

# Protection of human dignity under Romanian audiovisual content regulations. Reflections on the most prominent 2012 case.

Assoc. Lecturer **Sinziana Maria JURĂU**, PhD

Department of Journalism  
Babeş-Bolyai University, Cluj-Napoca  
Email: jurau@fspac.ro

**Abstract:** *The article presents, in a chronological order, the most important legal developments in the protection awarded to human dignity and personality rights under Romanian law. The overview is correlated with references to international regulations, where applicable. A study-case of the most prominent 2012 issues (the conflicting freedom of expression, right to information on matters of justified public interest and privacy protection of politicians) is introduced in order to illustrate the protection mechanism.*

**Keywords:** *human dignity; freedom of expression; privacy protection; personality rights.*

## International provisions aimed at protecting human dignity

The relationship between national and international regulations is regulated through art 11 of the Romanian constitution that stipulates, according to the second paragraph, that “Treaties ratified by Parliament, according to the law, are part of national law.” However, according to the third paragraph, “if a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.” A brief overview of the international legal provisions used to motivate legal decisions regarding the interactions between freedom of expression and personality rights follows and comprises references to the evolution of the concept under the French Civil Code,

the European Human Rights Convention and Resolutions adopted by the Council of Europe.

Due to the important role that French doctrine played in the interpretation of the provisions of the Romanian Civil Code, the legal solutions adopted by the French legal system are amongst the most interesting and relevant provisions that could be analyzed. Manuc (Manuc, 2012, p. 363) notes the fact that French courts resolved the conflict between freedom of expression, right to information and privacy and honor protection by applying common law principles as tort liability for example. However, as means of infringing these fundamental rights diversified, calls for a more firm protection were answered with the inclusion, under Art 9 of the French Civil Code, to a right to privacy and respect awarded to the presumption of innocence.

Among the most prominent international instruments that accompanied what Manuc (Manuc, 2012, p. 363) denominated as "the affirmation movement of personality rights", are

The Universal Declaration of Human Rights of 1948 containing provisions on privacy and condemning attacks upon honor or reputation, and the European Human Rights Convention of 1950 confirming the right to a private and family life, to residence and correspondence.

Freedom of expression, as provided by art. 10 of the European Convention on Human Rights, carries with it duties and responsibilities and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society to ensure the protection of the reputation or rights of others. Referring to the limitations imposed on freedom of expression, the European Court of Human Rights held that freedom of expression includes the duties and responsibilities, amongst which the duty of interested parties to act in good faith, with respect for journalistic ethics (*Radio France and Others c / France*; *Colombani and Others c / France*; *Bladet Tromsø and Stensaas c / Norway*, pondered and peas c / Romania; *Stângu and Scutelnicu c / Romania*).

The Consultative Assembly of the Council of Europe adopted, on 23 January 1970, Resolution 428 which set out as recommended standard in respect of privacy that: " Within its core, the right to privacy of the person is able to lead the life as desired, with a minimum of interference. This law relates to privacy, family life and that of the home, the physical and moral integrity, honor and reputation, the fact of being presented in a false light, the non-disclosure of facts unnecessary and embarrassing to publication without the authorization of private photographs, protection against espionage and undue or unacceptable intrusion to protect against misuse of private communications, the protection of confidential information communicated or received by an individual."

## **Legal protection of human dignity as awarded by national provisions**

Among the first legal provisions regarding the personality rights prof. Muraru (Muraru & Vladoiu, 2007, p. 634) notes the fact that art. 26 paragraph 4 of the 1923 Constitution stated that „Media crimes are to be judged by members of the jury, except for the cases hereinafter established, that shall be judged by ordinary tribunals, according to the common law” (enumeration), while letter c) mentions „the calumnies, the insults, the defamations against private persons or state officials, whoever they are, affecting their private life or their personal honor”.

Izabela Bratiloveanu (Bratiloveanu, 2012, p. 102) listed the first references to human dignity in the Romanian fundamental law - Art. 13 of the Constitution of the Socialist Republic of Romania

“In the Socialist Republic of Romania, the entire activity of the state is for the development of its structure and for the flourishing of the socialist nation, for the continuous growth of the living and cultural standards of the people, for ensuring the freedom and dignity of the individual and for the multilateral fulfillment of the human personality”.

The researcher (Bratiloveanu, 2012, p. 102) identified the fact that a similar concern for human dignity was expressed under art. 1 of the 1991 Constitution that proclaims human dignity, the rights and freedoms of the citizens, the free development of the human personality, justice and political pluralism as the supreme values of Romania. In conjunction with the above-mentioned art. 1, art. 26 provides for the public authorities’ obligation to respect and protect the intimate, family and private life. Under the current Constitution, freedom of expression is consecrated in art. 30 and comprises the possibility of the human being to express its thoughts, opinions, religious beliefs and spiritual creations of any kind, orally, in writing or through images, sounds or other communication means, in public. Freedom of expression is limited, under the same art. 30 paragraph 6, by the respect awarded to dignity, honor, privacy of a person, and the right to self-image.

By referring to the fundamental law as the basic framework, Bratiloveanu concludes that the violations of human dignity need to be analyzed on a case by case basis and the sanctions applied should be related to the damages caused.

Manuc (Manuc, 2012, p. 364) notes that, following a similar evolution as the French legal system, the provisions of the Romanian Civil Code were not regulating any of the personality rights. The same researcher indicates that jurisprudential solutions included tort liability principles in order to protect a person’s honor or image, reference to art. 998 – 999 of the Civil Code being commonly used as legal grounds for court decisions. A more developed concept of personality rights can be found as listed under Art. 54 of Decree no. 31/1954 that provides for the possibility to address a court in “The person who has suffered damage to her right to a name or nickname, denomination, honor, reputation, to her personal non-patrimonial

right of author of a scientific, artistic or literary work, of inventor or to any other personal non-patrimonial right, could claim in court, the termination of the deed affecting rights above mentioned.”

Personal dignity received a stronger protection in the following years, with the inclusion in the 1967 Romanian Criminal Code of the crime of insult, defined as “an attack against the reputation of a person by words, gestures or other means, or by exposure to revilement, as well as the fact by which a person is attributed a flaw, illness or infirmity, that even if they are real, they should not be revealed.” and sanctioned with the punishment of prison between one month to three months or a fine and slander, defined as “publicly stating or imputing a determined fact concerning a person, which, should it be true, would expose that person to a penal, administrative or disciplinary sanction, or to the public contempt” and sanctioned with the punishment of prison between three month and a year or a fine. Penal action would be conditioned by the complaint of the person that considered himself/herself insulted, and settlement of the claim would have as a consequence the removal of penal responsibility. The 1967 legal structure provided for the possibility to have a veracity proof, if the statement was made in order to defend a legitimate interest. In 1997, with the entering into force of the “new” (post-communist) Romanian Criminal Code, sensitive amendments were made to the quantum of punishments and a significant addition to the definition of slander was introduced, the legislator providing for the possibility of the crime to be committed “by any means”.

The articles 205 and 206 of the Criminal Code brought Romania in front of the European Court of Human rights for several times. In *Cumpănă and Mazare against Romania* case the Court ruled that the imprisonment sentence for the plaintiffs was excessive, considering however that the article 10 was not violated in the cause. The European Court warned that under current legal provisions there is a substantial risk that the investigation journalists might refrain themselves from expressing on matters of general interest - such as the alleged irregularities in awarding some public contracts to trading companies, if they might be convicted. Under a series of decisions that will be subjected to further research, slander and insult benefited from the attention of several public authorities, which either decriminalized, or stated upon their constitutionality.

After heated discussion on the subject matter, the New Romanian Civil Code, that entered into force in the autumn of 2011, listed under the title “Respect of the private life and dignity of the human person” the right to free speech, the rights to private life, the right to dignity and the right to one’s own image. According to the new civil law provisions, freedom of speech can be restrained by law or the international conventions and pacts on human rights to which Romania is a party. The right to private life aims at providing with legal protection against potential violations of a person’s intimate, personal or family life, including his/her house, residence or their correspondence, without the person’s consent, against the law

or the international pacts and conventions to which Romania is a party. The same article explicitly forbids the use, in any way, of the correspondence, manuscripts or other personal documents, as well as information from the private life of a person, without their consent or by infringing legal limits. Honor and reputation are protected under the provisions regulating the right to dignity, and they are confined to a persons' consent and the law. Correlated with the necessity to obtain a person's consent, the legal provisions recognizing the right to one's own image stipulate for the possibility to prohibit or prevent the reproduction, in any way, of their physical appearance or their voice or, as the case may be, the use of such a reproduction. The provisions of the New Civil Code include a list of what is considered or could constitute prejudices against private life:

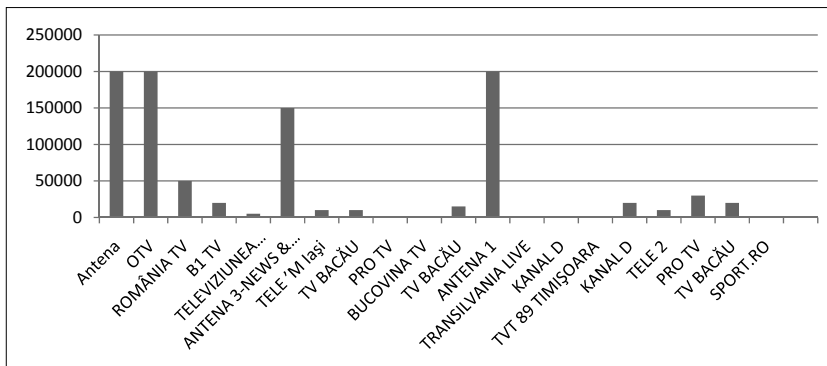
- a. penetrating or unrightfully remaining in the dwelling or taking from it any object without the consent of the person occupying it legally;
- b. tapping unrightfully a private conversation, made by any technical means, or the use, learnedly, of such an interception;
- c. capture or use of the image or voice of a person situated in private premises, without his/her consent;
- d. broadcasting of images which present the inside of private premises, without the consent of the person occupying it legally;
- e. keeping of the private life under observation, by any means, except in cases provided by law;
- f. broadcasting of news, debates, investigations of written feature audiovisual reports on the intimate, personal or family life, without the consent of the person concerned;
- g. broadcasting of materials containing images regarding a person under treatment in medical assistance institutions, as well as of data with personal character on the health status, diagnostic issues, prognostic, treatment, circumstances related to the illness and any other various facts, including the result of the autopsy, without the consent of the person concerned, and in case the latter is deceased, without the consent of the family or of the entitled persons;
- h. the mala fide use of the name, image, voice or similarity with another person;
- i. publication or use of the correspondence, manuscripts or other personal documents, including of data concerning the domicile, residence, as well as the phone numbers of a person or of the members of his/her family, without the consent of the person to whom these belong or who, as the case may be, is entitled to dispose of them.

Expressing journalists' concerns and politician hopes Quffa notes that the Civil Code "aims to limit the tabloid press, but especially to eliminate the discussions on marital or extramarital life of an individual, insulting statements against a person."

(Quffa, 2012, p. 434) However, within the same Title of the New Civil Code, limits of exertion of the above-mentioned rights are regulated. Therefore interferences allowed by law or the international conventions and pacts concerning human rights to which Romania is a party do not constitute an infringement of the rights to a private life and dignity. Also, the exertion in good faith of the constitutional rights and liberties and observance of the international pacts and conventions to which Romania is a party does not constitute an infringement of the rights to a private life and dignity. And, of utmost importance for the freedom of the press, under the “presumption of consent”, a written consent from the person affected is not necessary if the person informs knowingly a journalist or a natural or legal person of whom he/she knows that they carry out their activity in the domain of public information.

The New Civil Code provisions complement the 504/2002 Audiovisual Law that stipulates, under art. 3 paragraph 1, that “Broadcasting and retransmission of programs is achieved with the aim of ensuring political and social pluralism, cultural diversity, linguistic and religious, informing, educating and entertaining the public, respecting freedoms and basic human rights.” The effective protection awarded to personality rights is detailed by the third Title of The Regulatory Code Regarding Audiovisual Content. The Regulatory Code Regarding Audiovisual Content was adopted through the National Audiovisual Council Decision no. 220, on February 24th, 2011 and entered into force on the July 28th 2011. Under Art. 30 of Title III – “Respect of human dignity and the right to one’s own image”, “Audiovisual media service providers are compelled to respect the fundamental human rights and freedoms, the private life, to honor and reputation, and the right to a person’s own image.”. “(2) The interest of the public should not be satisfied at any cost; the mere reference to the right to information cannot justify the violation of private life. (3) The right to one’s own image should not hinder finding the truth in issues of justified public interest.”

An overview of the sanctions applied by the National Audiovisual Council in 2012, on the cases where an infringement of personality rights was submitted for examination shows the following



The Council decided to apply high fines at the very beginning of the year, for 3 television stations that were found guilty for violating the right to privacy and human dignity of Romania's former Prime Minister, by broadcasting hidden-camera footage of him naked, without any justified public interest for the issue.

### **Right to privacy and public interest in conflict.**

#### **Emil Boc (former Romanian Prime Minister) naked case.**

Several TV stations have been sanctioned by the National Audiovisual Council at the beginning of the year 2012 with penalties varying between 50.000 and 200.000 Ron (equivalent of 11.500 and 46.000 Euros) for what the members of the Audiovisual Council concluded to be one of the most serious violations of a person's dignity and right to privacy, infringing upon several explicit provisions regarding the respect to human dignity, as addressed by the Audiovisual Regulatory Code and the Audiovisual Law.

During the television show "Un show pacatos" (or "Sin - show"), on the evening of 13<sup>th</sup> – 14<sup>th</sup> February 2012, Antena 1 broadcasted a total of 58 minutes (approximately half of the entire show) of footage captured with a hidden camera of former Prime Minister Emil Boc, completely naked, changing clothing in the dressing room of a gym. The broadcast titled "Super-exclusive! A prominent dignitary has been filmed naked! Images in a few moments!", debuted with a motivation provided by the moderator of the TV show for airing the images "the personal safety of a high-ranked dignitary is a matter of national security[...] This should be of interest for every Romanian, because in a situation similar to the one that you are about to see, the dignitary could be, not filmed, but stabbed, shot or molested by the someone..." (Decizia nr 86-din 16-02-2012, 2012). Ironic comments were made to the former Prime Minister's physical shape and appearance both by the TV host and his guests in the show.

S.C. OCRAM TELEVIZIUNE S.R.L., legally responsible for OTV television station was sanctioned with an identical sanction to the one applied to Antena 1, for broadcasting in the background of their live evening show the images, commenting them ironically and encouraging guests to express their opinion.

Another (smaller) sanction was applied to Romania TV for showing the same footage during their news editions, in order to illustrate news that was condoning Antena 1 actions, signaling infringement to the right to privacy that had as a consequence a record numbers of registered complaints with the Audiovisual Council.

#### ***1. Was there a justified public interest to broadcast the footage?***

##### ***Was the usage of hidden camera necessary, therefore legal?***

The Council concluded that even if the declared purpose of the show was to demonstrate the vulnerability of Romanian officials' security measures, the repeated

broadcasting of the footage and the comments it was associated with indicated the fact that the issue of security was just a pretext. The Council considered that the broadcaster has committed a flagrante violation of a fundamental human right, namely the right to privacy as guaranteed by art. 26 of the Constitution and the laws of broadcasting, harmonized with the European legislation. Council members felt the issue as a whole, was broadcasted in violation of art. 32 paragraph (2) of the Audiovisual Code provisions according to which the interest of the public should not be satisfied at any cost; the mere reference to the right to information cannot justify the violation of private life.

In their evaluation of the decision to broadcast the program, the Council used the criteria for demonstrating the absence of a justified public interest as set out by the provisions of art. 31 of the Audiovisual Code that stipulate that "In the sense of the present code, any problems, facts or events which influence a community or society, are considered of justified public interest in particular on:

- a. the prevention or probation of committing a fact with criminal incidence;
- b. the protection of health or public safety;
- c. reporting false allegations or cases of incompetence that may concern the public."

The Councils' conclusion was that the broadcaster failed to consider an important aspect, namely that the pictures in question were not informative and did not serve the public interest, but concern only the private life of Mr. Emil Boc.

The usage of hidden cameras and the consequent broadcasting of the images obtained were considered unjustified, as the cumulative conditions, listed under art. 36 of the Audiovisual Code, of the written consent for broadcasting of the persons subject to filming or recording and the absence of potential irritation, pain or portraying the person in risky or degrading situations, were not met. As for the legality of the broadcast, the footage was deemed illegal as it did not fall under the exception of justified public interest listed under art. 35 of the same Code

## ***2. What is the relationship between freedom of expression and the right to privacy of public officials?***

The Council reiterated its position on the interaction between freedom of expression as a fundamental principle of the rule of law that requires compliance with domestic and international laws and personality rights, including the right to human dignity, privacy and own image that are conceptualized as core guarantees of any humans' fundamental right to create, contour and express its' own personality with minimum interference. Freedom of expression, although a fundamental right of a democratic society, cannot be exercised as to harm the rights of other members of the community, as the right to own image, dignity, reputation and privacy. Following this reasoning, Councils' members consider freedom of expression as a fundamental



right that requires, however, compliance with domestic and international laws that guarantee to all persons the right to behave according to their options in dealing with other members of the community, provided as other members of society are not harmed.

### **Conclusions:**

The effectiveness of the sanctions applied by the Audiovisual Council is continuously challenged, as several of its more controversial decisions were attacked in Court. As the debate over the incrimination of slander and insult in the Romanian Criminal Code is resuscitated by the recent developments, civil law provisions might no longer be the only ones based on which a compensation for the moral damages caused could be awarded, provided that they have been proven in court, and thus subjected to sometimes random factors such as the local jurisprudence. Which is “the best legal protection system” that can guarantee the respect for personality rights without hindering freedom of expression of journalists and the general right of the public to be informed remains a heated debate in nowadays Romania.

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