
PROTECTION OF PRIVATE, FAMILY, AND INTIMATE LIVES

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Abstract: The Constitutional Court of Romania (CCR) holds an essential position in guaranteeing the observance of human rights within the country's constitutional and legal framework. Through its attribution to interpret and verify the compliance of laws with the Constitution, the CCR has built a vast and particularly significant caselaw regarding the individual's fundamental rights. By studying the Constitutional Court of Romania's judicial practice in the field of human rights, we can examine how fundamental rights are interpreted and implemented in the national legal system. In this regard, the CCR plays a vital role in ensuring the protection and promotion of these rights by interpreting the Constitution and applicable legislation in accordance with international standards. It is important to highlight that the CCR's human rights caselaw reflects the constant attempt to ensure a balance between the individual's and society's interests, protecting fundamental rights in accordance with the principles of the rule of law and international standards in the field. Through the analysis of concrete cases and constitutional interpretation, the CCR strengthens its essential role in human rights promotion and defense in Romania.

Keywords: protection; private life; fundamental law; family; case law.

1. Introduction

The right to intimate, private and family life is one of the fundamental human rights recognized by both domestic legislation and international instruments to which Romania is a party. This right involves the protection of the individual's scope, ensuring one's privacy, autonomy, and freedom to lead a personal life in a private and family setting.

The Constitutional Court of Romania played a crucial role in the interpretation and defense of the right to intimate, private and family life, contributing to the evolution and strengthening of the protection of this right in the Romanian legal context. Through its rulings and decisions, the CCR has developed significant caselaw in this field, clarifying the principles and margins for the exercise of this fundamental right.

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The CCR caselaw on the right to intimate, private and family life has developed by addressing complex and varied cases, which involved the protection of individual dignity and freedom in different contexts, such as the protection of private life against abusive interventions by the authorities, the protection of the secrecy of correspondence or telephone communications, the protection of family life and privacy in couple relationships or situations of divorce and children's custody.

2. The right to intimate, family and private lives

According to Art. 26 of the Romanian Constitution para. 1 "Public authorities observe and protect intimate, family [1] and private life, and in para. 2 provides for the natural person's right to dispose of oneself, if one does not violate other person's rights and freedoms, public order, or good morals".

The text assumes that human beings' intrinsic values include aspects of their intimate, family, and private lives. This indicates that there is a correlation between these three areas of personal life, suggesting that they can be considered constitutive parts of a singular right.

The first aspect, known as intimate family life, alludes to the personal experiences and relationships that develop within one's family. These relationships can extend from a life partner to parents, siblings, or children and include various elements such as love, communication, mutual encouragement, and active participation in the life of each family member [2].

The right to private and family life is indeed a fundamental right recognized internationally and in most national legal systems. This right is part of the first generation of rights, which are considered essential for the observance of the individual's dignity and freedom.

Article 12 of the Universal Declaration of Human Rights, mentioned in the text, states the right of every person not to be subjected to arbitrary interference with his personal life, family, home, or correspondence, and the right to the protection of the law against such interference or reaching.

This right implies respect for privacy, confidentiality, and individual autonomy. Individuals have the right to maintain their private lives and not be subject to unjustified interference with their personal or family life, including their communication and reputation.

Both internationally and nationally, there are regulations and legislation that protect the right to private and family life. These may include laws regarding personal data protection, the right to privacy, family rights, privacy of communication and others. Understanding and observing the right to private and family life is fundamental to ensuring a society where individuals feel protected and respected in their personal and family areas.

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Similar provisions protecting the right to private and family life are found in other international and regional human rights protection instruments, such as the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. Both Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms state the observance of every person's right to private life, family, home, and correspondence. These rights cannot be violated arbitrarily or illegally, and individuals are entitled to the protection of the law against such interference or intrusion.

However, both instruments recognize that there are situations in which a public authority may interfere with the exercise of the right to private and family lives. These interventions must be provided by law and be justified in a democratic society for reasons such as 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 rights and liberties of others [3]. However, any such intervention must be necessary and proportionate in relation to the pursued legitimate aims.

These provisions represent the efforts of the international community to protect individual rights and ensure respect for private and family lives in the face of public authorities' arbitrary or unjustified interventions.

Article 7 of the Charter of Fundamental Rights states every person's right to respect for one's private and family lives. It protects the intimate sphere of the individual and that person's family relationships, recognizing their importance for personal and social development. The right to private and family lives implies respect for individual privacy and autonomy in personal and family lives.

In addition, Article 8 of the Charter of Fundamental Rights guarantees every person's right to personal data protection. This right refers to the control and protection of an individual's personal information and states that such data must be processed lawfully, fairly, and transparently, while observing the individual's rights.

Regarding the family, according to the legal definition mentioned in the commentary, it is understood as a group of persons who have mutual rights and obligations due to the relations of marriage, kinship, adoption, or other assimilated relations. The State has the responsibility to protect intimate family life by law and to ensure the protection and respect of the rights and obligations arising from these relationships.

Thus, the Charter of Fundamental Rights of the European Union emphasizes the importance of respecting private and family life and the protection of personal data within the European Union, obliging member states to guarantee these rights through appropriate legislation [4].

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Various legal acts, including the Constitution, the Civil and Criminal Codes, contain provisions that protect the family unit. The purpose of these provisions is to guarantee that the family life of each person is respected, regardless of their social status or profession. When the State passes legal norms, it is imperative to uphold the sanctity of an individual's personal and family life. For example, the law recognizes the judge's ability to declare certain [5] court proceedings confidential in cases related to divorce or involving minors. Private intimate life refers to the sphere of privacy and confidentiality that a person chooses to keep around them. This involves aspects such as love life, health, religious or sexual orientations, and other personal aspects that the individual considers private.

Privacy also covers the area where private and community (social) areas meet, for instance, the case of personal data such as name, address, age, marital status, etc. Privacy protection has a wide scope as it involves multiple aspects of personal and social lives.

The aforementioned article, which refers to private and family life in the Charter of Fundamental Rights of the European Union, represents a statement of the principle of this right. Other constitutional and legal provisions are designed to guarantee respect for private life, such as the secrecy of correspondence, the inviolability of the domicile and the protection of health. These additional provisions contribute to the strengthening and protection of the right to private and family lives, ensuring respect for the individual's privacy and confidentiality in various aspects of the respective person's life.

The right to one's image is an important aspect of a private intimate life and is part of the protection of individual rights. This right refers to a person's right to decide on their image and to control its use and dissemination.

Publishing or using a person's image without their consent may constitute a violation of their right to their image. This applies both in the context of publication in the media and in situations where the image is used in other ways, such as in advertising, on the Internet or in other media.

The national courts and the European Court of Human Rights case law recognized and protected the right to one's image as part of the right to private and family life. This means that a person has the right to object to the use or publication of their image without their consent, especially when it may affect their privacy, reputation, or honor.

According to the mentioned constitutional text, the natural person has the right to dispose of itself, provided one does not violate the rights and freedoms of others, public order, or good morals. This right refers to bodily freedom and a person's right to have control and autonomy over their own body [6].

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Bodily freedom involves the right of a person to decide about their own person, to make choices about their health and physical integrity, and to accept or reject interventions on their body. This includes the right to decide on medical treatments, to choose to express or change one's physical appearance, to decide on sexual and reproductive activities and to protect one's body against any aggression or violence. However, it is important to emphasize that the right to dispose of one's own body is not absolute and may be restricted in certain justified situations, such as when the intervention is necessary to protect other fundamental rights and freedoms, such as public health or public safety.

Thus, the right to dispose of one's person refers to the individual autonomy and bodily freedom of a person, respecting the limits and other fundamental rights and freedoms.

The person's freedom to dispose of itself can be seen as a component of private life and is closely related to individual autonomy and bodily freedom. The interpretation of this provision must be conducted in the context of social dynamics because there are situations that have implications at the personal life level, and that require an analysis and application of the right to self-determination.

For example, the removal of organs from clinically dead people, the legalization of abortion, or the consumption of narcotic drugs are situations that raise complex questions regarding the right of a person to dispose of their person. These aspects involve decisions and choices related to the body's health and integrity, but at the same time, they can have moral, ethical, social, and legal implications.

The interpretation and application of the right to self-determination must consider the multiple considerations and values in society. These situations may involve a balance between the individual's right to self-determination and other legitimate interests, such as protecting the life, health, and rights of others. Legislation and case law in the field develop and evolve according to social changes and society's ethical and moral perspectives.

Therefore, the interpretation and implementation of the person's right to self-determination must consider the diversity of situations and their implications, in accordance with social dynamics and while observing legal and ethical values and principles.

The law provides that a person's right to self-determination is exercised within the limits in which it does not violate the rights and freedoms of others, public order, or good morals. Thus, certain situations, such as the compulsory health examination before marriage, compulsory vaccinations, or medical examinations for the detection of venereal or contagious diseases, may be considered justified in the interest of protection and public health, even if they involve restrictions on the person's right to dispose of itself.

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A person's right to self-determination lies at the boundary between individual freedom and the rights of other persons or the interests of society as a whole. Because there are multiple values and perspectives in society, this right will always be variable and will have to adapt to the changes taking place in society, including changes in public morals and new social realities.

Thus, an accommodation of the person's right to self-determination is needed while considering the social realities and ethical and moral values prevailing in a certain society. This may involve a balance between individual rights and freedoms and public or collective interests, such as public health or community safety.

In conclusion, a person's right to self-determination is subject to adaptation and accommodation according to social changes and moral and ethical values prevalent in a given society. Limitations of this right can be justified in situations that protect the rights and interests of others and society as a whole.

3. Caselaw analysis

Next, we will explore the specific caselaw of the CCR in the field of the right to intimate, private, and family lives, highlighting the Decision of the Constitutional Court no. 33 of January 19, 2017, Official Gazette no. 320 of May 4, 2017, on the violation of a person's private life.

The Craiova Court of Appeal – The Criminal and for Cases with Minors Section referred the Constitutional Court to this exception of unconstitutionality to decide on the validity of the law in question. The Constitutional Court will review the arguments submitted by Elena Dumitru and decide whether or not the legal provisions are in accordance with the Romanian Constitution. The exception of unconstitutionality raised by Elena Dumitru claims that these legal provisions are unconstitutional because they do not include buildings that belong to public property or in which activities of public institutions or authorities are conducted. In other words, the argument is that "premises" must also include these types of buildings and facilities to be considered constitutional.

The provisions in question have been criticized by the author of this exception. The author argues that these provisions fail to provide the same guarantee to the basic right in situations where the violation of personal, family, and private lives takes place in areas beyond the boundaries of the home, in particular, public areas or premises under the jurisdiction of government institutions or bodies.

According to the Court's decision, the disputed state regulation does not violate the person's right to private, family, or intimate lives. Instead, it provides additional safeguards against acts of anti-social behavior that breach these rights, particularly if they take place in a residence, room, or any other related area.

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In the field of legislative power, the criminalization of specific actions or the restructuring of the fundamental components of a crime is subject to the discretion of the lawmaker. This discretion is not without restrictions, however, as it must conform to the principles, values, and constitutional mandates of society. This idea is encapsulated in the concept of the "margin of appreciation", which recognizes that every society is entitled to some degree of discretion in striking a balance between individual rights and national interests, and in solving conflicts arising from competing for social values and moral beliefs.

The current situation involves the regulation of criminal protection for violations of privacy occurring in private areas [7]. The lawmaker positioned itself in the margin, not being obliged explicitly or implicitly by the constitutional provisions to establish a standard of criminalization as the author intended. Therefore, the lawmaker has the authority to give prevalence to the constitutional protection of values that do not fall under the scope of crimes and instead belong to the field of tortious civil liability [8].

4. Conclusions

In conclusion, protecting private, family, and intimate lives is an important right in a democratic society.

The Strasbourg Court reminded us that the concept of private life encompasses aspects of an individual's identity, including their name, photograph, and physical and moral well-being. In essence, the purpose of Article 8 of the Convention is to protect the personal development of an individual without external interference and in relation to one's community [9].

Therefore, under certain circumstances, the interaction between a person and external parties may concern their private life, even when it takes place in a public setting. As a result, the publication of a photo can interfere with an individual's private affairs, regardless of their public status. The alleged inadequacy of the protection granted by national courts to protect private life was also examined. It has been established that there is no definite line between positive and negative State obligations in terms of Article 8. However, the principles governing this line are similar in nature.

In both cases, it is essential to consider the fair balance that must exist between the conflicting interests. The interests at stake include protecting the right to freedom of expression as well as protecting the right to privacy.

Considering this, the criteria that are relevant to contribute to a discussion of general importance, the prominence of the respective individual and the subject of the report or image are all relevant factors. It is important to differentiate between private individuals and those in public office, such as politicians or public figures, as the level of privacy protection they receive can vary. While an unknown private individual may legitimately argue for the protection of privacy rights, this argument

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may not apply to public figures. In addition, the depicted person's behavior, the nature and consequences of the publication and the context surrounding the taking of the photographs are all relevant considerations.

The European Court of Human Rights established that the weighting of divergent rights must be limited to the general benefit of exercising freedom of expression. This is due to the media's obligation to distribute information and concepts concerning all matters of public interest, which is enhanced by the public's right to receive it. By doing so, they facilitate the development of an informed public opinion.

As previously demonstrated, the State has instituted the civil safeguards mentioned above, which allow a person who alleges a violation of their right to private life, family, and privacy to initiate a civil lawsuit in court.

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Author Contributions

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3. Decision no. 405 of June 15, 2016, Official Gazette no. 517 of July 8, 2016.
4. Decision no. 683 of November 19, 2014, Official Gazette no. 47 of January 20, 2015.
5. Muraru, I., Tănăsescu, S.E., (coordinators), (2022). Constituția României. Comentariu pe articole (The Romanian Constitution. Commentary on articles). Ed. CH Beck, Bucharest, p. 245-257.
6. The ruling of February 7, 2012, was pronounced in the case of Von Hannover v. Germany (no. 2).

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Notes:

- [1] Family life is a complex concept that includes all the relationships that arise between members of a family, but also the set of rights stemming from these relationships, such as the right to maintenance, education, professional training, physical health, etc. (D.C. Creț, *Defending family law values via criminal law norms*, in *AGORA International Journal of Juridical Sciences*, Vol. 15, No 2, 2021, pp. 19-20).
- [2] M. Bălan, *Constitutional law and political institutions*, Ed. Hamangiu, Bucharest, 2015, p. 380-385.
- [3] M. Criste, *Constitutional law. A citizen's right*, Ed. Universul Juridic, Bucharest, 2019, p. 191-207.
- [4] It is obvious that the State's role in safeguarding family life is not limited to establishing laws in this regard. Additional constitutional provisions, such as the right to family (Article 48), the protection of minors (Article 49), the protection of persons with disabilities (Article 50) and the right to inheritance (Article 46), are closely related to the State's duty to ensure the family life protection and preservation.
- [5] Regarding the divorce procedure in the regulation of the current Civil Procedure Code, see D.C. Creț, *Civil procedural law*, vol. II, Special part, 2nd edition, revised and added, Casa Cărții de Știință Publishing House, Cluj-Napoca, 2023, pp. 137-146.
- [6] I. Muraru, ES Tănăsescu (coordinators), *Constitution of Romania. Commentary on articles*, Ed. CH Beck, Bucharest, 2022, p. 245-257.
- [7] See Decision no. 405 of June 15, 2016, Official Gazette no. 517 of July 8, 2016, para. 66-68.
- [8] See in this regard Decision no. 683 of November 19, 2014, Official Gazette no. 47 of January 20, 2015, para. 16.
- [9] The judgment of February 7, 2012, pronounced in the case of *Von Hannover v. Germany* (no. 2), para. 95, 99, 108-113, 124 and 126.