

# THE RESPECT FOR THE HUMAN BEING AND HIS INHERENT RIGHTS IN THE REGULATIONS OF THE NEW CIVIL CODE

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**Abstract:** *This article aims to treat a very current issue, which is the respect for the human being and its inherent rights, in light of the recent legislation, namely the New Civil Code. The first part of the paper deals with the rights to life, health and dignity of the individual. The paper also describes the respect of private life and person's dignity, motivated by the fact that a separate section of the New Civil Code deals with the guarantee of the individual rights of privacy and dignity, namely the right to free speech, privacy, right to dignity and the right to self image.*

**Key words:** *respect, dignity, protection, private life, integrity, health.*

## 1. Introduction

As shown in the New Civil Code "everyone has the right to life, health, physical and mental integrity, to dignity, to their self image, to private life and other rights recognized by law" [1] all these rights are inalienable.

In addition to the rights listed above, there is the right to a name, home, a residence, marital status and the right of a person to self determination, as long as he does not infringe the rights and freedoms of others, public order or morals.

The doctrine has proposed a classification of the rights of personality, two criteria being given in this respect. Thus, according to a first criterion, that of time in which these rights protect the individual values of humanity, they can operate during life or after death of the individual.

According to a second criterion, the content of the regulated rights, we can divide the rights that protect the human

body and its biological and psychological functions (right to life, right to health, right to physical and mental integrity) and rights that protect moral values (right to dignity, freedom of expression, privacy, right to self image, right in observing the memory of the deceased) [2].

## 2. The rights to life, health and integrity of the human being

The legislative guarantees and equally protects the life, health and physical and mental integrity of the individual, establishing the priority of interest and good of the human being against the unique interest of society or science.

Analysing the provisions of "the European Convention for the protection of human rights and human dignity from the applications of biology and medicine, the Convention on Human Rights and Biomedicine" [3], also called Oviedo Convention, one can observe that the provisions of art. 2 of this regulation are

reproduced exactly in art. 61, paragraph 2 of the New Civil Code, which were mentioned earlier.

The legislation expressly forbids any practice of eugenics that has the purpose of organizing the selection of persons, in this way seeking protection of the human species.

The prohibition of eugenic practices, as a guarantee of the human uniqueness and dignity, is found in many laws, such as the Oviedo Convention, which establishes in Art.3 that "all discrimination against a person on grounds of his genetic heritage is prohibited".

Art. 63 of the New Civil Code sets out the general principles of art. 62, developing the idea that the law allows only medical interventions on the genetic character concerning the prevention and treatment of genetic diseases, issues taken mainly from Oviedo Convention, Additional Protocol to the Oviedo Convention and the French Civil Code.

According to art. 13 of the Oviedo Convention "an intervention designed to modify the human genome can be carried out only for preventive, diagnostic or therapeutic reasons, and only if its purpose is not to introduce a change in the genome of descendants".

The new Civil Code expressly prohibits, in art. 63, paragraph (1) "any medical intervention on genetic characters having as the main purpose the changing of the individual descent", the only admitted exceptions are, as noted previously, those interventions with the purpose of prevention or treatment of genetic diseases.

It is also forbidden to perform interventions whose purpose are the creation of human beings genetically identical to another human being alive or dead and also the creation of human embryos for research.

In accordance with art. 63, paragraph (3) of the New Civil Code "techniques of

medically assisted human reproduction are not allowed to choose the baby's gender, but only to avoid a serious hereditary disease related to his gender", this practice can lead to "subsequent genetic and demographic imbalance" [4].

The new Civil Code expressly establishes the principle of inviolability of the human body [5], and any other intervention that can endanger the physical or mental integrity of human beings is forbidden.

According to the principle of character of the human body that is not patrimonial, there is prohibited its pecuniary evaluation and signing pecuniary legal documents regarding the individual body or its parts. According to the New Civil Code, "any acts that have the purpose of giving property values to the human body, elements or its products, are treated with absolute nullity, except in cases expressly provided by law". [6]

The Civil Codes of Quebec [7] and France [8], which served as an inspiration model for the current Romanian code also expressly regulate the issue of nullity of conventions through which the attribution of a property value to the human body is sought.

The principle of prioritizing the best interest and good of the human being is found covered in art. 61, paragraph (2) of the New Civil Code which provides that interest and human welfare should prevail over the sole interest of society or science.

Giving expression to the principle of inviolability of the human body, the Romanian legislative regulates the right of each individual to physical and mental integrity so that "everyone has the right to physical and mental integrity. No prejudice can be brought to the integrity of the human being, except from the conditions expressly and exhaustively provided by law"[9]. By comparison, according to art. 10 of the Civil Code of Quebec, "every

person is inviolable and is entitled to integrity", while art. 16-4 of the French Civil Code states that "no one can harm the integrity of the human species".

According to art. 649 of Law no. 95/2006 on healthcare reform, in order to subject patients to potentially hazardous methods of prevention, diagnosis and treatment, their consent is required in writing after the medical staff has presented all the needed information on a scientific level reasonable for their understanding. This information concerns "the diagnosis, the nature and purpose of treatment, risks and consequences of suggested treatment, viable alternatives to treatment, risks and consequences, the disease prognosis without performing the treatment" [10].

The patient's valid consent may be given after the age of 18 years. As an exception, children younger than 18 may express their consent in the absence of parents or legal guardian in two situations covered by the provisions of art. 650 of the Act on healthcare reform, namely:

- In emergency situations, when parents or the legal guardian cannot be contacted, and the child has the necessary judgment to understand his medical status

- In medical situations related to diagnosis and / or treatment of sexual and reproductive issues, at the request of the child older than 16 years.

Also in emergency cases, when the patient is free of judgment and his legal representative or relative cannot be reached, the medical procedures can be performed even if there is no consent in this regard.

Moreover, if the legal representative or relative cannot be reached, the legislation allows the request of the guardianship authority's consent with the purpose of performing medical care. Exceptionally, in emergency situations when the period of time until having the consent, would

jeopardize the life and health of the patient, the legislative allows intervention even in the absence of the guardianship authority's consent.

The new Civil Code also regulates under very restrictive circumstances the situations when certain interventions can be carried out that may affect the physical or psychological integrity of the human being.

Thus, "no one shall be subjected to experiences of the tests, samples, treatments or other interventions for therapeutic or research purposes except cases and conditions expressly and exhaustively provided by law" [11].

Another aspect of protecting physical and psychological integrity is related to the procurement and transplant of organs, tissues and cells of human origin either from living donors or from deceased persons. The New Civil Code refers to Law no. 95/2006 on healthcare reform which in Title VI regulates "the performance of removal and transplantation of organs, tissues and cells of human origin for therapeutic purposes".

From the first article of this chapter it is pointed out that "removal and transplantation of organs, tissues and cells of human origin are performed for therapeutic purposes". [12] This is the only reason that can justify this kind of intervention. The legislature further defines a series of medical terms that could lead to understanding difficulties.

The new Civil Code provides that if the donor is living, removal and transplanting will be done with the prior and express consent of those involved, expressed in writing and freely. At the same time, it is necessary for them to be informed of the risks involved in these interventions. It is also provided that the donor may go back on his consent until the moment of removal, given the extremely important and irreversible consequences such intervention implies.

In case of removal of organs, tissues and cells for therapeutic or scientific purposes, from the dead, the provisions of art. 81 of the New Civil Code require the existence of written consent, expressed during the life of the deceased, and in his absence, the written consent expressly given by the surviving spouse, parents, descendants and relatives up to the fourth degree.

The removal of organs, tissues and cells of human origin is prohibited in case of minors and persons with no judgment due to mental disability, mental disorder or from other similar cause, except exceptional circumstances provided by law.

In the context of protecting physical and psychological integrity it is necessary to mention the issue of examination of genetic characteristics. In this sense, the content of art. 65 of the New Civil Code shows the regulation of the conditions of carrying out the operations of the examination of genetic characteristics and the possibilities of identifying a person on these bases.

The only purpose that can justify the examination of a person's genetic characteristics is medical or scientific research carried out in accordance with the law.

The identification of a person based on genetic fingerprints can be performed for the same purposes as in civil or criminal proceedings.

### **3. Respect for private life and dignity of the human being**

A separate section is set up by the legislature to guarantee individual rights of privacy and dignity, namely the right to free speech, privacy, right to dignity and the right to self image.

As for the right to privacy "no one shall be subjected to any interference in private life, personal or family or the

domicile, residence or correspondence, without consent or without observance of the conditions provided by Article 75 [13]". [14]

It also prohibits the use of correspondence, manuscripts or other personal documents and information on private life unless there is consent or compliance with the provisions of art. 75 to which we referred earlier.

In accordance with art. 8 of the Convention on Human Rights and Fundamental Freedoms ratified by Romanian Law no. 30/1994 [15] "(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 in accordance with the law and 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."

Likewise the French Civil Code, states that "everyone has the right to respect for privacy" [16], and also the Civil Code of Quebec, that states in the art. 35: "Every person has a right to respect of his reputation and privacy. No one may invade the privacy of a person without the consent of the person unless authorized by law."

The right to dignity distinct to the right to privacy is treated independently and implies the prohibition of any activity that may affect the honour and reputation of individuals without their consent or with in the limits of art. 75 of the New Civil Code.

In order to protect the right to self image, the legislature has expressly provided that any person "may prohibit or impede replication in any manner, of the physical appearance or his voice or, where appropriate, the use of such a procedure." [17]

In art. 74 of the new Civil Code a series of actions are described with examples that may be considered as breaches of privacy, commonly found in case law. Among them we mention: entry or having no right to enter the home or taking of any object without the consent of the person who legally lives there; interception without right of a private conversation performed by any technical means, the collection or use of the image or voice of a person in a private place without consent; keeping private life under observation by any means, except for cases allowed by law; dissemination of news, debate, inquiries or reports written or audiovisual on intimate, personal or family matters, etc. without the consent of the person concerned.

Art.76 of the New Civil Code refers to the presumption of consent of the person concerned in making public some aspects concerning his private life. On this hypothesis, we are in the presence of an infringement of privacy.

A current and very important issue which concerns the protection of human personality is the protection of personal data there having been adopted numerous Community and national rules such as establishing the legal framework for the processing of personal data and protection of the personal non patrimonial rights that can be harmed by operators holding data about each individual [20].

In this respect we mention Law. 677/2001 on the protection of the human being regarding the personal data processing and free movement of such data, [18] Law no. 506/2004 concerning the processing of personal data and privacy in the electronic communications sector [19], and Law. 682/2001 on ratifying the Convention for the protection of individuals with regard to automatic processing of personal data, adopted in Strasbourg on January 28, 1981. [21]

One of the most complete regulations on the protection of human personality is found in the Civil Code of Quebec, in art. 37-41.

The Romanian legislator stated as a principle, in art. 77 of the New Civil Code that "any processing of personal data by automated means or otherwise, is possible only in cases under the law".

#### 4. Conclusion

The inclusion in the New Civil Code of a chapter on human respect and its inherent rights is very useful. In this way, the legislative guarantees and equally protects the life, health and physical and psychological integrity of individuals, establishing the priority of interest and the good of the human being against the unique interest of society or science. Special interest is given to the respect of privacy and dignity of a person, motivated by the fact that a separate section of the New Civil Code is consecrated by the legislature to guarantee individual rights of privacy and dignity, namely the right to free speech, privacy, the right to dignity and the right to own image.

#### References

1. According to art. 16-5 of the *French Civil Code* "Agreements that have the effect of bestowing a patrimonial value to the human body, its elements or products are void." See: [8].
2. According to art. 25 of the *Civil Code of Quebec* "The alienation by a person of a part or product of his body shall be gratuitous; it may not be repeated if it involves a risk to his health." See: [7].
3. According to art. 64, paragraph (1) form *the New Civil Code*, "the human body is inviolable". See: [5].

4. According to art. 75 of *New Civil Code*. : “(1) It is a violation of rights provided in this section the acts that are permitted by law or international conventions and agreements on human rights to which Romania is part. (2) Exercise of rights and freedoms in good faith and in compliance with the agreements and conventions to which Romania is a party constitutes a violation of rights under this section ". See: [13].
5. Art. 9, paragraph 1 of the French Civil Code. See: [16], [17].
6. Art. 58, paragraph 1 of the *New Civil Code*. See: [1].
7. Art.64, paragraph 2 of the *New Civil Code*. See: [9].
8. Art. 66 of the *New Civil Code*. See: [6].
9. Art. 67 of the *New Civil Code*. See: [11].
10. Art. 71, paragraph 2 of the *New Civil Code*. See: [14].
11. Art. 73, paragraph 3 of the *New Civil Code*. See: [18].
12. Art. 141 of Law no. 95/2006. See: [12].
13. Art. 649, paragraph (3) of Law no. 95/2006. See: [10].
14. Chelaru, E.: *Personality rights in regulating the New Civil Code*, Law Review no. 10/2011, p. 35. See: [2].
15. Published in *The Romanian Official Gazette*, Part I, no. 135 from 31 May 1994 with the additional changes. See: [15].
16. Published in *Romanian Official Gazette* no. 103 from 28 February 2001. See: [3].
17. Published in *Romanian Official Gazette* no. 830 din 21 December 2001. See: [22].
18. Published in *Romanian Official Gazette* no. 1101 din 25 November 2004. See: [21].
19. Published in *Romanian Official Gazette* no. 790 from 12 December 2001. See: [29].
20. Nicolae, I.: *Instituţii ale dreptului familiei*, Ed. Hamangiu, 2009.
21. Zidaru, L.: *Natural Person*, lecture in the Conference “The new Civil Code” organized by the National Institute of Magistrates, Bucharest, 16<sup>th</sup> of September 2011 (Available at: [www.inm-lex.ro](http://www.inm-lex.ro),
22. Accessed: 20.11.2011). See: [4].