

INTERFERENCE IN THE EXERCISE OF THE RIGHT TO PRIVATE AND FAMILY LIFE IN THE CONTEXT OF NATIONAL AND EUROPEAN REGULATIONS AND ECHR JURISPRUDENCE

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Abstract: *The respect for human beings and their inherent rights, primordial rights acquired with the birth of a person, is a prerogative in the laws of European States, with a series of legal regulations that enshrine and protect them. In the category of human rights, we include the right to private and family life, which finds an ample regulation in both domestic and European law, the national and foreign legislators setting out a series of instruments to ensure their observance. This study proposes an analysis of these fundamental human rights, with reference to the legal regulations, but also to The European Court of Human Rights jurisprudence, while pursuing the possible interferences in their exercise and the way of sanctioning them.*

Key words: *ECHR jurisprudence, fundamental human rights, private life, family life.*

1. Introduction

The right to private and family life is regulated both at national and international level.

At the national level, the Romanian Constitution and the Romanian Civil Code offers the main legal frame for the protection of this right. According to Article 26 of the Romanian Constitution, “the public authorities shall respect and protect intimate, family and private life.”

We should mention that an entire chapter of the New Civil Code is consecrated to the respect of the human being and its inherent rights – the right to private life, to life, to health, to integrity, to dignity – and the respect owed after the person’s death (Matefi and Barsan, 2014, p. 23).

According to Art. 71 of the Civil Code “(1) Everyone has the right to respect for their private lives.

(2) No one may be subjected to any interference in the intimate, personal or family life, in their domicile, residence or correspondence, without their consent or without observing the limits provided in art. 75.

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(3) It is also forbidden to use in any way the correspondence, manuscripts or other personal documents, as well as the information of a person's private life without their consent or without observing the limits provided by art. 75.”

According to Article 75, it is not a violation of the rights set forth in this section, the lawful violations or those permitted by international human rights conventions and pacts to which Romania is a party.

At the European level we should first mention the European Convention of Human Rights, which regulated these rights within its 8th Article.

2. The Right to Respect for Private and Family Life according to Article 8 of the European Convention on Human Rights

The European Convention on Human Rights regulates the right to respect for private and family life in the 8th Article, according to which “1. everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Analyzing the content of this Article we notice from the very beginning that it contains two parts. The first one” sets out the precise rights which are to be guaranteed to an individual by the State – the right to respect for private life, family life, home and correspondence” (Kilkelly, 2003, p.6), while the second one underlines the nature of these rights, which are not absolute, so “it may be acceptable for public authorities to interfere with Article 8 rights in certain circumstances” (Kilkelly, 2003, p.6), expressly set by the legislator. Any other interference except from those stipulated by Art. 8, par. 2, are strictly forbidden.

3. The Notions of “Family Life” and “Private Life” in the Context of Article 8 of the European Convention of Human Rights

Family life

According to the ECHR case-law the “notion of <family life> in Article 8 is not confined solely to families based on marriage, and may encompass other *de facto* relationships. When deciding whether a relationship may be said to amount to “family life”, a number of factors may be relevant, including whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having children together or by any other means.” (Roagna, 2012, p. 27; X, Y, and Z v. the United Kingdom).

Private life

“The Strasbourg Court has never offered a clear and precise definition of what is meant by private life: in its view it is a broad concept, incapable of exhaustive definition”. (Roagna, 2012, p.12, Costello-Roberts v. the United Kingdom).

Regarding the situations the concept of private life has been applied to throughout the years, one could mention “bearing a name, the protection of one’s image or reputation, awareness of family origins, physical and moral integrity, sexual and social identity, sexual life and orientation, a healthy environment, self-determination and personal autonomy, protection from search and seizure and privacy of telephone conversations”. (Roagna, 2012, p.12).

In the Court’s view, private life “includes a person’s physical and psychological integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings” (Von Hannover vs. Germany) (<https://www.juridice.ro/wp-content/uploads/2016/07/von-Hannover-v-Germany-ECHR-24-June-2004.pdf>).

The notion of “private life” has, as we can easily notice, a large meaning, the ECHR jurisprudence being very extensive in this respect, as well as the references in the doctrine.

According to one author “one can consider anything having to do with personal health, philosophical, religious or moral beliefs, family and emotional life, friendships and, subject to reservations, professional and material life as part of private life (Cohen, 1993, pp. 405-407; Wicks et al., 2017, p. 411).

In case of Vukota-Bojić v. Switzerland, the Court states that private life within the meaning of Article 8 is a broad term not susceptible of exhaustive definition. Article 8 protects, “inter alia, a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of “private life” (see Peck v. the United Kingdom, no. 44647/98, § 57, ECHR 2003- I; Perry v. the United Kingdom, no. 63737/00, § 36, ECHR 2003- IX; and Köpke v. Germany, no. 420/07, 5 October 2010)”.
([https://hudoc.echr.coe.int/eng#{"itemid": \["001-167490"\]}](https://hudoc.echr.coe.int/eng#{)).

A similar approach could be found in another case, Niemietz v. Germany (16 December 1992), where the Court decided that “it would be too restrictive to limit the notion [private life] to an “inner circle” in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings”.

It is obvious that *private life*, in line with the European Convention on Human Rights, should also include the outside world, as each individual lives in interdependence with others.

Following the same idea in McFeeley v. the United Kingdom, “the Commission suggested that the importance of relationships with others also applied to prisoners and respect for private life thus required a degree of association for persons imprisoned.

Freedom to associate with others is thus a further, social feature of private life.” (<https://rm.coe.int/168007ff47>).

The respect for private life also involves the adoption of measures designed to protect this right in the larger context of the relations of individuals between themselves (X and Y v. The Netherlands, 1985)

In another case, *Köpke v. Germany*, “concerning secret video recording of an employee at her workplace made on the instructions of her employer, the Court found that the covert video surveillance during some fifty hours, the recording of personal data, the examination of the tapes by third parties without the applicant’s knowledge or consent, the use of the videotapes as evidence in the proceedings before the labour courts, and the domestic courts’ refusal to order the destruction of the tapes, had all seriously interfered with the applicant’s right to privacy (see *Köpke*, cited above)” ([https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-167490\"\]}](https://hudoc.echr.coe.int/eng#{\)).

4. Bărbulescu v. Romania – a recent example of violation of Article 8 of the ECHR

The following case, *Bărbulescu vs Romania*, presents a recent example of conviction for violation of Article 8 of the European Convention of Human Rights, on the basis that Romanian authorities did not afford adequate protection of the applicant’s right to respect for his private life. The Court held that the Romanian courts did not determine if the applicant was informed by his employer about the monitoring, about its nature or extent or the degree of intrusion into his private life.

“The applicant, Mr. Bărbulescu, was employed by a Romanian private company as a sales engineer and was asked to open a Yahoo Messenger account for professional purposes. On two occasions the applicant was notified by his employer that his communications would be monitored; however, the extent of the monitoring was not defined. Mr. Bărbulescu was fired after having reportedly made use of the Yahoo Messenger account for personal reasons, despite the relevant strict prohibition. More precisely, he was informed that his communications had been monitored and that conduct contrary to internal regulations had been recorded. Although Mr. Bărbulescu denied having used the account for non-professional communication, he was presented with a transcript of his communications which refuted his denial. Subsequently, the employment contract of Mr. Bărbulescu was terminated, leading him to challenge his employer’s decision before the Bucharest County Court and subsequently the Bucharest Court of Appeal. After the dismissal of his appeal, Mr. Bărbulescu lodged an application against Romania arguing that ‘his employer’s decision to terminate his contract had been based on a breach of his right to respect for private life and correspondence and that the domestic courts had failed to protect his right’”. (<https://strasbourgobservers.com/2017/10/19/barbulescu-v-romania-and-workplace-privacy-is-the-grand-chambers-judgment-a-reason-to-celebrate/>).

The European Court of Human Rights concluded that in this particular case, there was a violation of Article 8 of the Convention, considering that „the domestic authorities did not afford adequate protection of the applicant’s right to respect for his private life and correspondence and that they consequently failed to strike a fair balance between the

interests at stake.” ([https://hudoc.echr.coe.int/eng#{"fulltext": \["barbulescu"\], "documentcollectionid2": \["GRANDCHAMBER", "CHAMBER"\], "itemid": \["001-177082"\]}](https://hudoc.echr.coe.int/eng#{)).

In its motivation, the Court considers that „the domestic courts failed to determine, in particular, whether the applicant had received prior notice from his employer of the possibility that his communications on Yahoo Messenger might be monitored; nor did they have regard either to the fact that he had not been informed of the nature or the extent of the monitoring, or to the degree of intrusion into his private life and correspondence. In addition, they failed to determine, firstly, the specific reasons justifying the introduction of the monitoring measures; secondly, whether the employer could have used measures entailing less intrusion into the applicant’s private life and correspondence; and thirdly, whether the communications might have been accessed without his knowledge”.

([https://hudoc.echr.coe.int/eng#{"fulltext": \["barbulescu"\], "documentcollectionid2": \["GRANDCHAMBER", "CHAMBER"\], "itemid": \["001-177082"\]}](https://hudoc.echr.coe.int/eng#{))

5. Conclusion

This study has set out to highlight, through some relevant ECHR cases, the essence of the right to private and family life, emphasizing aspects like its regulation from the national and international perspective, its content within the ECHR sense and the interference in its exercise.

As mentioned in the beginning of this study, this right benefits from an ample regulation both nationally and internationally.

In the ECHR regulation, the right to private and family life is not considered to be an absolute one, the interference of public authorities being accepted but only under the circumstances expressly regulated by Article 8, everything that goes beyond this framework being forbidden.

We can find the same idea within the national regulations, an example in this respect being the above cited Article 75 of the Civil Code, which stipulates that it is not a violation of these rights, the lawful violations or those permitted by international human rights conventions and pacts to which Romania is a party.

As regards the meaning of “private life”, it is a large one, including not only the “inner circle” of the individual’s personal life, but also the outside world, the relationships established and developed with other human beings.

The European Convention of Human Rights was consistent with this approach, with extensive jurisprudence in this respect.

The present study contains a relevant selection of the ECHR jurisprudence in the matter of interferences in the exercise of the right to private life.

References

Cohen –Jonathan, G. (1993). Respect for private and family life. In R. Macdonald, F. Matscher and H. Petzold, *The European system for the protection of human rights* (pp. 405-407). Martinus Nijhoff, Dordrecht.

- [https://hudoc.echr.coe.int/eng#{"fulltext":\["barbulescu"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-177082"\]}](https://hudoc.echr.coe.int/eng#{) Accessed: 31.01.2018
- [https://hudoc.echr.coe.int/eng#{"itemid":\["001-167490"\]}](https://hudoc.echr.coe.int/eng#{) Accessed: 31.01.2018
- <https://rm.coe.int/168007ff47> Accessed: 31.01.2018
- <https://strasbourgobservers.com/2017/10/19/barbulescu-v-romania-and-workplace-privacy-is-the-grand-chambers-judgment-a-reason-to-celebrate/>
- <https://www.juridice.ro/wp-content/uploads/2016/07/von-Hannover-v-Germany-ECHR-24-June-2004.pdf> Accessed: 31.01.2018
- Kilkelly, U. (2003). *The right to respect for private and family life. A guide to the implementation of Article 8 of the European Convention on Human Rights*, p.6. Available on: <https://rm.coe.int/168007ff47>.
- Matefi, R., Barsan, M.M. (2014). The respect of private live – a fundamental right for a person. *Jus et civitas*, vol. 65, no. 1, p. 23.
- Roagna, I. (2012). Protecting the right to respect for private and family life under the European Convention on Human Rights, p. 12. Available on: <https://rm.coe.int/16806f1554>
- Wicks, E., Rainey, B., Ovey, C. (2017). *Jacobs, White and Ovey: The European Convention on Human Rights*, 7th Edition. Oxford: Oxford University Press, p. 411.
- *** *The European Convention of Human Rights*.
- *** *The Romanian Civil Code*.
- *** *The Romanian Constitution*.