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Abstract

The right to privacy is protected both in terms of national and international legislation, being established in a series of legal documents. However, the concept of „privacy” has no universally accepted definition in the specialized literature.

Given the components of the right to privacy, there is an interest in the analysis of the relationship between the right to life of the fetus and the right to privacy of the pregnant woman.

Keywords: privacy, right, fetus, pregnant woman. JEL Classification: K14, K36.

1. Aspects Regarding the Notion of „Privacy”

The right to privacy is guaranteed and protected along with the right to life, both in the national and in the international documents.

Nationally, in Art. 26 par. (1) of the Constitution it is provided that: „public authorities shall respect and protect the intimate, family and private life” and in par. (2) it is stated that: „the individual has the right to dispose of himself, if he does not violate the rights and freedoms of others, public order or morals”.

Internationally, the right to privacy is provided in a series of documents, among which the most important are the Universal Declaration of Human Rights of 1948 and the Convention for the Protection of Human Rights and Fundamental Freedoms.

In Art. 12 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948, it is stated that: „no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation, everyone has the right to the protection of the law against such interference or attacks”.

In Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms it is stated that: „everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority in the exercise of this right except such as it is provided by law and in a democratic society, a necessary measure for national security, public safety or the economic well-being of the country, prevention of disorder or crime, for the protection of health, morals, rights and freedoms of others”.

Most international documents, when one refers to the fundamental rights of the individual, take into consideration the individual who is already born, as a holder of these rights, but, logically, ensuring the perpetuation of mankind requires indisputable protection of the embryo and fetus, of the product of conception in general.

Constitutional texts do not relate mostly to the unborn child and the jurisprudence provides greater protection for the freedom to abort in the expense of the freedom to procreate.

The scope of the term „privacy” is extremely broad, covering „confidentiality, intimacy and individual freedom of choice in sexual orientation
and other issues\textsuperscript{vi}, which creates some difficulty in stating a complete definition for it in order to cover all the aspects taken into consideration.

Over time, both the specialized literature and international institutions authorized in the field gave definitions of the term „privacy“. A known definition is that „the right to privacy is the right of individuals to an anonymous and away from the eyes of the world life\textsuperscript{viii}“. In Resolution\textsuperscript{viii} no. 428 of 1970 of the Council of Europe it is stated that: „in its essential limits the right to privacy of the persons is the possibility of being able to lead lives as they wish, with minimal interference. This right relates to privacy, family life and to that of the home, to the physical and moral integrity, to the honour and reputation, to the fact of not being presented in a false light, to the non-disclosure of unnecessary and embarrassing facts, to the publication of private photographs without authorization, to the protection against espionage and unreasonable or unacceptable intrusion, to the protection against misuse of private communications, to the protection against disclosure of confidential information communicated or received by an individual“.

The European Court of Human Rights ruled in Niemietz v. Germany decision\textsuperscript{ix} of December 16, 1992, 13710/88, that it is neither possible nor necessary to find an exhaustive definition of the term „privacy“. However, it would be too restrictive to limit the scope of its impact on the inner circle in which anyone can perform life as he wishes entirely excluding the outside world of this circle. Privacy may encompass, to some extent, the right of an individual to establish and develop relationships with other people.

In Van Kück v. Germany decision\textsuperscript{x} on June 12, 2003, 35968/97, the European Court of Human Rights ruled that sexual identity is one of the most intimate aspects of private life.

In Laskey, Jaggard and Brown v. United Kingdom decision\textsuperscript{xi} of February 19, 1997, 21627/93, 21826/93 and 21974/93, the Court held that sexual tendencies and behaviors are related to the intimate life of the individual.

2. The Protection of Privacy in the National Legislation

In the Romanian law, the right to privacy, established and guaranteed by the fundamental law of the country, is protected both by criminal and civil law.

Thus, the Criminal Code in force contains three offenses, their presence serving to protect the freedom of the individual, closely related to privacy, namely: the offense of trespassing, provided in Art. 192 of the Criminal Code, the offense of violation of secrecy of correspondence, provided in Art. 195 of the Criminal Code, and the offense of disclosure of professional secrecy, provided in Art. 196 of the Criminal Code.

In the new Criminal Code\textsuperscript{xii}, Chapter IX, entitled „Crimes which Affect Home and Private Life“, of Title I reserved for the offenses against the person, includes the following offenses, in order to protect the concerned fundamental right: the violation of home (Art. 224 N.C.C.), the violation of professional office (Art. 225 N.C.C.), the invasion of privacy (art. 226 N.C.C.) and the disclosure of professional secrecy (art. 227 N.C.C.).

In Chapter II of the Civil Code, entitled „The Respect Due to the Human Being and to Its Inherent Rights“ we find the third section, dedicated to the respect of privacy and human dignity. Article 71 of the Civil Code reads: „(1) Everyone has the right to the respect of his private life. (2) No one shall be subjected to any interference in his private, personal or family life, or in his home, residence or correspondence, without his consent or
without respecting the limits laid down in Art. 75. (3) It is also prohibited from using, in any manner, the correspondence, the manuscripts or other personal documents and information from the privacy of a person without her consent or without respecting the limits laid down in Art. 75”.

3. The Relationship between the Right to Life of the Fetus and the Right to Privacy of the Pregnant Woman

This opposition is built especially internationally, in countries with long democratic tradition, such as USA, Austria, Germany, Belgium, Spain, France, but also by the decisions of the European Court of Human Rights.

An interesting point of view in this matter is Judith Jarvis Thomson's, which states that the right to life of the unborn child must not be analyzed in terms of possible entries in conflict with the mother's right to dispose of her body judging by the following reason:

„the right to life of the embryo/fetus does not imply any moral obligation for the mother to help the fetus to survive, offering her body for nine months. (...) The right to life creates an obligation on others not to kill the holder but it does not impose a positive obligation to do anything to ensure its survival. Accepting this point of view also supports the idea that abortion does not necessarily violate the right to life of the embryo/fetus”.

The issue of the relationship between the right to life of the fetus and the right to privacy of the pregnant woman was also analyzed by Elizabeth Wicks. From the point of view of this author the beginning of human life is represented by the acquisition of the phenotypic integration capacity.

This means that the fetus becomes viable and this represents the fact that his body activity is governed by the brain and his lungs are sufficiently developed to ensure the main organs’ need of oxygen and viability is acquired around the age of twenty-two weeks of the pregnancy, provided that the fetus receives appropriate medical care once his birth occurs.

A key aspect of the undertaken analysis is the assertion that there is an international trend in the recognition of the pregnant woman's right to abortion as a right in itself along with other individual rights, modeled on the provisions of the Protocol on the Rights of Women in Africa.

In the United States of America, the fetal right to life is recognized in many states almost as much as that of a born person.

The U.S. Supreme Court decision Roe v. Wade is of the essence in the analysis of the relationship between the right to life of the unborn child and the right to privacy of the pregnant woman because the Court had invoked in this case the privacy of the pregnant woman. Stating that it is not an absolute right, the Court held that the abortion on demand of the pregnant woman is not prohibited in the first trimester of pregnancy, provided that the procedure is performed in specialized clinics and by physicians trained in this regard. From the second trimester, the state's interest is to protect potential life.

Fetal viability is set at 28 weeks of pregnancy, and from this point on the state may prohibit abortion unless it affects the life or the health of the pregnant woman.

So as pregnancy progresses and the potential person is more likely to be born, the state restricts to prohibit the pregnant woman's right to privacy, understood as the right to dispose of her own body.

But, as it is normal, there are exceptions working for the mother even when the pregnancy is advanced, meaning that it will proceed with interruption of pregnancy in order to save the life or

health of the mother, this being the only option.

In that case we no longer talk about an abortion on demand, but about a therapeutic abortion.

In Austria, related to the provisions of Art. 2 of the European Convention of Human Rights, the Constitutional Court held that these provisions shall not apply to the unborn child xviii.

4. Conclusions

The issue discussed here is extremely sensitive in the context that internationally there is not a unified point of view regarding, on the one hand, to the components of the right to privacy and to the meaning of the term „privacy” and, on the other hand, to the relationship between the right to life of the fetus and the right to privacy of the pregnant woman.

We can see, however, a changed perspective relative to the analyzed issue in that the Member States are trying to establish the limits between which the rights of their citizens to manifest so that an individual's right to not be in conflict with the right of an other.

We believe that the discussed issue is not exhausted and that the further progress should be monitored on how the European Court of Human Rights intends to solve the incumbent cases for trial according to competence.

References

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3. Signed at Rome on November 4, 1950, amended by Protocols No. 3 of May 6, 1963, No. 5 of January 20, 1966 and No. 8 of March 19, 1985 and supplemented by Protocol No. 2 of May 6, 1963, which are part of it; Romania has ratified this Convention by Law no. 30/1994 on the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols to the Convention, published in the „Official Gazette of Romania” no. 135 of May 31, 1994. The Convention was amended most recently in accordance with the provisions of Protocol no. 14 (ETS no. 194), since its entry into force on June 1, 2010. Law no. 30 of May 18, 1994 amended most recently by Law no. 39/2005 on the ratification of the Protocol no. 14 to the Convention for the Protection of Human Rights

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"Except the Irish Constitution which provides in Art. 40 § 3 that: „abortion is prohibited, unless the mother's life is threatened”.


The European Court of Human Rights, the Supreme Court of the United States, the European Constitutional Courts. For details see Michel Lévinet, Fundamental Rights and Freedoms, French University Press, Paris, 2010, p. 49.


For more details see Elizabeth Wicks, The Right to Life, p. 172.
