managed by prosecutors. Violation of art. 8 of the ECHR mentioned the fact that during criminal investigations, the judge was wiretapped illegally, on the basis of permits issued by prosecutors, and also by the High Court, during 1999-2003, which continued in 2005, so over the time limit allowed.

In this case, the ECHR awarded damages symbolically, according to its practice according to which the admittance of the infringed right is simply a compensation for prejudice.

We see, therefore, that the first social implication redressing social disregard of the right to life is rehabilitating a man who was found guilty for committing various offenses. This equates to damage. But, in opposition to this situation, there is an ECHR judgment in the case of Stefan Blaj against Romania. The doctor, unhappy with the conviction he received in Romania, filed a complaint to the ECHR, where he complained that he did not have a correct trial, that, in reality, he was caused by the denouncer to accept bribes when the recording was done, that he was not informed during interrogation about his rights and the charges against him. The social implication that we consider in this example is to confirm correct perpetration of justice made by the courts in Romania, aspect with positive political implications over the state institutions as well, such as the National Prosecution Department that implements and enforces the law when an act of corruption is analyzed. Another example is that of the mayor Apostu against Romania. ECHR upheld the complaints of the former Cluj Mayor, Sorin Apostu, sentenced to prison for corruption, in

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which he complains of the bad conditions during the pre-trial detention, and of the violation privacy. According to the decision posted on the website of the European Court of Human Rights, it appears that the former mayor of Cluj, Sorin Apostu claimed that in 2011, when he was in custody for corruption, had poor and unhealthy conditions in the pre-trial detention Police Cluj County. The former mayor of Cluj also complained that his privacy was violated when prosecutors who handled his case released wiretaps that contained instants of his private life and had no connection with the file corruption. The ECHR judgment states that both the complaint on poor detention conditions and the complaint that by publishing wiretaps, the mayor's right to privacy was violated were upheld. Although demanded compensation in this case, the ECHR rejected it, motivating with the lateness of the application.

Socio-political implications of infringement of correspondence and residence – components of privacy

The right to keep correspondence is, as a principle, a part of the private life of a person. The editors of the Convention chose to mention in the text of art. 8. In the practice of Convention, it appears sometimes invoked distinctly; but it is sometimes joined right to privacy and/or to the right to family life. Thus, the Court decided that when a communication between two members of the same family is intercepted, we face a double interference: both on the right to family life and on the right to correspondence. As for the notion of correspondence, subject to the right protected by art. 8, cited right in the decision above mentioned, the European Court referred to the essential word: communication; as the former Commission said, there is correspondence within the meaning of art. 8 of the Convention in all cases where two or more people change, in any way, a message or an idea; it includes both written communication, and the telephone.

These aspects of private life were analyzed above. Art. 8 of the European Convention on Human Rights protect distinctly the right to home. In the jurisprudence concerning examination of the application of the provisions of art. 8 on protection of this right, the Court has held that the right to home regards the safety and welfare of a person. Ultimately, all other rights referred to in art. 8 are linked, in principle, to the right of home.

Indeed, as a rule, private life develops in relation to home; and so does family life, and the right to correspondence is also related to the person's home.

Also, as we shall show further, European court jurisprudence has extended the notion of home to the place where a person pursues his/her work, and recently it has been decided that, within certain limits, domicile within the meaning of art. 8 can involve a company headquarters and agencies. All these elements characterize the privacy of personal life which must be protected against any external interference. On a national level, the right to privacy of correspondence is also protected by rules of criminal law. The criminal legislator criminalized in the provisions of art.302 all the actions regarding opening, theft, destruction or retention, without right, of a correspondence sent to another, as well as disclosure without right of the content of such communications even when it was sent opened or it was opened by mistake and also the interception without right, of a conversation or communication by telephone or by any electronic means of communication. If the deeds refer to the disclosure, dissemination, presentation or disclosure to another person or to the public, without right, of the contents of the intercepted conversation or communication, even if the perpetrator became aware of it by mistake or by accident, the act is considered by the criminal legislature to be more serious.

By criminalizing these actions the legislature protects social relationships regarding the inviolability of correspondence, conversations or communications of a person and therefore those relating to privacy of the person. The person who commits such an infringement of the right to privacy is punishable with imprisonment or fine by the penal legislature. The home is protected by the criminal law by criminalizing the offense of trespassing - art. 224 The New Penal Code - breaking and entering. By home, the criminal legislature understands the residence and its annexes, where freedom and personal privacy should act freely, and by criminalizing this act, the criminal legislature protects social relationships whose security is conditioned by ensuring a person's freedom to have a home where can live free from abusive interference from the outside and decide freely on the people they want or not in his/her home.

Conclusions

The right to private life concerns personal privacy and it is closely related to family life, marital status of each individual, to all the identification attributes, including the main dwelling or other residences. Some conclusions about the socio-political implications of the failure of the right to privacy can be drawn from specific examples, of instances of case law. Thus, a high profile in the last two decades in our country and which derives from the right to privacy is, as already mentioned, that of correspondence. Media coverage was made possible as a result of political regime change in December '89. The supreme law of the country expressly stipulates that "privacy of letters, telegrams and other postal communications, of telephone conversations and other legal means of communication is inviolable." Without emphasize on the semantics of the term inviolable, it is very clear that there is not the possibility of accessing the content of the correspondence of a person without his/her consent, basic law not providing an exception and leaving no room for other interpretations, meaning the possibility of interference within the meaning of the correspondence. According to Romanian legislation typology and hierarchy of laws issued by the only legislative authority of the state by law, be it organic or much less by ordinary law, the constitutional legal norms contained in the supreme law cannot be violated. Correspondence cannot be violated not even by state institutions. But media exemplified many listening situations of phone calls to people who are accused of committing certain illegal offenses. In these cases, in addition to violation of a fundamental legal rule, it is rejected the right to privacy of the person, these actions being made while the person continues the presumption of innocence. Even more, such practices are apparently used previously to bringing some complaints, respecting the procedure in force, proceeding directly to monitoring a person (or group of people), to gather evidence for certain behaviors or intentions.

Internationally, access to private data, including correspondence, is motivated by the danger of terrorism in the world, especially if we consider the major events caused by terrorist organizations at the beginning of this millennium (WTC-USA, London, Madrid). Even if these motivations can lead to such interception practice and mail verification, abuses are not to be created. In another example, it was considered a violation of the right to private and family life, the attitude of a prison manager in Turkey, who often controlled correspondence between a prisoner and his lawyer. The prison staff has also destroyed the correspondence which a prisoner sent for publication in a newspaper, in order to inform people about the realities of the prison system. European court considered this attitude as a breach of art. 8 of the European Convention of Human Rights, whose content aims also

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to privacy of correspondence, considering that in a democratic society such an attitude is illegal.

A new, but very extensive, is the possibility of electronic communication. The Internet has become a vehicle for transmission of large amounts of information in a very short time, instantaneously. The content of a correspondence must be also respected in the so-called non-traditional forms of communication, not even the companies which function as administrators of Internet services, do not have the right to verify the correspondence. The storage of personal data by companies employing employees or their assistants do not entitle companies to use such personal data for a purpose other than managing the staff situations of the company, the use of personal data of employees is possible only with their consent. Checking the mail is a violation of the right to privacy, and in terms of Romanian positive law, it is considered that the text of the Constitution, stipulating that secrecy of correspondence is inviolable, cannot be interpreted beyond the term used, other regulations not having the necessary legal force to exceed, including the legislation that was organized by the secret services or other central autonomous authorities whose purpose is to protect state interests and national security.

The legal standard is confirmed by a constitutional provision of another rule, in the Romanian criminal law, which incriminates the act of a person of opening or intercepting the correspondence of a person, even if it is not sealed or glued or even codified. The only ones who have the right of interposition between the correspondence between the sender and recipient, by consulting its contents, are parents or other legal representatives, in charge with the education of the minor, when there are assumptions that the child could be affected. (Udroiu, Predescu, 2008: 212). Unlike the Constitution, which, in my opinion, is firm and does not provide any possibility to intercept the content of correspondence, at least that's the meaning of the word "inviolable", according to the Dictionary of the Romanian language. In criminal law, it was created an exception, the act of opening a correspondence of another, is incriminated only where the operation was done <without right>, which makes us think that, in addition to the categories of persons above mentioned, who can take the correspondence of minors, the caretakers, there would be other bodies or organizations that, under the name of the law, do so under various pretexts. Given the conflict between the two rules, namely the organic, which requires more than the constitutional norm, the first can be regarded as unconstitutional, even if it is in force, nobody informing so far the Constitutional Court about checking the legal effect which creates criminal provision, based on the constitutional norm.

In another case, which is debated by the European Court of Human Rights, also aiming at failure of privacy and family, an Italian woman noticed that near her own home (at a distance of 30m) a foundation of storage and treatment of waste was being built. The applicant asked the European Court, citing art. 8 ECHR, being permanently disturbed by noise and possible exhaust emissions of the waste stored there, all affecting health and family peace, while constituting a threat to the environment. The European court noted the grievances of the applicant, even if after 7 years from the commissioning of the deposit, its administrators took steps to respect the freedoms of the applicant, the court held that the State is in violation of the Convention, because for 7 years it despised the right to the residence by dangerous activity carried out in that warehouse, not taking into account the right to silent privacy of the applicant and her family.

In the privacy of an individual approach, developing technology has again concrete effects. Increasing sites where there are video cameras had a positive effect in terms of security for a particular object, but the placement of these devices in public places

such as schools, public institutions, shops or parks or other objectives has repercussions on the privacy of any person. Managers or owners of private property have the right to place video surveillance systems, but their focus is only on that property, and not on public spaces. The reason is understandable, namely the protection of privacy of every individual who uses public places. Capturing images with a video camera, which oversees the space of a closed circuit in the UK, and those images aimed at a person while trying to commit suicide, the act remaining in the prior attempts, followed by dissemination through a TV channel, prompted the person filmed to address the international courts, the latter considering that the offense charged was a violation of the European Convention on Human Rights concerning the right to private life (Selejan-Guțan, 2006: 136). The law protects private life, however, media (paparazzi) publicly discloses aspects within the privacy of public figures, often with a high reputation. On the other hand, the exposed person can be considered injured person and can invoke subjective rights, which concern private life, dignity, liberty or the like. Given the realities of everyday disputes started through the media, fellow curiosity about another's living, the possibility of using information through specific methods of blackmail someone's life, respect for privacy and family are suffering. The law is often violated and sanctions in many cases do not reach the application. Numerous articles are eloquent, some called <tabloids>, which sometimes bring serious prejudice to the personal aspects of a person's life and no finality of the case can be reached, as most often the person whose right was breached avoids to continue or amplify a conflict with the press, and does not use the right to ask to do justice.

Analyzing the categories of implications of violations of privacy, we conclude that they fall into the following categories: 1. implications with positive connotations for society: increased confidence in state institutions (e.g. Anticorruption National Department, ANC, the National Authority of Supervision of the Personal Data Processing, etc.), financial growth of the state budget through fines, recognition of the violated rights equivalent to compensation, punishment of those who violate privacy, warning the various institutions to respect legal provisions on the right to privacy or to prevent their decay or fine; 2. implications with negative social connotations for society: loss of confidence in institutions that frequently violate the right to privacy (medical centers, the media, courts applying legal provisions abusively, unsanitary detention centers, etc.), harm the legitimate interests of a person by committing abuses through legislation.

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