JUS ET CIVITAS

A Journal of Social and Legal Studies

Data Protection-The Genie in the Bottle. Juridical, Social and Pshycological Approches

Edited by

Cătălina Ştefania Szekely
Dana Volosevici
Dragoş Grigorescu

Coordinator of this Issue
Silviu-Dorin Şchiopu

Vol. V (LXIX) Issue 2

ISSN 2360 – 4026
ISSN L 2360 – 4026

Series Editorial Board:

Pascu Mihai COLOJA (Universitatea Petrol-Gaze din Ploieşti), Laure NURIT (Université de Nantes, France), Olivier PÉTRÉ-GRENOUILLEAU (Université Paris IV, France), Leonard CARUANA de las Cagigas (University San Pablo-CEU, Madrid), Octavian ŢICU (Universitatea Liberă Internaţională din Moldova), Sergiu MUSTEAŢĂ (Universitatea Pedagogică „Ion Creangă" Chişinău, Asociaţia Naţională a Tinerilor Istorici din Moldova), Bogdan MURGESCU (Universitatea Bucureşti), Lucreţiu MIHĂILESCU-BÎRLIBA (Universitatea „Alexandru Ioan- Cuza" Iaşi), Yuliya BOGOYAVLENSKA (Zhytomy State Technological University, Ukraine), Constantin HLIHOR (Universitatea Naţională de Apărare "Carol I", Bucureşti), Silvia CRISTEA (Academia de Studii Economice Bucureşti), Ercan HAYTOGLU (Pamukkale University, Turkey), Mehmet Yaşar ERTAS (Pamukkale University, Turkey), Cătălina-Ştefania SZEKELY (Universitatea Petrol-Gaze din Ploieşti), Dana VOLOSEVICI (Universitatea Petrol-Gaze din Ploieşti), Ioana NICOLAE (Universitatea Transilvania-Braşov).

JUS ET CIVITAS Editor-in-chief:

Viorel CERNICA

JUS ET CIVITAS Editor:

Cătălina-Ştefania SZEKELY

JUS ET CIVITAS Executive Editors:

Dana VOLOSEVICI, Dragoş GRIGORESCU

Jus et Civitas continues the old periodicals of **Buletinul Universităţii Petrol – Gaze din Ploieşti** (2005 – 2013)**, Lucrările Institutului de Petrol şi Gaze din Bucureşti** (1956 – 1959)**, Buletinul Institutului de Petrol, Gaze şi Geologie – Bucureşti** (1960 – 1973), **Buletinul Institutului de Petrol şi Gaze – Ploieşti** (1974 – 1992) and **Buletinul Universităţii "Petrol – Gaze" Ploieşti** (1993 – 2014).

Jus et Civitas is a bi-annual peer-reviewed journal which fosters the dissemination of transdisciplinary research findings related to social and legal studies.

The Journal is indexed in the international data bases: EBSCO, HEINONLINE

websites: www.bulletin.upg-ploiesti.ro; http://jetc.upg-ploiesti.ro/

Editorial Office: Petroleum – Gas University of Ploieşti
Bd. Bucureşti, No. 39, Ploieşti, Romania
Tel.: 0244 575292; Fax: 0244 575847
e-mail: jusetcivitas@gmail.com

** The authors have the all legal and moral responsibility for the content of the papers*

Contents

Silviu-Dorin Şchiopu
Considerations on the Effectiveness of the Data Subjects' Control over the Processing under the General Data Protection Regulation.. 1

Dana Volosevici
Some Considerations on Video- Surveillance and Data Protection………………………………. 7

Oana Șaramet
Protection of Personal Data - Dimension of the Right to Private Life. Fundamental Regulations... 15

Dragoş Lucian Rădulescu
Procedural Law Aspects Regarding Personal Data Items. Absence of Discrimination............. 25

Alina Mărgărițoiu
Vulnerabilities in School Environment and Children's Rights.. 33

Simona Eftimie
Social Networks' Use on Adolescents and Young People.. 39

Corina Iurea
Informed Consent, Fraud and Confidentiality in Psycho-Pedagogic Research Activity............ 45

Dragoş Grigorescu
Education, Ethology and the Problem of Overpopulation.. 53

Mihail Lohănel
Changes Brought to the Appeal for Annulment by Means of the New Civil Procedure Code.. 59

Data Protection-The Genie in the Bottle. Juridical, Social and Pshycological Approches

A genie grants wishes...but does it also provide solutions? The current issue of the Jus et Civitas Revue aims to seek an appropriate answer in this respect, departing from the provisions of the newly standing General Data Protection Regulation, which seems to be the newest trend when it comes the rights of a natural person. This is so because the problem of safe-keeping, transferring, using or misusing the personal data of a data subject seems to become more and more important in a world where the technology occupies a growing space in our life. As a natural consequence, the people in the European Union only wished for a better protection of their personal data so the European Parliament, being the most powerful authority issued the Regulation (EU) 2016/679. A solution was provided. But is this Regulation what we wished for?

Coordinator of this Issue

Silviu-Dorin Şchiopu

Jus et civitas	Vol. V (LXIX) No. 2 /2018	1-6	A Journal of Social and Legal Studies

CONSIDERATIONS ON THE EFFECTIVENESS OF THE DATA SUBJECTS' CONTROL OVER THE PROCESSING UNDER THE GENERAL DATA PROTECTION REGULATION

Silviu-Dorin Şchiopu

Transilvania University of Braşov (Romania)
E-mail: dorinxschiopu@gmail.com, silviu-dorin.schiopu@unitbv.ro

Abstract

According to the General Data Protection Regulation, natural persons should have control of their own personal data and the legal and practical certainty for data subjects should be enhanced. Thus, it should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed. Since the control over the processing is achieved by exercising the rights conferred by the Regulation (EU) 2016/679, knowing about the existence of the processing is a sine qua non condition for the exercise of these rights by the data subjects and implicitly for the control over their own personal data. That's why this short study aims to examine to what extent the right to be informed about the existence of the processing operations contributes to ensure the effectiveness of the control exercised by the data subjects on the processing.

Keywords: GDPR, data subject, right to be informed, control on processing operations, effectiveness

Introduction: On the one hand, in order to be able to verify that the processing of personal data does not infringe[1] the provisions of the General Data Protection Regulation (GDPR)[2] and in order to exercise their rights conferred by this Regulation, such as their right of access to and right to rectify the data being processed, the data subjects first need to know that their personal data is being processed *i.e.* collected, used, consulted, stored or otherwise processed. Since the control over the processing is achieved by exercising the rights conferred by the Regulation (EU) 2016/679, knowing about the existence of the processing is a *sine qua non* condition for the exercise of these rights by the data subjects and implicitly for the control over their own personal data. That's why the right to be informed about the processing operation, just like the

[1] E.g. that the processing complies with the principles set out in article 5 GDPR (principles relating to processing of personal data) and with one of the criteria for making data processing legitimate (legal ground for the processing) listed in article 6 GDPR. See also Court of Justice of the European Union, Judgement of 1 October 2015, *Bara and Others*, C .201/14, ECLI:EU:C:2015:638, published in the electronic Reports of Cases (Court Reports - general), paragraph 33.

[2] *Regulation (EU) 2016/679* of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, published in The Official Journal of the European Union, L 119 from 4 May 2016, p. 1–88.

other rights of the data subject, is the normative expression of the principle of control and of the data subject's participation in the processing of its own personal data[3].

On the other hand, there are circumstances when the data subjects are unaware of the personal data processing, *i.e.* the personal data has not been obtained by the controller directly from the data subject, but from another controller or a third party who collected it from the data subject. Such situations may occur in practice when, under article 14 paragraph (5) GDPR, in four cases the controller is not obliged to inform the data subject about the processing of personal data, despite the fact that personal data have not been obtained directly from the data subject.

First case – *the data subject already has the information*

The obligation to inform where the personal data has not been obtained directly from the data subject doesn't exist when the latter already has that information. This relates to situations in which the data subject has already been informed that its data will be processed for a specific purpose by a certain controller[4]. The principle of responsibility requires controllers to demonstrate and document what information the data subject already possesses, when and how the data subject has received it, and that no change has occurred that would make the personal data inaccurate.

Although the information needs to be provided only to the extent that the data subject doesn't already hold that information, as an example of good practice, Article 29 Working Party recommends the subsequent provision of all the information provided by article 14 paragraph (1) and (2) GDPR, even if no changes have taken place, as to ensure that the data subjects are properly informed of the data processing and their rights[5]. Practically, in this hypothesis, it is certain that the data subject is already aware of the personal data processing, so the control could be carried out.

Second case – *the provision of such information proves impossible or would involve a disproportionate effort or is likely to render impossible or seriously impair the achievement of the objectives of that processing*

Proves impossible ▪ If the provision of the information proves to be impossible then the controller must be able to demonstrate the factors preventing him from providing the data subject with that information. According to Article 29 Working Party, as soon as the factors that determined the impossibility no longer exist and it becomes possible to provide the information, the controller must do so[6].

The failure to provide information is usually determined by the lack of contact data of the data subject. In such a case, it was decided in the national case-law that if personal data were not obtained from the data subjects and the contact details of the data subjects are not held by the controller, the information of the data subject can be achieved by

---

[3] Gabriela Zanfir, *Protecţia datelor personale: drepturile persoanei vizate*, C.H. Beck Publishing House, Bucureşti, 2015, p. 81.
[4] European Union Agency for Fundamental Rights, Council of Europe, *Handbook on European data protection law,* Publications Office of the European Union, Luxembourg, 2014, p. 97.
[5] Article 29 Data Protection Working Party, *Guidelines on transparency under Regulation 2016/679*, WP260 rev.01, as last Revised on 11 April 2018, p. 27-28, document consulted on 27.10.2018 and available at http://ec.europa.eu/newsroom/article29/document.cfm?action=display&doc_id=51025. The European Data Protection Board endorsed the GDPR related WP29 Guidelines.
[6] *Idem*, p. 29.

including the information within the web site, so it is not necessary to provide individual information to each party, information that would indeed be impossible to achieve[7]. Thus, the provision of information can be accomplished by establishing appropriate information clauses on the controller's home web page as well as in the privacy policy section of the site.

However, allowing the processing of personal data regarding a data subject whose contact details are unknown to the controller may have adverse effects on that data subject, for example in the case of data taken from the portal of the courts, precisely because of the length of time that elapses between the beginning of the processing and the moment when the data subject becomes aware, by its own means, of that processing. Practically, the exercise of control in this situation is left to... hazard.

Involves a disproportionate effort ▪ The situation in which the provision of information would involve disproportionate efforts may arise in particular when the processing of personal data takes place for purposes of archiving in the public interest, for scientific or historical research purposes or for statistical purposes, so that, as a rule, other data processing cannot benefit from this exception. In order to assess the effort required to provide information, criteria such as the number of data subjects, the age of the data and any appropriate safeguards will be taken into account[8].

Article 29 Working Party recommends controllers, who would like to rely on this exemption from the obligation to inform the data subjects, to put into balance the effort that the controller requires to provide the information to the data subjects, on the one hand, and the effects on the data subjects if the information would not have been provided to them, on the other hand. In addition, this assessment should be documented by the controller in accordance with its accountability obligations. If the evaluation reveals that the provision of information would involve disproportionate efforts, according to article 14 paragraph (5) letter b) GDPR, the operator must take appropriate measures to protect the rights, freedoms and legitimate interests of the data subjects.

A particular case is when the controller processes personal data that does not involve the identification of the data subject, as in the case of pseudonymized data[9], and can demonstrate that he is unable to identify the data subjects. In such a situation, according to article 11 paragraph (1) GDPR, the controller is not required to obtain or process additional information in order to identify the data subject for the sole purpose of complying with the obligation to inform. At least for pseudonymized data, since there is no risk of identifying the data subject, there is no need for control over the processing operation.

[7] See Bucharest Tribunal, section II, *civil sentence no. 6120 of 2 October 2014*, unpublished.

[8] For example, if a group of genealogists obtains a dataset of 20.000 people, but the data was collected half a century ago, it was not updated and did not contain the contact data of the data subjects, given the size of the database and its age, the identification of each data subject in order to be provided the information prescribed by art. 14 would involve a disproportionate effort for the researchers – see Article 29 Data Protection Working Party, *op. cit.*, p. 30-31.

[9] According to article (4) point 5 GDPR, by "pseudonymisation" we understand the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.

On the other hand, even when the data is old, the processing can still have an adverse effect on the data subjects. In the latter case, if the provision of information would involve a disproportionate effort, this will weaken the effectiveness of the data subjects' control over the processing. However, recital (4) reminds us that the right to the protection of personal data is not an absolute right, but it must be considered in relation to its function in society and also be balanced against other fundamental rights, in accordance with the principle of proportionality. Thus, in order to counterbalance the lack of information to the data subject, the controller has the obligation take appropriate measures to protect the rights, freedoms and legitimate interests of the data subjects, which otherwise would have been protected through the control exercised by them.

Renders impossible or seriously impairs the achievement of the processing's objectives ▪ Where the provision of information is likely to render impossible or seriously impair the achievement of the objectives of the processing of personal data, the controller must, in order to be able to rely on this exception, demonstrate that simply supplying the information would have the effect of cancelling the processing objectives[10].

Third case – *the obtaining or disclosure of personal data is expressly laid down by Union or Member State law*

Where the obtaining or disclosure of data is expressly provided for in Union or national law to which the controller belongs, the latter is exempted from the obligation to inform the data subject. This exception is conditional on the fact that the law must provide for appropriate measures to protect the legitimate interests of the data subject [article 14 paragraph (5) letter c) GDPR] and, as a consequence, the operator must be able to demonstrate that the obtaining or disclosure of personal data complies with those measures. If the law does not provide for appropriate measures to protect the legitimate interests of the data subjects, although obtaining or disclosure is expressly laid down by Union or Member State law, the controller cannot rely on this exception.

The legislative measure does not necessarily require a legislative act adopted by a parliament but such a legislative measure must be clear and precise and its application should be predictable for the data subjects in accordance with the case-law of the Court of Justice of the European Union European and the European Court of Human Rights. Thus, for example, a protocol drawn up between two public authorities of a Member State which was not the subject of official publication doesn't constitute a legislative measure[11].

As Article 29 Working Party has also stated, the controller should specify to the data subjects that they obtain or disclose personal data in accordance with the law in question, unless there is a legal prohibition preventing the controller from doing so. Article 29 Working Party also stressed that the obligation to provide information also subsists when the controller is legally obliged to obtain the personal data directly from

[10] For example, a bank legally required to report to the competent authorities any suspicious activity on client accounts will not be able to inform the customer (data subject) about the reporting of a bank transfer as such information would seriously affect the objectives of the money laundering legislation. However, at the opening of the account, the bank will be able to inform its customers in general that their personal data can be processed to combat money laundering – see Article 29 Data Protection Working Party, *op. cit.*, p. 31-32.

[11] See Court of Justice of the European Union, Judgement of 1 October 2015, *Bara and Others*, C201/14, ECLI:EU:C:2015:638, published in the electronic Reports of Cases (Court Reports - general), paragraph 40.

the data subject, in which case the operator will have the obligation to inform regulated under article 13 GDPR, the only exception being the case where the data subject already holds the information[12].

Given the general legal assumption that the law is known by its subjects, it could be argued that, where data are collected from a data subject, the data subject has the information. Nonetheless, according to the previous edition of the Handbook on European data protection law, issued by the European Union Agency for Fundamental Rights and the Council of Europe, since the knowledge of the law is only an assumption, the principle of fair processing actually requires that the data subject be informed even if the processing is laid down by law[13]. If the information of the data subject should be ensured in cases of collection of data from the latter, the more it is required when the data have not been obtained from the data subject.

Fourth case – ***the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy***

Where personal data must remain confidential under a statutory obligation of professional secrecy governed by Union or national law, including a legal obligation to preserve secrecy, according to the Article 29 Working Group, in order to be able to rely on this exception, the controller must be able to demonstrate not only the existence of this obligation but also the way in which it prevents him from providing the data subject with the information[14].

Since confidentiality typically does not pose the problem of passing on personal data, with the exception of a legal obligation on the part of the controller, in this case, the operator has no distinct obligation to take appropriate measures to protect the legitimate rights, freedoms and interests of the data subject, such obligation being implicitly part of the professional secrecy or the statutory obligation of secrecy.

Instead of a conclusion: The Handbook on European data protection law stated on the obligation to inform the data subject, "this obligation does not depend on a request from the data subject, rather the controller must proactively comply with the obligation, regardless of whether the data subject shows interest in the information or not"[15]. Since knowing about the existence of the processing is a *sine qua non condition* for the exercise of the rights granted to the data subjects by the General Data Protection Regulation and implicitly for the control over their own personal data, the absence of information provided to the data subject in particular where the data were not collected directly from the latter can have only a detrimental effect on the effectiveness of the control of the processing. This diminution in effectiveness is to some extent offset in

[12] Article 29 Data Protection Working Party, *op. cit.*, p. 32.
[13] See European Union Agency for Fundamental Rights, Council of Europe, *op. cit.*, 2014, p. 97-98.
[14] For example, a doctor has the obligation to keep professional secrecy in relation to his patients, so if a patient discloses that some close relatives suffer from the same genetic disease and provide the physician with some personal data of these relatives, the doctor will not be obliged to inform the data subjects (the patient's relatives), and these data will remain confidential. If the doctor provided information to those relatives under the obligation to inform, the obligation of confidentiality owed to his patient would be infringed. – Article 29 Data Protection Working Party, *op. cit.*, p. 33.
[15] European Union Agency for Fundamental Rights, Council of Europe, *Handbook on European data protection law*, Publications Office of the European Union, Luxembourg, 2018, p. 207.

some cases by the controller's obligation to take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, but is not averted when the controller is processing personal data regarding a data subject whose lack of contact details makes the obligation to inform impossible to perform. That is why we can say that although the effectiveness of the control is not always guaranteed under the GDPR, other legal mechanisms offset in part the possible adverse effects of the processing.

Bibliography

Article 29 Data Protection Working Party, *Guidelines on transparency under Regulation 2016/679*, WP260 rev.01, as last Revised on 11 April 2018: http://ec.europa.eu/newsroom/article29/document.cfm?action=display&doc_id=51025.
Court of Justice of the European Union, Judgement of 1 October 2015, *Bara and Others*, C-201/14, ECLI:EU:C:2015:638, published in the electronic Reports of Cases (Court Reports - general).
European Union Agency for Fundamental Rights, Council of Europe, *Handbook on European data protection law*, Publications Office of the European Union, Luxembourg, 2014 and 2018.
Zanfir Gabriela, *Protecţia datelor personale: drepturile persoanei vizate*, C.H. Beck Publishing House, Bucureşti, 2015.

Legislation

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, published in The Official Journal of the European Union, L 119 from 4 May 2016.

Considerații privind efectivitatea controlului exercitat de persoanele vizate asupra prelucrării în lumina Regulamentului general privind protecția datelor

Rezumat

Potrivit Regulamentului general privind protecția datelor, persoanele fizice ar trebui să aibă control asupra propriilor date cu caracter personal, iar securitatea juridică și practică pentru persoanele vizate ar trebui să fie consolidată. Astfel, ar trebui să fie transparent pentru persoanele fizice că datele cu caracter personal care le privesc sunt colectate, utilizate, consultate sau prelucrate în alt mod. De vreme ce controlul asupra prelucrării se realizează prin intermediul exercitării drepturilor conferite de Regulamentul (UE) 2016/679, a cunoaște existența prelucrării constituie o condiție sine qua non pentru exercitarea acestor drepturi de către persoanele vizate și implicit a controlului asupra propriilor date cu caracter personal. De aceea acest scurt studiu urmărește a analiza în ce măsură dreptul de a fi informate cu privire la existența operațiunilor de prelucrare contribuie la a asigura efectivitatea controlului exercitat de persoanele vizate asupra prelucrării.

Jus et civitas	Vol. V (LXIX) No. 2/2018	7-14	A Journal of Social and Legal Studies

SOME CONSIDERATIONS ON VIDEO - SURVEILLANCE AND DATA PROTECTION

Dana Volosevici

Petroleum – Gas University of Ploiești, București Blvd, 39, Ploiești
dana.volosevici@vplaw.ro

Abstract
The massive spread of digital technologies has raised new challenges in respect of certain values and rights. In 2016, it was estimated that there were approximately 350 million video surveillance cameras installed worldwide. In this context, it is important to debate and propose concrete measures to address the issues of surveillance, including the challenges for the protection of personal data and human rights generally, while ensuring security.

Key-words: data protection, GDPR, video-surveillance

The massive spread of digital technologies has raised new challenges in respect of certain values and rights. Among the most visible and sensitive of these challenges are the multiplication of public and private files, the video-surveillance, the increasing dissemination of personal data and the growing sophistication of processing. In 2016, it was estimated that there were approximately 350 million video surveillance cameras installed worldwide[1]. In this context, it is important to debate and propose concrete measures to address the issues of surveillance, including the challenges for the protection of personal data and human rights generally, while ensuring security.

In accordance with the Regulation 679/2016, personal data means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person[2]. A name and surname, a home address, an identification card number; location data, an Internet Protocol (IP) address, a cookie ID, the advertising identifier of a phone are examples of personal data that is used in

---

[1] Campbel, F., *The GDPR's Impact on CCTV and Workplace Surveillance*, https://www.securityprivacybytes.com/2018/02/the-gdprs-impact-on-cctv-and-workplace-surveillance/.

[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), published in the Official Journal of the European Union, L119/4.5.2016, Article 4 (1).

relation to an important number of data subjects. Processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction[3].

Video-surveillance consists in monitoring of a specific area, event, activity, or person by means of an electronic device or system for visual monitoring. Video-surveillance footage often contains images of people and the information can be used to identify these people either directly or indirectly. Recognizable facial images always constitute personal data. This is the case even if the individuals are not known to or not identified by the operators of the system, but the images are taken in such a way that they can be identified. Less clearly visible images of an individual may also constitute personal data provided that the individuals are directly or indirectly (combined with other pieces of information) identifiable. Let's take a specific case, cameras having limited resolution are installed on a building to monitor the overall situation in the surrounding area for security purposes. Although the camera footage may not always yield recognizable facial images, it would be possible indirectly identify the persons captured on the cameras using information derived from the camera footage in combination with other information collected by the system, such as, for example, a car plate number).

Moreover, the purpose pursued by the data controller in the data processing is to identify people. Therefore, even if identification would only happen in a small percentage of the material collected, "as the purpose of video surveillance is, however, to identify the persons to be seen in the video images in all cases where such identification is deemed necessary by the controller, the whole application as such has to be considered as processing data about identifiable persons, even if some persons recorded are not identifiable in practice."[4]

Therefore, the information obtained by video-surveillance qualifies as personal data, and the principles relating to processing of personal data, stated by GDPR are fully applicable. Moreover, due to the location of the camera, the video-surveillance system might record images that might contain special categories of data, such as trade union membership or certain political opinions or religious or philosophical beliefs. Or, under the Article 9 GPDR, Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

The principles to be observed are expressly stated by the Article 5 of GDPR. Thus, Personal data shall be: (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency'); (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the

---

[3] GPDR, Article 4 (2).
[4] Article 29 Data Protection Working Party, Opinion 4/2007 on the concept of personal data, adopted on 20th June, 01248/07/EN WP 136, http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm.

public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation'); (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimization'); (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy'); (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to implementation of the appropriate technical and organizational measures required GPDR in order to safeguard the rights and freedoms of the data subject ('storage limitation'); (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures ('integrity and confidentiality'). Moreover, the controller shall be responsible for, and be able to demonstrate compliance with the abovementioned principles ('accountability').

The obligations incumbent primarily upon those who decide whether to install video-surveillance systems and are responsible for their operation. Under GDPR, controller means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. However, suppliers or other contractors assisting in the installation and operation of video-surveillance systems, should also apply the GDPR principles, especially if they may be qualified as processors, i.e. a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

Video-surveillance is used in public places and by institutions or companies who operate closed circuit television systems „CCTV", comprising of a set of cameras monitoring a specific protected area, with additional equipment used for transferring, viewing and/or storing and further processing the CCTV footage.

When analyzing the lawfulness of the processing activities, it is important to that into consideration that, in some circumstances, video-surveillance may a considerable intrusion into someone's private life. As an example, in Köpke v. Germany „the Court observes, on the one hand, that the covert video surveillance of an employee at his or her workplace must be considered, as such, as a considerable intrusion into the employee's private life. It entails a recorded and reproducible documentation of a person's conduct at his or her workplace, which the employee, being obliged under the employment contract to perform the work in that place, cannot evade."[5]

Some other issue that should be envisaged is that video surveillance is no longer just about capturing footages. The arrival of artificial intelligence (AI)-based analytics and

---

[5] European Court of Human Rights, Karin Köpke v. Germany, Application no. 420/2007, decision of 5 October 2010.

object-identification systems permit the access to massive amounts of information that would need to be protected under the new regulation. As an example, Unusual Motion Detection (UMD)[6] technology uses AI in video search. Without any pre-defined rules or setup, UMD technology is able to continuously learn what typical activity in the scene looks like, and then detect and flag unusual motion. This allows operators to search through large amounts of video faster, as UMD focuses their attention on the atypical events that may need further investigation.

Another relevant example is Ella, a small, discreet computer installed on a local network with the rest of the security cameras. Ella is capable of analyzing interesting events from 8 separate 1080P streams[7]. Ella automatically scans for cameras on the network and asks for a camera to be allocated. From there it breaks down the surveillance video into metadata and sends it to a secure server, where it's analyzed by deep learning algorithms and transformed into searchable data. The machine learning engine comes with a host of existing tags, allowing the operator to query any camera footage for people, animals, colors, vehicles, and more right out of the box.

Ella also enables highly specific activity alerts. The camera may notify the operator regarding specific objects and events that may be relevant. To do so, the operator can train Ella to learn what objects and activities are important, by tagging query results with a thumbs-up or thumbs-down[8].

Especially in these cases, it is important to prove that the personal date is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed and that other less intrusive forms and ways to achieve the purpose are ineffective.

As regards lawfulness of the processing, it shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
(c) processing is necessary for compliance with a legal obligation to which the controller is subject;
(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

[6] http://avigilon.com/products/video-analytics/umd/.
[7] http://store.icrealtime.com/products/Network-Equipment/ella-box.html.
[8] https://www.techhive.com/article/3242989/security-cameras/ella-brings-smarter-searching-to-home-security-cameras.html.

There are many legitimate reasons why controllers use CCTV, such as the control of the access to the premises, the security of the buildings, the safety of staff and visitors, as well as property and information located or stored on the premises. In employment relationship, the employers may invoke reasons like preventing employee misconduct, ensuring compliance with health and safety procedures, monitoring and improving productivity. When employers rely on legitimate interests as the legal basis for processing it is mandatory to prove the legitimacy of their stated interest (and potentially the interests of third parties) and balance that interest against the interests, rights and freedoms of their employees.

Under Romanian law, where electronic monitoring and / or video surveillance systems are used in the workplace, processing of employees' personal data in order to achieve the legitimate interests pursued by the employer is only permitted if:

a) the legitimate interests pursued by the employer are duly justified and prevail over the interests or rights and freedoms of the data subjects;
b) the employer has made the obligatory, complete and explicit information of the employees;
c) the employer consulted the trade union or, as the case may be, the representatives of the employees before installing the monitoring systems;
d) other less intrusive forms and ways to achieve the purpose pursued by the employer have not previously proved effective; and
e) the length of storage of personal data is proportional to the purpose of the processing, but not more than 30 days, except for the situations expressly regulated by the law or the duly justified cases.[9]

As regards the legitimate interests pursued by the employer, GDPR states that the legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller.[10]

When the controller is the employer, the criteria states by ECHR in Bărbulescu v. Romania may be applicable[11]. We recall that the applicant complained, in particular, that his employer's decision to terminate his contract had been based on a breach of his right to respect for his private life and correspondence as enshrined in Article 8 of the Convention and that the domestic courts had failed to comply with their obligation to protect that right. The case concerned the decision of a private company to dismiss an employee after monitoring his electronic communications and accessing their contents. The ECHR pointed out that despite of the rapid developments in technology, it considers that proportionality and procedural guarantees against arbitrariness are

[9] Article 5 of the Law 190/2018 on implementing measures of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), published in the Official Gazette of Romania no. 651/26.07.2018.
[10] GDPR, recitals 47.
[11] European Court of Human Rights, Grand Chamber Case of Bărbulescu v. Romania, Application no. 61496/08, Judgment of 5 September 2017, para. 121, 122.

essential. In this context, the domestic authorities should treat the following factors as relevant:

(i) whether the employee has been notified of the possibility that the employer might take measures to monitor by video-surveillance;
(ii) the extent of the monitoring by the employer and the degree of intrusion into the employee's privacy;
(iii) whether the employer has provided legitimate reasons to justify the use of video-surveillance;
(iv) whether it would have been possible to establish a monitoring system based on less intrusive methods and measures
(v) the consequences of the monitoring for the employee subjected to it and the use made by the employer of the results of the monitoring operation, in particular whether the results were used to achieve the declared aim of the measure
(vi) whether the employee had been provided with adequate safeguards, especially when the employer is monitoring operations were of an intrusive nature.
The employer shall be able to prove that less intrusive forms and ways to achieve the goal pursued by the employer have not previously proved effective. For example, in order to secure business properties, the employer could consider a motion sensor, or a camera pointed at the doors rather than at the workspaces of employees. This obligation, stipulated by the Romanian law for the cases when the employer grounds the procession on legitimate interests, is applicable for all other grounds of processing, since, in accordance with the Article 4(1)(c) of GDPR, personal data must be "adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed".

In order to choose the appropriate tool, the controller should carefully identify and evaluate the risks. If the video-surveillance is carried out for security purposes, the controller should detail the types of security incidents that are expected to occur in the area under surveillance and justify the existence and extent of those risks. It is advisable that the controller specify if the purpose of the video-surveillance is to deter, prevent or investigate. In Barbulescu v. Romania, the ECHR states that "The Court is compelled to observe that the Court of Appeal did not identify what specific aim in the present case could have justified such strict monitoring. Admittedly, this question had been touched upon by the County Court, which had mentioned the need to avoid the company's IT systems being damaged, liability being incurred by the company in the event of illegal activities in cyberspace, and the company's trade secrets being disclosed. However, in the Court's view, these examples can only be seen as theoretical, since there was no suggestion that the applicant had actually exposed the company to any of those risks."[12]

Once the risks are identified and evaluated, the controller is able to choose the right tool, using a wide range of possibilities: access control systems or by security personnel, introducing or upgrading alarm systems, motion control system, outdoor security lighting. Only if such tools are demonstrated to be insufficient, video-surveillance should be considered as a legitimate choice. The number of cameras, their location, the system technical specifications are another indicator of the complexity and size of a surveillance system and the controller should be able to explain its choice.

[12] European Court of Human Rights, Grand Chamber Case of Bărbulescu v. Romania, para. 153.

When cameras are installed for purposes of security and access control, the location of the cameras should be chosen in such a way that they could cover the areas containing sensitive information, high-value items or other assets requiring heightened protection for a specific reason and entry and exit points to the buildings.

As regards the length of storage of personal data, it should be proportional to the purpose of the processing, but not more than 30 days, except for the situations expressly regulated by the law or the duly justified cases. The controller may decide to establish a two-level length of storage: the first length will apply as a general rule, and the second level will be applicable if there is a need of further investigation. When cameras are installed for purposes of security, one week should be more than sufficient for the controller to make a decision whether to retain any footage for longer in order to further investigate a security incident or use it as evidence.

Another category of obligations is related to its employees and employees' representatives. The employer has to notify the employee of the possibility that the employer might take measures to monitor by video-surveillance and to consult the trade union or, as the case may be, the representatives of the employees before installing the systems.

As soon as the employment relationship starts, the employer is obliged to take appropriate measures to provide any information referred to in Articles 13 and 14 relating to processing to the employees in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

When deciding to install video-surveillance, and prior to such installation, the employer shall consult the trade union. Under Romanian law, 'consultation' means the exchange of views and establishment of dialogue between the employees' representatives and the employer. Therefore, obtaining the trade union consent in not mandatory. Of course, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees. Consultation shall take place: (a) while ensuring that the timing, method and content thereof are appropriate, at the relevant level of management and representation, on the basis of information supplied by the employer of the opinion which the employees' representatives are entitled to formulate, in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate.

Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given free consent to the processing operation. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.[13] In employment relationship, Working Party 29 pointed out that "it is important to state that employees are seldom in a position to freely give, refuse or revoke consent, given the dependency that results from the employer/employee relationship. Unless in exceptional situations, employers will have to rely on another legal ground than consent - such as the necessity

[13] GPDR, recital 42.

to process the data for their legitimate interest. However, a legitimate interest in itself is not sufficient to override the rights and freedoms of employees."[14]

The legal consequences of video surveillance are quite extensive, since both fundamental rights and personal data are at stake, therefore, the use of video surveillance should be lawful and accepted by the data subjects. The legal provisions and the case law must follow the development and the spread of digital technologies, but the controllers should integrate statutory and moral rules in the procedures related to video surveillance.

Bibliography

Beaugrand Th., Marcellin S., Staub, S., Castets-Renard C, Blum P., Rasle B, Brogli M., Younes-Fellous V. (2017) *Protection des données personnelles*, Paris: Editions Législatives, 2017

Bourgeois, M., *Droit de la donnée. Principes théoriques et approche pratique*, LexisNexis, Paris, 2017.

Mahmood Rajpoot, Q. Jensen, Christian D., *Video Surveillance: Privacy Issues and Legal Compliance,* in Promoting Social Change and Democracy through Information Technology, http://orbit.dtu.dk/files/110934780/Video_Surveillance_Privacy_issues_and_legal_compliance.pdf .

Article 29 Data Protection Working Party, *Opinion 08/2001 on the processing of personal data in the employment context*, WP48, url: http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2001/wp48_en.pdf, 13 September 2001.

Article 29 Data Protection Working Party, Opinion 4/2007 on the concept of personal data, adopted on 20th June, 01248/07/EN WP 136, http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm.

Article 29 Data Protection Working Party, *Opinion 02/2017 on data processing at work*, WP249, url: http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=610169, 8 June 2017.

European Court of Human Rights, Karin Köpke v. Germany, Application no. 420/2007, Decision of 5 October 2010.

European Court of Human Rights, Grand Chamber Case of Bărbulescu v. Romania (Application no. 61496/08), Judgement of 5 September 2017.

Considerații privind supravegherea video și protecția datelor cu caracter personal

Rezumat

Răspândirea masivă a tehnologiilor digitale a generat noi provocări cu privire la valori și drepturi. În 2016, se estima că în lume au fost instalate aproximativ 350 de milioane de camere de supraveghere video. În acest context, este important să se dezbată și să se propună măsuri concrete pentru abordarea aspectelor referitoare la supravegherea video, inclusiv a celor privind provocările legate de protecția datelor cu caracter personal și a drepturilor omului în general.

[14] Article 29 Data Protection Working Party, *Opinion 2/2017 on data processing at work*, Adopted on 8 June 2017, 17/EN WP 249, p. 4.

Jus et civitas	Vol. V (LXIX) No. 2 /2018	15-24	A Journal of Social and Legal Studies

PROTECTION OF PERSONAL DATA - DIMENSION OF THE RIGHT TO PRIVATE LIFE. FUNDAMENTAL REGULATIONS

Oana Șaramet

Transilvania University of Braşov (Romania)
E-mail: oana.saramet@unitbv.ro

Abstract
Since the proclamation of the fundamental rights of every human being through the Universal Declaration of Human Rights, by the pacts, protocols, charts, conventions, declarations that have followed it at international or regional level, often even through their preamble, a "Given" to any of us, regardless of nationality, citizenship, age, gender, color, social or ethnic origin, race, language, religion, opinion, political affiliation, wealth, namely human dignity. Recognizing this quality of any human being, implicitly, in our opinion, it was necessary, at least recognized, if not even protected and even guaranteed, the existence of a private life and, implicitly, a right to it. The content and dimensions of this right have not been established in international documents, and it is preferable that their identification be made through the institutions or courts, where appropriate, responsible for guaranteeing recognition and enforcement of this right. Thus, it was possible to continually and continuously update this content by reference to the social reality in a continuous evolution. So we can now see what is meant by the concept of private life today, but that we can no longer ignore one of its dimensions, which should be acknowledged not only by a legal consecration, but also by an effective application of legal provisions, namely the protection of personal data precisely in order not to affect the private life of a human being, nor, implicitly, its dignity.

Keywords: human dignity, law, privacy, protection, personal data

Introduction: All human beings are part of human society, as a primary form of organization, a reality so obvious that we should not even say it. However, each of these forms part of other forms of social organization, larger or smaller, according to their own needs and desires, such as a nation, people, a local community, or a religious or other kind, a group of friends. We become part of such different communities as nature, smaller or larger, because we are specific to enter into social relationships with their members.

But does this social relationship have no boundaries, it can interfere, unconditionally and unlimitedly, with the private aspects of our life? But what does this notion of "private life" mean?

By international, regional and national regulations, through doctrinal explanations, but also by jurisprudential explanations, we tried to identify this notion but also to at least, a right to privacy, as well as its protection for any human being. In this approach, the evolution of this notion and implicitly of the dimensions of the right has been surprised

at the three mentioned levels - internationally, regionally and nationally, as well as at the same time at the level of several states or several international organizations with skills in human rights and their protection.

This year, 2018, in the context of the Cambridge Analytical Scandal or the application, from 25 May 2018, of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals regarding the process of protection of individuals concerning their personal data and the free circulation of such data and repealing Directive 95/46 / EC (General Data Protection Regulation)[1] more than ever, we spoke about the protection of personal data and, implicitly, the right of each of us to protection of these data.

As many international, regional and national human rights regulations do not expressly refer to such a right, its implicit recognition has been made in terms of protected fundamental values such as human dignity or, in some cases, including by reference to the right to privacy.

Concepts presentation: Thus, even the Universal Declaration of Human Rights, by art. 12[2] has provided for the right to private life, emphasizing the dimension of personal and family life to which no interference can be brought. Although the stipulations of the International Fundamental Human Rights Act, namely the International Covenant on Civil and Political Rights[3] could have developed these provisions, including the lack of radical changes in the social reality, the legislator has only determined to take over the text of the statement, without any change or addition.

The human rights regulations, developed at regional level, based on the international ones mentioned above, have enshrined this right to private life in somewhat similar, but undeveloping, and much less, undeparting from those regulations which inspired them. Thus, at Europe,[4] the European Convention on Human Rights [5], as regards the content

---

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council from 27 April 2016 concerning the protection of individuals regarding the processing of personal data and on the free circulation of such data and repealing Directive 95/46 / EC published in Official Journal of the European Union L119 of 04 May 2016.

[2] This article provides that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". This Declaration was adopted by the UN General Assembly on 10 December 1948, by its Resolution 2171 A/III. Romania signed the Declaration on 14 December 1955, when it became member of the United Nation Organization, as it is settled by the Resolution R 955 (X) of the UN General Assembly.

[3] Article 17 provides that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." This Covenant was adopted and opened for signature by the General Assembly of United Nations, resolution 2200A (XXI) of 16 December 1966, and entered into force on March 23rd 1976, in accordance with Article 49. Romania has ratified the International Covenant on Civil and Political Rights on October 31st 1974, by Decree no 212 which was published in the Official Gazette of Romania, Part I, no 146 from November 20th 1974.

[4] How regulations, similar to those at the Council of Europe level, have been adopted by other regional organizations on other continents, we consider it appropriate to recall their possible regulations on the right to privacy. Thus, by the American Convention on Human Rights Pact of San José, as amended by the Buenos Aires Protocol signed on February 27, 1967 (It was adopted at the Inter-American Specialized Conference on Human Rights by the Organization of American States, San José, Costa Rica, 22 November 1969, is available at: https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm, accessed on: 07.03.2018),

of the law, is identical to the one in the above-mentioned international documents, the regulation being extensive, more detailed as to the limitations, the terms under which the State, through its public authorities, to interfere on the appliance of this right, limiting them to the necessity in a democratic society imposed by certain exceptional situations that concern, for example, national security or the protection of the rights and freedoms of others. Recently, what allowed the legislator at the level of the European Union to consecrate two fundamental rights, or to reach new dimensions in the "classical" ones, the Charter of Fundamental Rights of the European Union identified, by article 8[6], expressly and distinct from the right to private and family life, the right to the protection of personal data. From the analysis of this regulation of this right, we will be able to identify three aspects, namely that for everyone this right is guaranteed; the processing of personal data is allowed and possible, but only if respected some terms,

---

it is provided, by article 11, that the right to privacy consists in everyone's right to have his honor respected and his dignity recognized, but also in the fact that no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. This article provides, especially, that everyone has the right to the protection of the law against such interference or attacks, this way it is reinforced the idea of protection which has to be offered by the law to everyone. Also, by article 18 letter b), Cairo Declaration on Human Rights in Islam, adopted and proclaimed by Organization of Islamic Conference resolution 217 A (III) of adopted on 5 August 1990 (It is available at: http://www.bahaistudies.net/neurelitism/library/Cairo_Declaration_on_Human_Rights_in_Islam.pdf, accessed on: 07.03.2018) provides that everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships, but also that it is not permitted to spy on him, to place him under surveillance or to besmirch his good name. Even this convention underlines that the State shall protect him from arbitrary interference. In another conventions, namely the African (BANJUL) Charter on Human and Peoples' Rights (It is available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf, accessed on: 07.03.2018), it is settled, by article 5, that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. Although this last convention does not stipulate the right to privacy, knowing is a convention that regulates fundamental rights on a continent at the beginning of this path, it does not mean that indirectly we could not talk about recognizing this kind of right, even it's only at an early stage, given that human dignity is recognized as a fundamental value inherent in any human being.

[5] Article 8, referring to the right to respect for private and family life, provides that "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 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." The Convention for the Protection of Human Rights and Fundamental Freedoms was adopted at the level of the Council of Europe, and was opened for signature in Rome on 4 November 1950 and came into force in 1953. Romania has ratified this Convention on April 18th 1994, by Law no 30 which was published in the Official Gazette of Romania, Part I, no 135 from May 31st 1994.

[6] Article 8 from din Charter of Fundamental Rights of the European Union (This Charter was adopted at Strasbourg, in 2000, but has become legally binding on the entry into force of the Treaty of Lisbon, signed by Member States of European Union, on December 13th 2007, and entered into force on December 1st 2009, being part of this) provides that: "(1) Everyone has the right to the protection of personal data concerning him or her. (2) Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. (3) Compliance with these rules shall be subject to control by an independent authority."

for specified purposes and in a legitimate manner based on the consent of the person; the establishment of a guarantee for the full respect of the content of this right through the obligation to set up specific control procedures to be carried out by independent authorities. The consequence of this right will then allow the EU legislator to improve the legal framework to ensure even the full respect of this right.

States have approached the protection of privacy not only at international or regional level, through specific regulations as members of organizations at these levels but also at national level.

Thus, if we take into account some fundamental laws of some EU Member States [7] we can see that we can talk about several categories of stipulations. In some of the constitutions we find a wider consecration of the right to private life[8], while in others we find a more sophisticated consecration of this right.[9]

However, the lack of an explicit consecration of this right to private life, by the constitution of a state, does not mean ignoring it and, even less, its non-recognition because, directly or indirectly, the fundamental law of any state will center its regulations on one of the fundamental values, generally recognized and unanimously, accepted - human dignity, as we believe it was considered by the German [10] or Italian Constitution[11], for example, mentioned in what precedes.

Given the complexity of this notion of private life, the variety and the multitude of concepts that we may have in mind as far as it is concerned have determined, justly, the

[7] The right to private life is constitutionally constituted by more than 160 states, as evidenced by the analysis of these fundamental laws as they are found in the Constitution Project. See: Access Now, *Creating a Data Protection Framework: A Do's and Don'ts Guide For Lawmakers. Lessons from the EU General Data Protection Regulation*, January 2018, p. 2, inclusiv nota de subsol 2. This document is available at: https://www.accessnow.org/cms/assets/uploads/2018/01/Data-Protection-Guilde-for-Lawmakers-Access-Now.pdf, accessed on: 19.11.2018.

[8] This is, for example, the case of the provisions of art. 32 of the Constitution of Bulgaria (This document is available at: https://www.constituteproject.org/constitution/Bulgaria_2015?lang=en, accessed on: 30.11.2018) or those in art. 26 of the Constitution of Estonia (This document is available at: https://www.constituteproject.org/constitution/Estonia_2015?lang=en, accessed on: 30.11.2018). By such stipulations, the constitutional legislator not only guarantees this right or declares it inviolable, but imposes the obligation to introduce protection measures against illegal intervention of the authorities, as well as the aspect of private life that cannot be affected by the interference of the authorities in exceptional circumstances.

[9] This is, for example, the case of the provisions of art. 15 of the Constitution of Cyprus (This document is available at: https://www.constituteproject.org/constitution/Cyprus_2013?lang=en, accessed on: 30.11.2018) or those in art. 35 of the Constitution of Croatia (This document is available at: https://www.constituteproject.org/constitution/Croatia_2013?lang=en, accessed on: 30.11.2018). By such provisions, the constitutional lawmaker confines itself to guaranteeing the right to private life, recalling, as the case may be, also the need to respect the honor, dignity and reputation of the person, as is the case with Croatia.

[10] The fundamental law of the Federal Republic of Germany has not explicitly enshrined the right to private life, but its indirect recognition is possible by identifying human dignity as the basis of the rights enshrined in this constitution by art. 1. (This document is available at: https://www.constituteproject.org/constitution/German_Federal_Republic_2014?lang=en, accessed on: 30.11.2018)

[11] In the same sense are the stipulations of art. 1 par. (1) of the Constitution of Italy. (This document is available at: https://www.constituteproject.org/constitution/Italy_2012?lang=en, accessed on: 30.11.2018)

recognition in the doctrine of the fact that „it cannot be precisely defined".[12] Moreover, in its judgments, the European Court of Human Rights has emphasized that the right to privacy, it's content, as well as the limits within which it can be enforced „will vary considerably from case to case and the margin of appreciation to be accorded to the authorities may be wider than that applied in other areas under the Convention"[13]. Even if this support is made in relation to the provisions of art. 8 of the European Convention on Human Rights, we appreciate its validity, also claiming that „it is a concept whose content varies according to the age to which it relates, the society in which the individual lives, and even the social group to which it belongs".[14]

The doctrine emphasized that defining privacy has been, and continues to be, a group project to which lawyers, philosophers, scientists, and the common citizen have much to contribute. It is a project that seeks answers to a number of questions, including whether privacy is an independent concept with a unique meaning or is merely an alternative word for freedom, autonomy, or dignity.[15]

Referring to our constitutional provisions on the right to intimate, family and private life, taking into account the nuances highlighted by the jurisprudence of the European Court of Human Rights, we will notice that our constitutional lawmaker refers to „two notions understood in a non- in a very wide sense, that is to say everything related to the family life and the private life of the individual"[16]. But intimate life „is found in the two components"[17], „[d] is only a part of the sphere of relations contained by each of these notions".[18]

Our doctrine [19], based on the jurisprudence of the European Courts as well as that of the Constitutional Court, therefore distinguishes between two components of this right, namely the right to family life (the right to respect for and protection of family life, as it is identified by the doctrine[20]), such as and the right to privacy (the right to respect and protection of privacy, as it is identified in the doctrine[21]), without omitting a third

[12] Corneliu Bârsan, *Convenţia europeană a drepturilor omului. Comentariu pe articole*, C. H. Beck Publishing House, Bucureşti, 2005, p. 598

[13] See, in this regard, for example, point 72 from Case of Christine Goodwin v. The United Kingdom, Judgment, 11 July 2002, Application no. 28957/95, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60596%22]}, accessed on: 19.11.2018.

[14] Corneliu Bârsan, *op. cit.*, p. 598

[15] Patricia A. Cain, *The Right to Privacy under the Montana Constitution: Sex and Intimacy,* 64 Mont. L. Rev. (2003). Available at: https://scholarship.law.umt.edu/mlr/vol64/iss1/5/, accessed on: 28.11.2018, p. 100.

[16] Valerian Cioclei, Comments regarding article 26 from Romanian Constitution, republished, în lucrarea Ioan Muraru, Elena Simina Tănăsescu, coordinators, *Constituţia României. Comentariu pe articole*, C. H. Beck Publishing House, Bucureşti, 2008, p. 248

[17] Ibidem

[18] Ibidem

[19] See, in this regard, for example, Corneliu Bârsan, *op. cit.*, p. 598 and next, or Ioan Muraru, Elena Simina Tănăsescu, coordinators, *op. cit.*, p. 249-252 şi p. 253-255

[20] Valerian Cioclei, *Comments regarding article 26 from Romanian Constit*ution, republished, în lucrarea Ioan Muraru, Elena Simina Tănăsescu, coordinators, *op. cit*, p. 249

[21] Idem, p. 253

dimension - concerning the right to intimate life, namely the right of the person to dispose by herself.[22]

The privacy (private life) of a person will „[r]efer to an area of privacy, privacy that any person understands to keep it around."[23] The elements that come into this area „are related to the sentimental life, activity, identity and sexual preferences, to the health of the person"[24], but to the „confluence between the personal and the social space as they are, for example, the person's identifying attributes (name, residence and civil status), its occupational activity"[25], but also by virtue of regulations, residence and correspondence, and even the right to a healthy environment.[26]

The challenges of contemporary society have allowed or even imposed, where was demand, the need to protect other aspects that, in our opinion, relate to the individual's private life, its multiple dimensions. Any one of us felt at some point may even „abused" the use, for commercial, social, political purposes, by legal persons of private law or even public law of personal data [27] interfering with the private space of our lives, with any of its dimensions, in our opinion. [28]

So, in such situations, it was necessary and adequate not only to intervention of a judge who, by way of jurisprudence, finds a prejudice or even an harm to human dignity or the right to privacy, or both, but also to the legislator to capture and establish, even by fundamental norms, a right to the protection of personal data, either as a dimension of the right to private life[29], or as a distinct right [30],thereby certifying the need for the

[22] Idem, p. 255
[23] Idem, p. 253
[24] Ibidem. See also, for example, point 97 from Case of Smirnova v. Russia, Recueil 2003-IX, 24 July 2003, available at: http://sutyajnik.ru/rus/echr/judgments/smirnova_eng.htm, point 77 from Case of Smith and Grady v. The United Kingdom, Recueil 1999-VI, 27 September 1999, available at: https://hudoc.echr.coe.int/eng#{%22dmdocnumber%22:[%22696285%22],%22itemid%22:[%22001-58408%22]}, or point 64 from Case of Johansen v. Norway, Recueil 1996-III, 07 August 1996, available at: https://www.globalhealthrights.org/wp-content/uploads/2015/01/JOHANSEN-v.-NORWAY.pdf, accessed on: 19.11.2018.
[25] Ibidem
[26] Ibidem, precum şi Corneliu Bârsan, *op. cit.*, p. 598 - See also, for example, point 118 from Case of Hatton and others v. The United Kingdom, 08 July 2003, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61188%22]}, accessed on: 19.11.2018.
[27] According to article 4 point 1) from Regulation (UE) 2016/679, „personal data" means any information relating to an identified or identifiable natural person („data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
[28] On a different view, although it is noticed that the development of a right to the protection of personal data has gradually taken place because it has always been addressed from the perspective of privacy, it is considered that they need to be viewed distinctly, with all that a connection between them cannot be denied. Regarding this subject you can see, Andra Giurgiu, Summary of PhD thesis „Protection of personal data from the perspective of European law", 2013, p.10 (This document is available at: http://doctorate.ulbsibiu.ro/wp-content/uploads/GiurgiuAndrarezumattezadoctoratRO.pdf, accessed on: 19.11.2018).
[29] An example of this is the stipulation of art. 10 of the Constitution of Finland (This document is available at: https://www.constituteproject.org/constitution/Finland_2011?lang=en, accessed on: 30.11.2018) which guarantees the right to private life, but in the content of which it has been signed up also the need to ensure the protection of personal data.

autonomous existence of this right. Otherwise, in the same sense, the provisions of the Charter of Fundamental Rights of the European Union, as I mentioned above, are also in the same sense[31].

Regardless of how at this time we report the existence of this right to the protection of personal data to another fundamental right or to an essential value in a democratic society and a rule of law, or we expressly and distinctly dedicate it to them, certainly is, in our opinion, we can no longer deny the existence of this right. Such an approach would affect our privacy and would even put under the question our ability to fully execute our right to privacy.

Conclusions: Privacy, like freedom, is difficult to define except in the negative: the right not to be unnecessarily intruded upon is a basic starting point, but [h]owever, privacy is more than that[32]. The same author recognizes that he prefers the classic, an old formulation which says that privacy means „the right to be let alone", since it encapsulates the essence of most people's understanding, what might be called the core content of privacy.[33] Regarding data protection, this author appreciates that these kind of data is especially concerned with controlling the collection, use, and dissemination of personal information[34] and it is important to stipulate the right to protect personal data, by fundamental laws, because the purpose of creating a constitutional right to privacy is not to leave data protection solely to the courts, except for the interpretation of the necessary statutes in cases of conflict but to allow individuals to assert privacy claims in various arenas that extend beyond general and specific data protection laws.[35]

The evolution in time of this right, as demonstrated by both international and national regulations, by doctrinal and jurisprudential approaches, shows that the legislator has adapted to the current, challenging and changing realities, and has been prompted to do so of these realities.

The fact that today, through regulations of regional entities with legal personality, such as the European Union, but also by constitutional provisions or with such value, the right to protection of personal data, distinct or as a component part of the right to

[30] Thus, for example, by the provisions of article 10 of the Greek Constitution (This document is available at: https://www.constituteproject.org/constitution/Greece_2008?lang=en, accessed on: 30.11.2018), distinct from the right to privacy, expressly established the right to the protection of the processing of personal data, the legislator also providing for the need for an independent authority to objectively ensure such protection.

[31] See the footnote no 6

[32] David H. Flaherty, *On the Utility of Constitutional Rights to Privacy and Data Protection*, 41 Cas. W. Res. L. Rev. 831 (1991), Available at: http://scholarlycommons.law.case.edu/caselrev/vol41/iss3/14, accessed on: 28.11.2018, p. 831.

[33] Warren & Brandeis, The Right to Privacy, 4 HARv. L. REV. 193, 195 (1890) (quoting T. COOLEY. A TREATISE ON THE LAW OF TORTS 29 (2d. ed. 1888)), quoted by David H. Flaherty, *op. cit.,* p. 831.

[34] David H. Flaherty, *On the Utility of Constitutional Rights to Privacy and Data Protection*, p. 834.

[35] Idem, p. 853

privacy, at least for the time being, allows us to say that, indeed, „the protection of personal data is of paramount importance in our increasingly digital society”.[36]

It is a right that based on using the right to private life as a foundation, but given the importance and necessity of protecting, in particular, personal data today, it entitles us to affirm that the right to privacy is distinct from the right to the protection of personal data as a new right in the category of rights - inviolability of any person.

Bibliography

Access Now, *Creating a Data Protection Framework: A Do's and Don'ts Guide For Lawmakers. Lessons from the EU General Data Protection Regulation*, January 2018.
Bârsan Corneliu, *Convenţia europeană a drepturilor omului. Comentariu pe articole*, C. H. Beck Publishing House, Bucureşti, 2005.
Cain Patricia A., *The Right to Privacy under the Montana Constitution: Sex and Intimacy,* 64 Mont. L. Rev. (2003).
Flaherty David H., *On the Utility of Constitutional Rights to Privacy and Data Protection*, 41 Cas. W. Res. L. Rev. 831 (1991).
Giurgiu Andra, Summary of PhD Thesis "*Protection of personal data from the perspective of European law*", 2013, presented at "Simion Bărnuțiu" Faculty of Law from "Lucian Blaga" University of Sibiu
Muraru Ioan, Tănăsescu Elena Simina, coordinators, *Constituția României. Comentariu pe articole*, C. H. Beck Publishing House, Bucureşti, 2008.

Legislation:

Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948, by its Resolution 2171 A/III. Romania signed the Declaration on 14 December 1955
International Convenant on Civil and Political Rights, adopted and opened for signature by the General Assembly of United Nations, resolution 2200A (XXI) of 16 December 1966, and entered into force on March 23rd 1976, in accordance with Article 49, and ratified by Romania on October 31st 1974, by Decree no 212, published in the Official Gazette of Romania, Part I, no 146 from November 20th 1974
American Convention on Human Rights Pact of San José adopted at the Inter-American Specialized Conference on Human Rights by the Organization of American States, San José, Costa Rica, 22 November 1969
Cairo Declaration on Human Rights in Islam, adopted and proclaimed by Organization of Islamic Conference resolution 217 A (III) of adopted on 5 August 1990
African (BANJUL) Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986
Convention for the Protection of Human Rights and Fundamental Freedoms, adopted at the level of the Council of Europe, and opened for signature in Rome on 4 November 1950, came into force in 1953, and ratified this Convention on April 18th 1994, by Law

[36] Access Now, *Creating a Data Protection Framework: A Do's and Don'ts Guide For Lawmakers. Lessons from the EU General Data Protection Regulation, op. cit.,* p. 3

no 30 which was published in the Official Gazette of Romania, Part I, no 135 from May 31st 1994
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), published in Official Journal of European Union L119 of 04 May 2016
Charter of Fundamental Rights of the European Union, published in Official Journal of the European Union C 326 of 26 October 2012
Constitution of Bulgaria, revised and published in The Official Gazette in 2015
Constitution of Croatia, revised and published in The Official Gazette in 2013
Constitution of Cyprus, revised and published in The Official Gazette in 2018
Constitution of Estonia, revised and published in The Official Gazette in 2015
Constitution of Finland, revised and published in The Official Gazette in 2011
Constitution of Germany, revised and published in The Official Gazette in 2018
Constitution of Greece, revised and published in The Official Gazette in 2008
Constitution of Italy, revised and published in The Official Gazette in 2012
Constitution of Romania, revised and published in The Official Gazette, No. 767 of 31 October 2003

Websites:

https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm, accessed on: 07.03.2018
http://www.bahaistudies.net/neurelitism/library/Cairo_Declaration_on_Human_Rights_in_Islam.pdf, accessed on: 07.03.2018
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf, accessed on: 07.03.2018
https://www.accessnow.org/cms/assets/uploads/2018/01/Data-Protection-Guilde-for-Lawmakers-Access-Now.pdf, accessed on: 19.11.2018
https://www.constituteproject.org/constitution/Bulgaria_2015?lang=en, accessed on: 30.11.2018
https://www.constituteproject.org/constitution/Estonia_2015?lang=en, accessed on: 30.11.2018
https://www.constituteproject.org/constitution/Cyprus_2013?lang=en, accessed on: 30.11.2018
https://www.constituteproject.org/constitution/Croatia_2013?lang=en, accessed on: 30.11.2018
https://www.constituteproject.org/constitution/German_Federal_Republic_2014?lang=en, accessed on: 30.11.2018
https://www.constituteproject.org/constitution/Italy_2012?lang=en, accessed on: 30.11.2018
https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60596%22]}, accessed on: 19.11.2018.
https://scholarship.law.umt.edu/mlr/vol64/iss1/5/, accessed on: 19.11.2018
http://doctorate.ulbsibiu.ro/wp-content/uploads/GiurgiuAndrarezumattezadoctoratRO.pdf, accessed on: 19.11.2018

https://www.constituteproject.org/constitution/Finland_2011?lang=en, accessed on: 30.11.2018
https://www.constituteproject.org/constitution/Greece_2008?lang=en, accessed on: 30.11.2018
http://scholarlycommons.law.case.edu/caselrev/vol41/iss3/14, accessed on: 28.11.2018

Protecția datelor cu caracter personal-dimensiune a dreptului la viață privată. Reglementări fundamentale

Rezumat

Încă de la momentul proclamării drepturilor fundamentale ale fiecărei ființe umane, prin Declarația Universală a Drepturilor Omului, prin pactele, protocoalele, cartele, convențiile, declarațiile care i-au urmat acesteia la nivel internațional sau regional, deseori chiar prin preambulul acestora, s-a recunoscut un "dat" al oricăruia dintre noi, indiferent de naționalitate, cetățenie, vârstă, sex, culoare, origine socială sau etnică, rasă, limbă, religie, opinie, apartenență politică, avere, anume demnitatea umană. Recunoscând această calitate a oricărei ființe umane, implicit, în opinia noastră, a fost necesar a fi, cel puțin recunoscută, dacă nu chiar ocrotită și chiar garantată, existența unei vieți private a acesteia, precum și, implicit, a unui drept la aceasta. Conținutul și dimensiunile acestui drept nu au fost consacrate prin documente internaționale, preferându-se ca identificarea acestora să se facă, în mod concret, prin intermediul instituțiilor sau al curților, după caz, însărcinate cu garantarea recunoașterii și aplicării și a acestui drept. Astfel a fost posibilă actualizarea permanent și continuă a acestui conținut prin raportare la realitatea social aflată într-o evoluție continuă. Vom putea, așadar, observa ce se înțelege, în prezent, prin conceptul de viață privată, dar și că acum nu mai putem ignora una dintre dimensiunile acesteia care trebuie să se bucure nu doar de o consacrare juridică, ci și de o efectivă aplicare a dispozițiilor juridice, anume protecția datelor cu caracter personal tocmai pentru a nu afecta viața privată a unei ființe umane, precum nici, implicit, demnitatea acesteia.

Jus et civitas	Vol. V (LXIX) No. 2 /2018	25-32	A Journal of Social and Legal Studies

PROCEDURAL LAW ASPECTS REGARDING PERSONAL DATA ITEMS. ABSENCE OF DISCRIMINATION

Dragoş Lucian Rădulescu

Petroleum – Gas University of Ploiești, București Blvd, 39, Ploiești
E-mail: dragosradulescu@hotmail.com

Abstract
The concept of discrimination is based on facts which seek to establish differences in the fundamental rights of individuals, in conditions of non-compliance with equal legal treatment, in the presence of comparable legal situations.By extension, the free access of any persons to information of public interest is specified, as one of the fundamental principles applicable to legal relations between persons and public authorities, within the provisions of Law no. 544/2001 on the free access to information of public interest. With regard to the provisions of Regulation no. 679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the protection of individuals aims at recognizing a fundamental right recovered including in the Charter of Fundamental Rights of the European Union and in the Treaty on the Functioning of the Union European Union, in order to respect fundamental rights and freedoms and to establish an area of freedom, security and justice.These concepts are subject to different legal situations, the article detailing aspects relating to the means of protection afforded to the rights of individuals, the modalities of enforcement, and the possible effects of judicial practice.

Keywords: discrimination, criteria, data, personal, work

Introduction: In the case in question, a public authority issued a provision requiring the director of an institution under his control to be replaced from the board of directors and subsequently he appealed against that provision. His request for annulment was upheld by a court order, the defendant public authority being obliged to pay the rights attached to that previously held position.

Concepts presentation: Under the circumstances in which the public authority delayed the payment of its obligations, it was summoned by a bailiff in the forced execution and recovery procedure of those money entitlements. The bailiff sent billing addresses to the accounts held by the authority to various banks on salary accounts and one of these, which initially interpreted the salary collection account as an account to be taken, has instituted the attachment with the effect of freezing those amounts. However, the attachment requests sent by the bailiff to other banks were rejected by these institutions on the grounds that the payment of wage entitlements cannot be affected by the establishment of a denial.

Although the debtor public authority communicated to the bank that the attachment can not affect the salary accounts, pursuant to the provisions of art. 781 (5) letter c of the Civil Proceedings Code of Civil Procedure, the bank informed them that on the account of the deprivation a payment was made and after payment the attachment was lifted. The debtor public authority had concluded with the bank a banking contract aimed at facilitating the transmission of the payment orders for paying employees through the current personal accounts with access on issued cards.

The subject of the contract provided for the transfer by the defendant of salary income through the bank to those employees who would open a current account for the purpose of monthly salary earning. To this end, the Authority would ensure in its current open bank account the available funds for its execution of the wage payment order, as the payment orders will be processed in benefit of the employees who were credited. The bank was to open current account holders to the employees of the public authority and was obliged to issue debit cards on their behalf, providing a necessary structure for the transfer of these money entitlements.

However, the bank communicated to the public authority the fact that a bailiff had been set up and directly targeted the wage bill. The public authority notified the bank and the bailiff asking for details of the origin of the amounts sent as payment, provided that no payment of wages or other bank transfers by the authority was made through that account. The public authority notified the bank and the bailiff asking for details of the origin of the amounts sent as payment, provided that no payment of wages or other bank transfers by the authority was made through that account. The authority also addressed the bailiff requesting the disclosure of enforcement documents, and appealed against execution and demanding suspension of execution against the bank account.

On the other hand, in order to comply with the legal provisions on the forced execution of public institutions, the authority informed the bailiff that he is acting as secondary authorizing officer with funding from the Ministry of Health only for operational-functional activities that can not the object of enforced enforcement, these being salaried rights. The public authority communicated to the bank the fact that, according to its internal procedures, it itself required the existence of an account of the institution, which, on the basis of the procedures applied, would have the effect of transferring the salary rights due to its employees.

As regards the legal relationship between the defendant and the applicant, the public authority did not in any case require the bank to open a current account for the purpose of using it for various receipts or payments and did not require the bank to credit it under any circumstances. On the other hand, the authority expressly requested the applicant to comply with its contractual obligations and to secure the transfer of the amounts for the salaries of its employees to their accounts in order to secure the due rights. The absence of an express request by the authority for possible bank lending of such payments resulted in the impossibility of the bank to present the document requesting such a credit procedure, which implies an abuse of rights. The public authority notified the bank that the amount paid by the bank was not due or held on its behalf, the account being opened under the name of wage cards and used exclusively for this purpose. On the other hand, the provisions of the Code of Civil Procedure regarding the removal are imperative, art. 781 (1) stipulating about only the sums of money owed

to the debtor, or held on behalf of the applicant, or which the latter owed to the third party in the future, aspects which are not found in the case.

Thus, according to the provisions of art. 781 (5) letter c of the Civil Procedure Code, the amounts due for the payment of future salary rights cannot be subjected to forced execution, which means that the court executor has paid a payment from the bank's own funds, amounts that were not due and which the public authority did not recognize because they did not open any credit account. In the put, public autotrity has never mandated the bank to execute payments on its behalf, regardless of their subject matter.

However, the bank communicated that it had initiated the removal and blocking of the debtor's authority in accordance with the provisions of Article 782 paragraph 1 of the Code of Civil Procedure and the Ordinance No. 22/2002 on the execution of the payment obligations of public institutions established in executory titles. The reference by the latter to the provisions of Article 2 of the Ordinance for the purpose of explaining the non-execution of forced execution by attachment to the debtor's accounts was, however, unfounded, and the wage entitlement payment accounts are inapplicable to the procedure.

Thus, Article 2 of the Government Ordinance no.2 / 2001 stipulates the receivables established by executory titles for the public authorities, sums will be paid from the amounts approved for this purpose through their budgets or from the expenditure titles to which the payment obligations fall. If the execution of the claim established by enforceable titles does not start or continues due to lack of funds, the debtor institution is obliged to take the necessary steps within six months to fulfill its obligation to pay.

Referral to the provisions the normative act in question namely the case when the public institutions fail to fulfill their obligation to pay within the stipulated time limit and witch entitles the creditor to request execution[1] of the basis of the Civil Procedure Code, aspect which was not registered in the case when the bank paid the amount with own funds and not of those existing in the payroll account. Besides, the impossibility of paying sums for wages was also specified by the Ministry of Public Finance, mentioning that such receivables cannot be paid out of the amounts intended according to the approved budget to cover the expenses for organization and functioning. In addition, the Ministry of Finance states that the Constitutional Court has specified certain limits of execution, in the sense that it cannot be done on any money resources of public institutions. Execution could only be made on the amounts specifically allocated from the budget for this purpose, and it is inconceivable that by executing an executory title such an institution became lack of its financial resources.

Communication of personal data. Absence of discrimination: The relevant identification of the legal institution of unjust enrichment[2] refers to the situation in which the patrimony of a particular person is increased due to the decrease of the patrimony of another person, without a legal basis. The material conditions for bringing an action for restitution include the enrichment of the defendant, the diminution of the

---

[1] Zilbesrstein S, *Tratat de executare silită*, Ed. Lumina Lex, București, 2001, pg. 42.

[2] Pop L., Popa I-F., Vidu S.I., *Tratat elementar de drept civil. Obligațiile*, Ed.Universul Juridic, București, 2012, pg. 368.

applicant's patrimony and the fact that there is a close link and a single cause between the increase of the defendant's patrimony and the reduction of the applicant's patrimony. In order to prove the non-fulfillment of these conditions, the public authority requested the bank to communicate the data of the person identified in the submitted documents and the way in which he contributed with the bank to the crediting of the public authority. The Authority also requested that the bank provide financial documents relating to the relationship between the latter and the person concerned.

The request of the public authority was based on the provisions of Law no. 544/2001 on free access to information of public interest, but also on the provisions of Regulation 679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. According to art. 3 of Law no. 544/2001 required the public institutions to have access to the public interest information by creating a special department for public relations or by designating a person in this respect. The provisions of Article 6 required that any interested person had the right to request information from the public authorities or institutions to obtain information of public interest by introducing an application containing the elements of identification of the requested information, the signature and the address of the applicant.

After the application was submitted, the public authorities had the obligation to respond in writing to the applicant within 10 to 30 days, depending on the difficulty or complexity of that requirement, with the possibility for the applicant to bear the cost of the copy services of those relevant documents. On the other hand, if after the information received the applicant requested new information, they valued a new petition, which also involved new terms of reply.

According to the provisions of Article 11/ 1 of the law, information in the field of national defense, security and public order, the deliberations of authorities or economic interests as classified information, such as commercial or financial activities that affect intellectual property or the competition principle personal data, criminal or disciplinary inquiries containing confidential sources or jeopardizing on-going investigations or court proceedings in a fair trial, and on the protection of young people.

However, the bank rejected the written request of the public authority for access to public information on the ground that it would breach the provisions of point d of Article 11 / 1 of the Law no. 544/2001, the provisions of Regulation 679 of 27 / apr / 2016, as well as those of GO 137/2000 regarding the prevention and sanctioning of all forms of discrimination. In this respect, the provisions of Article 4 of Regulation 679 of 27 / apr / 2016 required personal data any information with reference to an identified or identifiable natural person named the person concerned. The physical person could be identified directly or indirectly through the elements related to the name, identification number, localization aspects, existence of an online identifier, conditions of his / her own physical, physiological, genetic, psychological, economic, cultural or social identity with the prohibition of unauthorized disclosure.

For the purpose of the regulation, we can see that classified information did not extend to those that would have a favoring character or which caused a violation of the law by a public authority. A sanctioning regime is also in place in the case of an explicit or tacit refusal of an employee designated by an authority to respond to a request, which entails his disciplinary liability following the complaint lodged with the head of the authority.

On the other hand, the well-founded complaint led not only to sanctioning, but also to issuing the response to the public interest information previously requested.

In accordance with the provisions of Article 22 of the Regulation, the right of the injured party is also specified by not requiring the requested information to file a complaint with the tribunal's administrative division. If the court judges the claim as being founded, it could have ordered the authority to provide the requested public interest information and to bear any moral or patrimonial damages.

We can appreciate from the previous provisions that the possibility of a person to request information of public interest is not limited by the law of a term or a number of requests submitted for this purpose. On the other hand, the non-compliance of the public authority could lead to its action in the courts, with the possibility of granting moral or material damages, as a misuse of law, the motivation of the authority related to the non-disclosure of the information regarding the refusal of the petitioners to bear unjustified payments of the children of the documents required. In this respect, only the violation of procedures for personal data or information on commercial or financial activities the advertising of which could have the right to intellectual property or the principle of fair competition could lead to a refusal of authority.

In the case in question, the bank did not respond to the request of the public authority to send copies of documents for internal use, namely invoices, papers, explanatory notes, contracts, which concerned a legal relationship with the natural person who paid the claim on his behalf be executed by attachment. Thus, we consider that a private legal person may refuse to transmit such documents on the basis of normative acts that would require the inclusion of acts in the category of classified or classified information, which is not the case in question.

In those circumstances, the issue of the documents requested can be carried out only with the court's request, in order to bring to the bank the filing of the relevant documents in the case. Only this could be seen that there was an account statement in which the amount paid to the bailiff appeared and was credited to the account of the authority through the intervention of a bank employee. It could be seen the contribution of a bank employee who personally credited part of the amount paid to the bailiff without a request from the debtor authority to do so. The amount of the payment was made up of the amount paid on a voluntary basis by the bank and the consideration for the commission charged to the payment order by that employee.

As a result, a banking institution cannot substitute the court and cannot generate payment mechanisms for a claim that goes beyond the legal provisions in the matter. A banking institution is not entitled to favor the creditor by making payments with the obvious non-observance of the express provisions of the Code of Civil Procedure regarding the denial, the provisions being imperative. Thus, only the sums of money owed to the debtor or held in his name by someone else, or which the latter owed them in the future to the indefinite third party, are not subject to prosecution. On the other hand, the protection of individuals against discrimination[3] on the grounds of race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation,

[3] Muscalu L.M., *Discriminarea în relațiile de muncă*, Editura Hamangiu, București, 2015, pg. 199.

age, disability, chronic non-contagious disease, HIV infection, religion or belief, disability, age or sexual orientation is provided for in the national legislation in GO 137/2000 regarding the prevention and sanctioning of all forms of discrimination and in Labor Code[4].

With regard to the protection regime, the directives[5] in the field required Member States to introduce policies whereby employers would inform their own employees of the existence of rules on discrimination, the possible protection regime and appeals.The rules in question concerned an attempt to extend the protection regime, including in the circumstances in which those discriminatory acts had ceased. In this respect, any legal person demonstrating a legitimate interest has the right to be involved in the application of the protection regime in the name or in support of the victims affected by the breach of the principle of equal treatment.

On the other hand, the aspects relating to the burden of proof[6] in the case of discrimination presuppose an exceptional procedural regime, the obligation to be attributed to the perpetrator of the deed, in the circumstances in which his action did not comply with the principle of equal treatment. If, however, by an internal law it was provided that certain documents in the defendant's internal circuit were covered by the confidentiality rule and he used that legislative provision in order to avoid proving his own fault, that consist an element necessary to hear the case on the basis of the existence of a presumption of guilt. However, the impossibility of identifying a comparable situation which would have led to the occurrence of a difference of treatment by the bank towards its own employee, that is, the existence of another person in the same institution in a comparable situation, leads to the lack of discrimination.

Legal Effects: As regards the legal conditions of the action for restitution[7], they are represented by the fact that the enrichment and proper bridging must be free of a fair cause or it has been demonstrated that the bank did not fully bear the claim of the debtor public authority in the conditions in which a third party, an employee of that person, contributed personally with own funds for payment. On the other hand, enrichment should be in good faith, not to try to violate other mandatory legal provisions by abuse of law[8], thus facilitating unlawful execution, in that not only are used own funds for the payment of the claim. Last but not least, the bribe must not have another legal action to fulfill his claim.
It can be ascertained that in reality the bank in bad faith decided not to comply with the legal provisions contained in art. 781 C.proc.civ regarding the procedures for the attachment, transferring from own funds, without the defendant's consent, the amount representing the claim, in the idea that he will, however, subsequently request the defendant by means of a special action of unjust enrichment, making the execution

[4] Ţiclea A., *Codul muncii comentat. Editia a VI-a, actualizată*, Editura Universul Juridic, Bucureşti, 2015, pg. 21.

[5] Gâlcă C., *Drept comunitar al muncii. Transpunerea în dreptul muncii român*, Ed.Roseti Internaţional, Bucureşti, 2012, pg. 94.

[6] Tăbârcă M., *Drept procesual civil*, Ed.Universul Juridic, Bucureşti, 2005, pg. 510.

[7] Dogaru I., Drăghici P., *Teoria generală a obligaţiilor*, Ed.Ştiinţifică, Bucureşti, 1999, pg. 200.

[8] Stătescu C., Bărsan C., *Drept civil. Teoria generală a obligaţiilor*, Ed.Juridică, Bucureşti, 2000, pg. 118.

unlawful. The bank also unlawfully interpreted the conditions for exemption from the obligation to provide the public interest information requested and the provisions of Regulation 679 of 27 April 2016 on the processing of personal data and on the free movement of such data. Thus, under the terms of Article 1348 of the Civil Code, the person who pays without due has the right to restitution, such an action cannot be admitted if the defendant has an action, other than in rem verso, which can be filed not only against enrichment or a third person against the bailiff who unlawfully and abusively received the amount owed by the public authority.

On the other hand, according to the provisions of Article 1638 of the Civil Code, the benefit received or exercised on the basis of an unlawful or immoral case remains subject to restitution, provided that the bank and the executor were notified in writing by the public authority of the impossibility of legal payment by deduction of the amounts held in the salary account. Reference has also been made to the procedures imposed by the Ministry of Health on the effect of enforceable titles. Thus, if by arrangement with the bailiff a natural or legal person proceeds to make such payments from own funds, the procedure is illegal, the benefit being received on the basis of an unlawful cause which always remains subject to the refund.

In conclusion, if the bailiff has another action based on any source of obligations, he cannot bring an action for unjust enrichment. Thus, the subsidiary nature of the unjust enrichment action has in fact the role of preventing the abuse of the institution by which other institutions of private law may be diverted, even in situations where enrichment and bribery may occur. If the defendant has another action, either against the enrichment or against a third person, the unjust enrichment mechanism becomes inoperable, its scope being restricted by the legislator in order to prevent abuse of rights.

Conclusion: From the above-mentioned points of view, it can be seen that from the point of view of the norms of non-discrimination the guarantee of the fundamental rights of the victims presupposes the obligation of the author to prove the non-existence of differential treatment. This means that the legislator considered that it would be necessary to share the burden of proof between the victim and the author of the discrimination. We are considering the victim's obligation to raise the presumption of discrimination and the defendant to prove non-infringement, without thereby allowing the author to extend those provisions to other legal situations or to avoid communicating supporting documents in relatively related cases.
In this respect, the provisions of GO 137/2000 on the prevention and sanctioning of all forms of discrimination are strictly interpreted as regards the burden of proof.

On the other hand, the provisions of art. 11 / 1 of the Law no. 544/2001 on free access to information of public interest exempts from communication only the information in the field of national defense, security and public order, the deliberations of the authorities, those that have an impact on the intellectual property rights or the principle of fair competition, personal data or elements related to criminal or disciplinary inquiries, without people being able to extend this strictly restrictive area.

In view of the provisions of Article 4 of Regulation 679 of 27 / apr / 2016 on the protection of individuals with regard to the processing of personal data, such data requires any information relating to an identified or identifiable natural person which

refers to names, identification numbers, location, conditions of their own physical, physiological, genetic, psychological, economic, cultural or social identities. However, in the legislator's view, the classification of classified information does not extend to information that is evidence of the unreasonableness of causes, if by the respondent's conduct it seeks to favor a particular person or indirectly leads to a violation of the law. In this respect, the sanctioning regime is also established in the case of the explicit or tacit refusal to respond to such a request, namely the application of the culpable elements of the disciplinary liability.

Bibliography

Gâlcă C., *Drept comunitar al muncii. Transpunerea în dreptul muncii român*, Ed.Roseti Internațional, București, 2012;
Dogaru I., Drăghici P., *Teoria generală a obligațiilor*, Ed.Științifică, București, 1999;
Muscalu L.M., *Discriminarea în relațiile de muncă*, Editura Hamangiu, București, 2015;
Pop L., Popa I-F., Vidu S.I., *Tratat elementar de drept civil. Obligațiile*, Ed.Universul Juridic, București, 2012;Stătescu C., Bărsan C., *Drept civil. Teoria generală a obligațiilor*, Ed.Juridică, București, 2000;
Țiclea A., *Codul muncii comentat. Editia a VI-a, actualizată*, Editura Universul Juridic, București, 2015;
Tăbârcă M., *Drept procesual civil*, Ed.Universul Juridic, București, 2005;
Zilbesrstein S, *Tratat de executare silită*, Ed. Lumina Lex, București, 2001.

Elemente procedurale vizând datele cu caracter personal. Inexistența discriminării

Rezumat

Conceptul de discriminare se fundamentează pe fapte ce au ca obiect instituirea unor diferenţieri în privința drepturilor fundamentale ale persoanelor, în condiții de nerespectare a tratamentului juridic egal, în prezența unor situaţii juridice comparabile. Prin extensie, accesul liber al oricăror persoane la informatiile de interes public este precizat, ca unul dintre principiile fundamentale aplicabil raporturilor juridice dintre persoane si autoritatile publice, in cadrul prevederilor Legii nr. 544/2001 privind liberul acces la informatiile de interes public. În ceea ce privește dispozițiile Regulamentului nr. 679 din 27 aprilie 2016 privind protecţia persoanelor fizice în ceea ce priveşte prelucrarea datelor cu caracter personal şi privind libera circulaţie a acestor date, protecția persoanelor fizice vizează recunoașterea unui drept fundamental regăsit inclusiv în cadrul Cartei drepturilor fundamentale a Uniunii Europene și în Tratatul privind funcţionarea Uniunii Europene, în scop de respectare a drepturilor şi libertăţilor fundamentale și de fundamentare a unui spaţiu de libertate, securitate şi justiţie. Aceste concepte fac obiectul unor situaţii juridice diferite, articolul detaliind aspecte raportate la mijloacele de protecție acordate drepturilor persoanelor, modalitățile de aplicare, precum și posibilele efecte de practică judiciară.

Jus et civitas	Vol. V (LXIX) No. 2 /2018	33-38	A Journal of Social and Legal Studies

VULNERABILITIES IN SCHOOL ENVIRONMENT AND CHILDREN'S RIGHTS

Alina Mărgărițoiu

Petroleum-Gas University of Ploiești, Bd. București 39, Ploiești
E-mail: alinapetrescu1@yahoo.com

Abstract

When analysing vulnerability in school environment, the issue of children's rights is an important topic because the school environment needs to ensure the equality of chances in terms of learning and participation, emotional security and educational support. Therefore, the purpose of this micro-research is to investigate the degree in which the school requirements and environment contribute to children becoming vulnerable. The collected results show that during primary school the children's rights and needs are observed, and the pedagogical practices regarded by the pupils as generating vulnerability are limited.

Keywords: vulnerability, children's rights, pupils' vulnerabilities

1. Clarifications regarding the concepts of vulnerability and vulnerable group

Nowadays, the concept of vulnerability is being used in the school environment (not only in the social support area) to describe the exposure to certain risks that have negative consequences on all parties involved in the education act. Nonetheless, vulnerability has no clear, generally accepted definition. Some studies treat vulnerability

as a “vague and foggy concept”, usually being more used than understood, easier to talk about than to be defined[1].

Etymologically speaking, “vulnerability” comes from the Latin word “vulnerare” which means “to wound”. Thus, a vulnerable person “can be easily wounded, attacked”, “has weak, defective, questionable parts”[2]. But according to the same author, Brené Brown, vulnerability represents an “emotional risk, exposure, uncertainty”, but also “the most precise instrument to measure courage”, “the way we can find each other”[3]. Therefore, vulnerability is both a dimension of the human nature (of the individual imperfections or limits) which we should not hide or deny, and a premise of personal development.

While vulnerability covers multiple areas (social, economic, psychologic, and educational, etc.), the national and European legal documents and social and education research reports usually make use of the terms vulnerable/disadvantaged/marginalised.

In the education area, children with special education needs (SEN) constitute a vulnerable group including: children with social-economic disadvantages, children with deficiencies, children with health problems; abused and neglected children; children in foster homes; adopted children; children from dysfunctional and broken families; children from certain minorities/ethnic groups; children belonging to parents that abuse substances; children affected by their parents leaving abroad, etc. This classification aims to identify and implement certain educational support methods in order to help them.

2. Children’s rights and the vulnerability of the children in school environment

According to the current requirements, building a friendly and inclusive school environment entails removing all participation and learning barriers, especially for vulnerable children, as well as observing children’s rights. All classrooms need to be a secure emotional space/environment for pupils, adequate for the teaching-learning-evaluation process, and this is closely related to the children’s needs and rights.

According to the Order of the Ministry for Education and Scientific Research no. 4.742/2016, the range of the children’s rights covered by the “Pupil’s statute” is vast:

- The right to an equitable education regarding the admission, performance, and finalisation of the studies;
- The right to have a quality education provided by the educational institutions;
- The right to be resected in terms of image, dignity, and personality;
- The right to learn in institutions that observe the regulations regarding school hygiene, work safety, civil protection, and fire hazard protection;
- The right to personal data protection with the exceptions provided by law, etc.[4].

[1] Michael Jopling, Sharon Vincent (2016). *Vulnerable children: Needs and Provision in the Primary Phase.* York: Cambridge Primary Review Trust, p. 6
[2] Brené Brown, *Curajul de a fi vulnerabil,* Curtea veche Publishing House, București, 2016, p.50
[3] *idem*
[4] https://www.edu.ro/sites/default/files/OM_4742_10.08.2016-Statut_elevi_2016_0.pdf

As we all know, controversies regarding pupils' rights appear between community members in the daily life or in the virtual space. For example, some of the most intensely debated topics during 2018-2019 were: the right not to be rebuked in front of the class; the right to give quarterly anonymous feedback to teachers; the right to request the results of the written evaluation within 15 working days and the possibility to dispute the results in person or through the parents; the right to protest without hindering the school activities, etc.[5]

Therefore, the school environment with all its interdependent components and processes, involves a context of duties and rights. It is structured as any other group environment where individuals constantly appreciate, test, attract, and reject one another, and build a micro-universe by combining past and present experiences. Unfortunately, not all experiences in the school environment are positive. Negative experiences that can make children become vulnerable include:

a) Dehumanization of education ("School practice invites us to see the neurosis effects of school life, with obsessive schedules and programs, with homework and lessons as purpose (not means), with limits for the intelligent initiatives and curiosities"[6]);

b) Exaggerated competition among pupils (in addition to certain advantages, promoting competitive relations among pupils can generate individualism, envy, hostility, suspicions, anxiety, conflict, violence, reduces self-esteem);

c) School violence (vulnerable pupils risk to easier become the victims of school violence. On the other hand, the aggressiveness of certain pupils represents a sign of their needing help and not knowing how to ask for it);

d) Inadequate educational intervention ("If a teacher is emotionally abusive with the pupils or if tasks given to them cannot be accomplished, pupils will perceive the classroom as a toxic environment"[7]. The teacher-pupil interaction can become a vulnerability factor for pupils when the teacher's pedagogical and relational abilities are reduced, when the teacher does not invest time and patience in the teaching activity, or when the teacher does not show empathy, equity and consideration for the pupils).

Children need to feel respected, supported, appreciated and valued in any education institution.

3. Research Methodology

Purpose of Study

The micro-research purpose was to investigate the degree in which the requirements and the school environment contribute to making children vulnerable in the primary school in order to provide a theoretical and practical framework to decision makers in education and our society.

---

[5] https://www.portalinvatamant.ro/articole/regulamente-27/ce-drepturi-si-obligatii-au-elevii-si-profesorii-in-anul-scolar-2018-2019-8073.html

[6] Françoise, Dolto, *Dificultatea de a trăi*, Trei Publishing House, București, 2009

[7] William, Dikel, *Sănătatea mentală a elevilor,* Trei Publishing House, București, 2015, p. 62

Participants, procedure and methods

Considering that our micro-research is a qualitative one, we need to specify that the value of the study lies in the exploratory nature of the problem and not in obtaining statistically representative results. In order to identify key aspects of our research, we have considered necessary and appropriate to make an investigative study in the school from Ploiești, renowned locally for integrated SEN children.

Based on the purpose of the research, we have submitted semi-structured interview guide to 34 pupils in primary school (4th grade) to determine the degree in which they mention usual inadequate education practices, as well as the perception of the children regarding their teacher and school environment.

4. Data analysis and interpretation

The answers provided to the questions "Do you feel vulnerable/ disadvantaged in school and during classes?" and "What are the situations when you felt vulnerable and disadvantaged?" show the positive perception of the children regarding their teacher and school environment.

There was a relatively small number of answers that described educational practices perceived as generating vulnerability by the pupils. These covered the following aspects:

- Receiving strong or unjust sanctions;
- Labelling pupils as "good" and "weak" and giving more attention to the first category;
- Homework with a high difficulty degree;
- The presence in the classroom of a pupil with special educational needs (SEN) that displays emotional and behaviour problems.

The interviewed pupils mentioned the tendency to marginalise and label the SEN pupil due to various worries and concerns. They explained their reactions and attitudes using phrases such as: "He is different than us", "He does not understand our discussions", "My parents told me to keep away from this child".

In terms of their interaction with the classmates, most of the children stated that they have good and very good relations. Assuming this social relations component is greatly valued; the nature of the relations between classmates represents a determining factor in the way the pupils perceive the school environment as being friendly/secure or unfriendly/vulnerable.

Furthermore, the interviewed children present their teacher as being a source of educational support when it comes to overcoming learning and school adaptation issues. Most of them gave affirmative answers to the question: "Do you feel you get help from the teacher when you have difficulties?"

5. Conclusions: The results of our micro-research indicate that the interviewed pupils have a good general perception about the teacher and school environment. While the topic of pupils' vulnerability and vulnerabilization in the primary school is more prominent in social media, this research shows that during primary school pupils feel their needs and rights are observed.

On accordance with the analysed topic, professor Gabriel Albu recommends that young generations should be raised "to have a sense of their own value in all they are doing; to accept their vulnerabilities and imperfections; to value work, perseverance, respect; to have a sense of authenticity; to learn from their own imperfections; to cope with our ever changing word with courage and resilience"[8].

As teachers, we should not underestimate the power of smiling and encouraging gestures, the emotional resonance of accepting and valuing our differences and authenticity with respect to our children and ourselves. Vulnerability has also another perspective: not as a weakness, but as a part of the human nature.

We consider that a best practice guide for teachers should be useful in order to help them find more efficient answers to the needs of the children exposed to educational and emotions risks, as well as for observing these children's rights.

Bibliography

Albu, Gabriel, *Introducere într-o pedagogie a curajului,* Trei Publishing House, București, 2017;

Brown, Brené, *Curajul de a fi vulnerabil*, Curtea veche Publishing House, București, 2016.

Dikel, William, *Sănătatea mentală a elevului*, Trei Publishing House, București, 2015

Dolto, Françoise, *Dificultatea de a trăi,* Trei Publishing House, București, 2009;

Jopling, Michael, Vincent, Sharon (2016). *Vulnerable children: Needs and Provision in the Primary Phase*. York: Cambridge Primary Review Trust

https://www.edu.ro/sites/default/files/OM_4742_10.08.2016-Statut_elevi_2016_0.pdf

https://www.portalinvatamant.ro/articole/regulamente-27/ce-drepturi-si-obligatii-au-elevii-si-profesorii-in-anul-scolar-2018-2019-8073.html

[8]Gabriel, Albu, *Introducere într-o pedagogie a curajului,* Trei Publishing House, București, 2017, p. 137

Vulnerabilizarea în mediul școlar și drepturile copiilor

Rezumat

În analiza paradigmei vulnerabilității în mediul școlar, drepturile copilului reprezintă o problematică importantă, deoarece mediul școlar trebuie să asigure egalizarea de șanse în învățare și participare, securitate emoțională și suport educațional. De aceea, scopul micro-cercetării a fost să investigăm măsura în care cerințele și mediul școlar vulnerabilizează elevii. Rezultatele obținute ne arată faptul că, în ciclul primar, sunt respectate nevoile și drepturile copiilor, iar practicile pedagogice resimțite de elevi ca generatoare de vulnerabilitate sunt limitate.

Jus et civitas	Vol. V (LXIX) No. 2 / 2018	39-44	A Journal of Social and Legal Studies

SOCIAL NETWORKS' USE ON ADOLESCENTS AND YOUNG PEOPLE

Simona Eftimie

Petroleum-Gas University of Ploiești, BD. Bucharest, no. 39, Ploiești
E-mail: simone_eftimie@yahoo.com

Abstract
An intense debated issue about contemporary adolescents is their excessive use of social networks. Are they aware of hidden dangers of social networks' use? Do they allow to social networks operators to access data from their personal devices? Which are the advantages or disadvantages of using social network as communication form with their families / relatives, friends? Are any differences between the way adolescents (pupils, gymnasium level) and late adolescents / young people (students in social sciences) are using and identifies risks of using social networks? The answers to these questions we tried to offer in our study. In this study we have involved 51 subjects (15 adolescents, pupils on gymnasium and 36 young people, students on social sciences). Other results are also discussed here.

Keywords: social network, adolescent, young people, cyberbullying, personal data

Introduction: Today many parents – and teachers also – are worried about the excessive consuming of social networks by their children / pupils. But also these worried parents are those that allow (and bye) to their children to use (home and even or especially to school) smart phones. What is their motivation? They have to be in contact; and this situation encourage children to use smart phone in school in order to communicate by messages with friends, to listen music, to see videos on YouTube, to share photos on Instagram, to play videogames[1].

So, parents become concerned about potential threats of digital technology, like cyber harassment – cyber bullying, sexting and easy access to pornography or violence.[2]

The effects of technology use on children's development are intense evaluated. Online access seems to encourage virtual aggression[3] because is easier to humiliate and make observation in the absence of your victim, without looking to his / her face when is reading your message.

---

[1] Nicholas Kardaras, *Copiii şi ecranele luminoase,* Editura Paralela 45, Piteşti, 2016, p. 155.
[2] John Coleman, Suzie Hayman, *Părinţii şi tehnologia digitală. Cum să creşti generaţia conectată*, Editura Herald, Bucureşti, 2017, p. 84.
[3] Idem, p. 7.

Specialty literature pro or against the use of technology by adolescents / young people is very prolific. In the light of international scandal about the privacy violation of social networks, Romanian laws recently created debates about personal data protection.

Although teachers are trained to use technology in their classrooms and to encourage their pupils to efficiently use personal devices in order to find information, Romanian children are not educated for media consuming; their curricula do not propose to develop specific competences about this issue.

Concept presentation

Social networks

Virtual communication, especially among adolescents and young people, has become recently an interesting subject for researchers. The risks of this kind of communication and their raising prevalence among young people justify this interest. Another argument for specialists' interest is the violence exerded on social networks and its' psychological impact.[4]

Also, gender differences considering the preference for a social network are analysed; for example, in a study developed in Spain[5], adolescent girls seem to prefer Facebook, Twitter and Instagram, while male use more Skype.

Cyberbullying

Statistics indicate a high rate of cyberbullying among teens; a study made in Greece indicated that a third of investigated subjects have made an attack on their peers using new technologies.[6] Cyberbullying is defined as a form of aggression against individuals or groups using information and communication technology (email, phone, chat, and websites) with various manifestations:

- verbal aggression;
- blackmail, threats;
- attacks of the account etc.[7]

Other risk phenomena analyzed on research studies concerning technology / Internet use are:

- establishing virtual contacts;
- sexting – public sharing of intimate materials without verifying person's identity;
- sharing of personal data on the Internet;
- use of social networks etc.[8]

And the statistic results are alarming: for example, in a study conducted in Great Britain 37% of people aged between 13 and 25 years old have send a nude photography with them using their smart phone.[9]

---

[4] Esther Mena – Rodriguez, Leticia - Concepción Velasco – Martínez, Gender violence and social networks in adolescents. The case of the province of Malaga, Procedia - Social and Behavioral Sciences 237 (2017) 44 – 49, www.sciencedirect.com.

[5] Idem.

[6] Sofía Buelga, Javier Pons, *Aggressions among Adolescents through Mobile Phones and the Internet*, Psychosocial Intervention, Vol. 21, No. 1, 2012 - pp. 91-101, http://dx.doi.org/10.5093/in2012v21n1a2.

[7] Kamil Kopecký, *Cyberbullying and Sexting between Children and Adolescents - Comparative Study*, Procedia - Social and Behavioral Sciences 149 (2014) 467 – 471, www.sciencedirect.com.

[8] Idem.

In this context, we were interested to analyze the awareness' measure of our subjects (young people and adolescents) about the danger of using social networks without discernment and their preferences for a specific type of social network.

Research methodology

Purpose of study

In our analysis we have start from the supposition that there are obvious differences between gymnasium pupils and students concerning their awareness concerning the dangers of using social networks. So, we have proposed to study following issues:

- Types of social networks used by the two categories of subjects;
- Purpose of using social networks;
- Identified advantages and risks / dangers of using social networks;
- Protection measures against privacy violation / access to personal data from personal devices.

Research methods and subjects involved

In order to fulfil our objectives we have investigated 51 subjects, 15 adolescents (early adolescence), pupils in 7th and 8th grade (in a gymnasium) and 36 students in social sciences. Our investigated students were both from license level (22 subjects) and master level (14 subjects), aged between 20 and 35 years old.

We have used questionnaire to investigate our subjects, but, in order to complete the information obtained by questionnaires we have also organized 3 focus group interviews during seminar activities with students subjects involved in our study.

Research findings

- *Typology of social networks and the advantages of using them*

In the top of social networks used by our young people subjects were Facebook, Instagram and Whatsapp (with the observation that the order of adolescents' preference was Instagram, then Facebook, and Whatsapp).

Interesting is that in spite of legal age that allow you to create an account on a social network, our subjects mentioned that their first personal cont was created mostly between 11 and 15 years old.

We have also observed that subjects aged between 30 and 35 years old indicated that their first account on a social network (they preferred most Whatsapp and then Facebook) was after their 18th birthday.

Considering advantages / the positive role of social networks, investigated adolescents indicated keeping contact with friends, colleagues and parents, sharing homework.

[9] John Coleman, Suzie Hayman, *Părinţii şi tehnologia digitală. Cum să creşti generaţia conectată*, Editura Herald, Bucureşti, 2017, p. 87.

Investigated young people indicated the economy of time and money, the rapidity of contact with persons from a long distance, even “communicating more often” (subject, female, 32 years old).

- *Types of information posted and searched on social networks*

Both posted and searched information that our adolescents mentioned were films, photos, solutions for homework while young people nominalised also photos, news, music, and fashion and also school information.

If most adolescents consider that this information posted on social networks do not affect them in any way, young people motivated that social networks have a positive effect on their public image:

“We could create a positive public image, posting information about our performances and we also could develop our circle of friends.” (student, female, 34 years old)

- *Identified dangers and protection measures*

It’s interesting to notice that, almost all investigated young people didn’t mentioned that they are aware of the danger of allowing operators to access information from their personal devices, they still allow them to access that information. Most mentioned reason for that attitude was their need to use programs (and a condition to access programs is their agreement that operators access to information from their devices).

Even the ones that declared that they do not allow operators to access personal data (like contacts, pictures, documents etc.), they are contradictory in their declarations because they affirmed that they use social networks to share pictures, documents (and a condition requested by operators in order to allow people to use that programs is that people allow them to access photos and documents from their devices, as we have already mentioned).

So, it’s / could be a trap, a vicious circle and some of our subjects seem not to be aware of that.

Another difference between the two categories of investigated subjects was that if adolescents are not preoccupied to take measures to protect their personal data, young people seem to be more conscious about their vulnerability and indicate some protection measures for their personal information:

- password to secure their account,
- friends selection (only selected people could see posted information),
- and taking care to not share on social network information about their location, personal photos, phone number, address etc.

Young people, subjects aged between 30 and 35 years old, demonstrate more awareness and identified the danger of cyber bullying if the account is not well protected:
“Someone could steal your identity and post information in your name.” (student, female, 33 years old)
“Intimacy could be violated.” (student, female, 35 years old)

A similar point for all investigated subjects was that they indicated as necessarily to protect personal data, even if most of them (especially adolescents) seems that are not preoccupied / do not know how to do that.

To synthesise the results, we have conceived a table that present in comparison adolescents and young people characteristics concerning social network use.

Tabel 1 – A comparison between investigated adolescents and young people use of social networks

Adolescents	***Young people***
Social networks preferred (order of preference)	
Instagram	Facebook
Facebook	Whatsapp
Identified advantages of social networks	
Relationship with friends, colleagues, parents	Rapid and cheap contact with families, friends in real time / finding old friends/ creating new relationships
Posted information	
Photos, films (with / about friends / colleagues), homework solutions	Photos, school information, news / announcements
Permission to access information from personal devices	
Yes	No
The need for personal data protection	
Yes	Yes

Conclusions: Starting from our study data, we could notice that there are a lot of dangers that both adolescents and young people are not aware of the risks of allowing operators of social networks to access to their data (information from / about their devices). They are not educated to identify these risks also because both our school curricula and teachers are not prepared to educate them in this direction.

Social networks could be useful for keeping in touch (parents / grandparents and their children / grandchildren) when distances do not allow face to face contact. Also parents and schools could communicate using this way for the benefit of children. Children could be encouraged to use social networks to share information about homework, group projects etc.

Virtual games, often criticized, could be an opportunity to develop skills, concentration, perseverance, empathy.[10] And an online friendship could become an offline friendship.[11]

In conclusion, digital world could be risky, but also could be very useful for children, depending on the way we, as adults, use it and children learn to use it.

In this direction, we consider useful that school' curricula to include classes for developing competences of efficient use of technology, of critical thinking of adolescents by making them aware both of risks and opportunities of social networks use. Also, counselling future parents / parents of adolescents about raising children / adolescents in a world were technology mediated communication is a reality and developing their abilities to communicate efficiently with their children.

Bibliography

Buelga, Sofía, Pons, Javier, *Aggressions among Adolescents through Mobile Phones and the Internet*, Psychosocial Intervention, Vol. 21, No. 1, 2012 - pp. 91-101, http://dx.doi.org/10.5093/in2012v21n1a2.
Coleman, John, Hayman, Suzie, *Părinţii şi tehnologia digitală. Cum să creşti generaţia conectată*, Editura Herald, Bucureşti, 2017, p. 7.
Kardaras, Nicholas, *Copiii şi ecranele luminoase,* Editura Paralela 45, Piteşti, 2016, p. 155.
Kopecký, Kamil, *Cyberbullying and Sexting between Children and Adolescents - Comparative Study*, Procedia - Social and Behavioral Sciences 149 (2014) 467 – 471, www.sciencedirect.com.
Mena – Rodriguez, Esther, Velasco – Martínez, Leticia – Concepción, *Gender violence and social networks in adolescents. The case of the province of Malaga*, Procedia - Social and Behavioral Sciences 237 (2017) 44 – 49, www.sciencedirect.com.

Utilizarea rețelelor de socializare de către adolescenți și tineri

Rezumat

O problemă intens dezbătută în legătură cu adolescenţii din societatea contemporană este utilizarea excesivă de către aceştia a reţelelor sociale de comunicare. Sunt ei conştienţi de pericolele ascunse ale utilizării acestor reţele? Permit ei operatorilor de reţele sociale de comunicare să le acceseze datele personale din gadgeturile personale? Care sunt avantajele şi dezavantajele utilizării reţelelor sociale ca formă de comunicare cu familiile – rudele, prietenii? Există diferenţe între felul în care adolescenţii (elevii de gimnaziu) şi tinerii (studenţi la ştiinţele sociale) utilizează şi identifică riscurile utilizării reţelor sociale de comunicare? Răspunsurile la aceste întrebări am încercat să le găsim prin acest studiu în care am investigat 51 de subiecţi dintre care 15 adolescenţi, elevi de gimnaziu şi 36 tineri, studenţi la ştiinţele sociale. Alte rezultate sunt de asemenea discutate aici.

[10] John Coleman, Suzie Hayman, *Părinţii şi tehnologia digitală. Cum să creşti generaţia conectată*, Editura Herald, Bucureşti, 2017, p. 109-112.
[11] Idem, p. 123.

Jus et civitas	Vol. V (LXIX) No. 2 /2018	45-52	A Journal of Social and Legal Studies

INFORMED CONSENT, FRAUD AND CONFIDENTIALITY IN PSYCHO-PEDAGOGIC RESEARCH ACTIVITY

Corina Iurea

Petroleum Gas University of Ploiești, BD. Bucharest, no. 39, Ploiești
E-mail: corinaiurea@yahoo.com

Abstract
This paper analyses the ethical character of the interactions between researchers and the subjects of the psycho-pedagogic research, a topic that has attracted more and more interest. The research activity needs to be ethical, show consideration towards the interests and needs of the participants and of those affected by the research results. While researching, we need t be honest, opened, and have a critical approach about who, what and why we perform the research. Researchers need to avoid any activity that could impact their credibility, objectivity, and impartiality.

Keywords: ethics, fraud, informed consent, confidentiality

Introduction: We see that teachers are not prepared to cope with the information and justification needs involved by the changing social reality in education in order to find solutions to various problems, because the education environment in schools has changed dramatically. Thus, we believe that the nature of the information needed at a given moment and the development of adequate research means will be increasingly more important both for understanding and analysing the data. Better knowledge about the current social relations is needed because education involves constant improvement of the entire research process and an evaluation of its performance in order to accept the research conclusions and results collected regarding a certain educational process.

What is research? One way to answer this question is to define “research” as a generic term covering a vast and diverse range of activities. The term is also used evasively when referring to an investigation process. One the common characteristics of these activities is that they aim “to discover”, because any scientific research activity basically intends to discover by collecting data[1]. But what distinguishes research from the basic discovery activity is its need to be ethical, objective, and systematic (Robson, 2002) and to produce a leap (however small) in knowledge[2].

---

[1] Drăgan Ion, Nicola Ioan, *Cercetarea psihopedagogică*, Editura Tipomur,Târgu-Mureș, 1995, pp. 5-7.
[2] Robson Colin, *Real World Research. A Resource for Social Scientists and Practitioner Researches*, (2nd edition). Blackwell: Oxford, 2002, p. 59.

Many teachers assume at some point the responsibility of a school project. Naturally, this implies identifying the needed information about a certain topic in speciality literature and on the internet. It can be a good learning experience, but a study that wants to be assimilated to scientific research, as described above, needs to go even further and also requires: formulating a research topic and a testable hypothesis; a research methodology; collecting raw data; analysing and interpreting the data; validity control; generating new knowledge.

1. Why is research important? It is not at all redundant to ask when we should perform research or not. Some research can be expensive, so we should first be certain that the activity is important. Some research benefits are tangible – for example, a research that could find a cure for multiple sclerosis or that could slow down the evolution of Alzheimer disease, things that would be well received globally. Other research, such as investigating our relationship with the social environment and out place in this context, could be hard to justify, although it is also important because it would increase our understanding and knowledge in the social area. We thus touch another important, yet often ignored, aspect of research: generating new knowledge. Research is important because:

- Innovation and experimental character can lead to good changes (e.g. changing certain education policies in the context of the Romanian educational reform);
- Objective investigations can lead to identifying certain improper or unethical education practices (e.g. physical punishment in schools);
- Research done rigorously and systematically expands knowledge in a certain area and can lead to developing ways of solving problems (increasing our knowledge about different kinds of nutrition can be useful in solving the issues created by child obesity).

1.1. Research and "truth". There is no absolute truth, just as no certainty can be absolute. We all experience the word differently. We have different perspectives and experiences and we do not always agree about what the truth is in a life experience. Therefore, how can we establish what the "truth" is when we face different and often even contradictory experiences? Instead of thinking that research establishes "the truth", we should perceive it as a means to establish "knowledge and understanding" about a fact, a process or phenomenon, where "the truth" is synonymous with the honest, rigorous, and reliable approach. What research intends to do is establishing "the truth" through a rigorous and structured process of critical investigation, so that not even the most common assumptions can be accepted without validation. Kerlinger (1986) refers to this sceptical form of investigation as checking a subjective certainty about an objective reality[3]. Furthermore, any "truth" established by research is also subjected to a self-correction process (meaning, public control, cf. Cohen et al, 2000)[4], any possible ambiguities being eventually discovered and corrected or eliminated. A good research gets considerably closer to the "truth" by using an approach that combines reason and experience and has built-in mechanisms against errors, ambiguity and subjectivity. Borg (1963)[5] considers research is the best approach to discover the truth.

---

[3] Kerlinger N. Fred., *Foundation of behavioural research,* (3rd edition), Holt, Rinehart, and Winston: New York, 1986, p.78.

[4] Cohen Louis, Manion Lawrence and Morrison Keith, *Research Methods in Education*, (5th edition), RoutledgeFalmer: London, 2001, pp. 49-73.

[5] Borg R. Walter, *Educational research: an introduction*, D. McKay Co.: New York, 1963, p.315.

2. Psycho-pedagogic research and ethics. It is important to introduce the concept of ethics from the very beginning because it is an essential element of the research activity. Research need to be ethical and show consideration towards the interests and needs of the participants involved and of those affected by the results. Research should not cause harm or damage to any individual. During research, we need to be honest, opened and critical with respect to what, how, and why we make the research. Researchers have the duty to make accurate and clear observations, even though these observations agree or not with their hypothesis or prior assumptions. Therefore, researchers do not only "make observations" and "take measurements", they also must describe the circumstances the measurement and observation were made in, as well as who performed them. Researchers expect their methods and discoveries to be subjected to public control. Its aim of being structured, sceptical and ethical distinguishes empirical research from other kinds of research activities, such as research performed by lawyers and journalists, where the investigation results are used to support a personal view by creating evidence or arguments to plead in favour of the respective view, and not to search for evidence that could contradict it. This does not necessarily mean the view is false but could mean that the individuals (lawyers or journalists) are not able to see when it could be false.

In order for the scientific research to be ethically acceptable and certain and generate credible results, the research behaviour needs to comply with scientific best practices. Best scientific practices compel scientific researchers and experts to adhere to actions approved by the scientific community, meaning integrity, meticulousness and accuracy both in research behaviour and result submission, and in judging the research and its results, to use data collections ethically confirmed, research and evaluation methods that comply with scientific criteria, and to exercise proper openness towards scientific knowledge when the results are published, etc. Improper conduct is defined as negligence and irresponsibility in performing research. Other examples of improper conduct include:

- Concealing other researchers' contributions when publishing;
- Negligence in making reference to previous discoveries;
- Lack of attention and, thus, misleading with respect to reporting the results and the methods used;
- Negligence with respect to data recording and storage;
- Repeatedly publishing the same results as being new;
- Misleading the researchers' community with respect to the research performed.

It is certain that psycho-pedagogic research and development needs a permanent verification, measurement and control process that is accepted, transparent and based on a dialogue that considers all points of view and interests, especially since "there is a tight connection between science and ethical values"[6]

Data: information (numerical or descriptive) that is analysed and used as grounds for decision-making in research. It is usually used in plural, the singular form being rarely used in research.

---

[6] King, F. Ronald, *Strategia cercetării. Treisprezece cursuri despre elementele ştiinţelor sociale*, Polirom, Iaşi, 2005, pp. 53-58.

***Ethics**:* making sure the well-being, interests and preoccupation of the involved parties are observed. It is paramount that the research should not cause any harm or damage to the participants during its performance. Currently it is generally agreed that research should comply with an ethics code established by a public authority *(in Romania, see Law 206/2004 with subsequent amendments and additions, National Education Law 1/2011, art. 306-326, Order 5735/2011 regarding the regulation for the organisation and activity of the National Ethics Committee in Scientific Research, Technical Development and Innovation).*

***Scepticism**:* being prepared to question or doubt the nature of the discoveries. Doubt is an important step in research in order to reach a relative certainty (we can never reach an absolute certainty). Therefore, a sceptical approach tries to discover or search for (counter) arguments that could both reject and confirm the discoveries. Furthermore, researchers allow their discoveries to be checked by others and wait for their validation in time.

***Structured**:* researchers think about what, how and why doing certain activities methodically and intentionally all the way throughout the process. Everything is established explicitly, for example: if researchers want to use the observation method in a research, they need to clearly state what is being observed, who makes the observation, how, where and in which circumstances, and for how long the observations are performed.

There are a vast number of publicly available researches and studies in education. How can we distinguish between what is valuable or not? Researchers are very opened when it comes to publishing results so that they are acknowledged as a new and valid contribution to human knowledge. Bringing something new is not always a ground-breaking discovery, such as a cure for cancer, but “making a difference” in what is currently knows is also acknowledged as a contribution to knowledge. Because we currently doubt constantly our knowledge, it is important to continue researching areas we already have knowledge about, but also in new areas. Some studies confirm what was already discovered by somebody else. These studies could be useful because previous studies were for example performed at a smaller scale and it is equally important to check if the same studies can be applied at a larger scale or in different circumstances. This type of research is usually called *control study* or, depending on the circumstances, *adaptation study*. Some studies incriminate previous studies, a process equally important in the field of knowledge. If a research would never be questioned, knowledge would cease to evolve, and we would still believe that Earth is flat! Other studies that are based on older discoveries expand the existing knowledge in various areas. If researches are performed to “make a difference” in knowledge, it is assumed that the results are intended to be shared, especially with those that could benefit from them. This is what we call the phenomenon of research results dissemination, a process through which the collected information, results, conclusions and ideas of the researchers are shared with the public. This is usually done through a **research report.**

This written report informs about the research goal, team and methods used or about the discoveries made, including also a discussion about the research topic and its implications. Usually, the research reports that are published in academic journals are subjected to rigorous check process in which other academic researchers validate the research in the respective area, check the adherence to ethic principles, and decide

whether it should be included in an academic journal or not. The academic journal is only one method of sharing knowledge, being one possible platform for creating and disseminating knowledge. Some studies are made public being published as books, other as magazine articles, and certain reports circulate only among peers in a restricted circle. Many researches are uploaded on websites, and academic journals are also available in electronic format. Not all studies are written. Some use the video format. It is also a common practice to present the studies orally, usually during local, national or international conferences. The ample accumulation of studies offers a basis through which we can better understand the world we live in. When researchers want to begin a new study, they check the existing knowledge base in their respective area in order to establish what is already known in their interest area.

3. Ethics in research activity. Proper attention needs to be given to the ethics of all research studies. The ethical aspects should not be ignored; they represent the essence of all research stages, from the initial design to the public dissemination of the results. Sometimes, the research topic itself can raise certain ethical questions. If, for example, the research is centred on the study of different forms of harassment, then the study itself could provoke sadness, anxiety or could increase the vulnerability of the subjects that have been victims of harassment. On another hand, it is important to analyse such topics because it could contribute to increasing our knowledge and understanding in the area in order to better prevent this phenomenon. Simply put, researchers need to consider the possible benefits of their studies, to appreciate a given situation from the point of view of another person in order to develop awareness with respect to ethics and its "consequences". By "*consequences*" we understand personal, emotional, financial, physical consequences on the involved parties (including the researchers). Such consequences could be:

- Emotional – anxiety, embarrassment, depression, loss of self-esteem;
- Financial – the value of personal spare time, travelling costs, other expenses;
- Physical – pain or other physical effects (in medical studies);

Calculating the cost-benefit ratio is one of the ethical aspects that need to be considered by default in designing a research study. There are several others as well. The principles we need to follow include:

- Respect and correctness – respecting the sensibility and the statute of the participants;
- Rights – the participants' rights to be protected against injustice, to be informed and listened to;
- Best results – actively promoting the best results registered by the participants[7].

Ethics acts at both a large and small scale, during and beyond the time allocated to the research study. The large scale usually refers to a process of approval provided by an ethics committee (or a similar body) that gives a formal guiding plan with respect to ethics in scientific research. They can take the form of check lists useful for the new researchers. In Romania, *The National Ethics Committee in Scientific Research, Technical Development and Innovation* is a consulting body focusing mainly on the

[7] Alderson, Priscilla & Morrow, Virginia. *Etic, Social Research and Consultance for Children and Youngs*, (2nd edition), Barkingside: Barnado: London, 2011, pp. 69-73.

analysis of the claims regarding the infringement of roper conduct norms in research and development activities. For further information, access the following site: http://cne.ancs.ro. At a small scale, researchers constantly make pertinent individual analyses about certain sensibilities displayed by the research subjects. A personal question could, for example, cause suffering.

3.1. Informed consent. The entire research is performed with the participants' consent. Before getting their consent, they need to understand the activity they will be involved in and what it entails. This is called informed consent. It is not enough to state "I will make a research regarding the culture of teenage magazines" and ask teenagers to sign the consent forms because this is ethically debatable. The participants need to know the research goals and objectives, the way the data collected from them will be used (especially in terms of confidentiality and anonymity), and information about the result dissemination. This information needs to be clear and unambiguous. In the example with the research on the culture of the teenage magazines, the researchers can state that the objective is study of the relation between the identification with a female celebrity and the self-image of teenage girls; they can also state that they intend to use the share the results with health institutions, etc. Nonetheless, the informed consent topic is complex in this case due to the underaged status of the teenagers; hence the informed consent is submitted to the parents or legal guardians of the pupils. Sometimes, a conflict of interests can be reached. Children may want to participate in the study, but the parents do not agree. Usually it is the parents' wishes that take precedence, but there are also exceptions when it comes to older children. While a 5-year-old cannot sign the consent, this does not exclude the obligation to inform them as well as possible using a language they can understand about the purpose of the study. As opposed to a strict legal perspective, from an ethical point of view, all children should be familiarized with the aspect of consent. Any risks and problems associated with the study need to be explained along with a brief presentation of the research methods and period. It is increasingly popular to distribute flyers with information about the investigation. The participants need to be aware that they can withdraw their consent at any moment for any reason whatsoever. The informed consent that, ethically speaking, is won, does not involve any constraints imposed by the researchers. There are many examples of manipulative practices that lack ethics, e.g.: suggesting to prisoners that the participation could increase their chances of parole; refusing to participate could affect a child's chance of being selected in the football team; the participation could be positively appreciated by those in charge with career decisions.

3.2. Fraud. Could fraud ever appear in research? Some researchers claim the answer is definitely "no". Others claim that there are cases when the purpose justifies the means and the results are worth any "costs". However, these premises are never a proper foundation for building a search for truth/knowledge and thinking about such research is rather difficult. A frequent example of fraud in research is making observations incognito through hidden cameras or two-way mirrors. Other examples include researchers that mislead the participants about the research goals, such as a researcher that observes a classroom of pupils pretending the study is about the pupils' attention when in fact it is about the teaching style of the teacher.

3.3. Confidentiality and anonymity. The protection of the subject through:

- **confidentiality:** the "raw" information provided by the social actors (what they say) are only known by the research operators and staff; only the results are made public,

after processing; this is easy to achieve in the case of investigations through questionnaires, but more difficult in the case of qualitative researches; it is not always needed (if there is no real risk for the social actors, or if they assume the risk after being properly informed);

• **anonymity:** the "raw" information can be divulged (we can reproduce extensive interview sections), but not the names of the social actors (individuals, institutions, organisations, communities); only the researchers are able to connect a statement with a certain social actor; anonymity begins from the moment the data is recorded (in observation charts, in interview transcripts) – the names of the social actors are deleted or changed; this is not always possible or mandatory.

There is an ethical obligation to protect the individuals taking part in research. If possible, researchers reassure the participants that the data collected will be treated confidentially and stored anonymously. The names are changed when they are mentioned in the research report. Video data need special attention because anonymity is hard to achieve in this case. This is why, in order to ensure anonymity, photo and video data are sometimes destroyed at the end of the research.

Conclusions: Any psycho-pedagogic research involves responsibility at several levels: scientific, moral, social, etc. The researchers are directly responsible for their discoveries. The main element of any scientific research activity is the responsibility of the researchers towards their work especially their results. Researchers need to justify the research activity, to explain the utility and validity of the collected results, to try to bring a benefit to society through the respective research. All these considered, any scientific research needs to be questioned through moral censorship. The research activity is a highly professionally praised activity that automatically entails a certain work style and conduct model, and includes the following aspects: rigorousness in selecting and treating the research topic; professional, moral and social responsibility; respect towards the work, topic, and researcher; honesty and modesty; sincere and correct cooperation with the research team; obeying hierarchies, statuses and roles within the research team; disseminating the research results after properly checking them in terms of correctness and scientific value. The research ethics need to consider the "moral infringements" displayed by the scientific researchers. The "moral infringements" of the ethical norms of the scientific research often include: intellectual theft; parallel researches that aim to undermine an authentic research activity in order to decrease its value, interest and utility; communicating incorrect results that are theoretically false or providing insignificant, useless or even dangerous products; using the scientific research against the interest or safety of the studied population, with negative, antisocial, destructive, etc. purposes.

The researchers' honesty towards themselves and the other peers is a main aspect of the proper conduct in the psycho-pedagogic research. Lack of honesty generates a negative image of science and can alter mutual trust among researchers. The honesty of the scientific researchers warrants the respect towards the contributions of predecessors, competitors and partners, thus reducing errors and exaggerations. The research/ development staff needs to act for building, maintaining and strengthening the trust of the investigated public in the honesty, correctness and impartiality in research and

development activities or in other activities where research/development is involved. From this perspective, they need to reject any attempts of influencing their following the proper conduct. The research/ development staff needs to avoid any activity that could impact their credibility, objectivity and impartiality.

During their entire career, the research staff is responsible for their continuous professional development, by regularly updating and improving their psycho-pedagogic and cross-disciplinary skills and competences.

Bibliography

Alderson Priscilla & Morrow Virginia, *Etic, Social Research and Consultance for Children and Youngs,* (2nd Edition), Barkingside Barnado: London, 2011.
Borg R. Walter, *Educational research: an introduction*, D. McKay Co.: New York, 1963.
Cohen Louis, Manion Lawrence and Morrison Keith, *Research Methods in Education*, (5th edition), RoutledgeFalmer: London, 2001.
Drăgan Ion, Nicola Ioan, *Cercetarea psihopedagogică*, Editura Tipomur,Târgu-Mureș, 1995.
King F. Ronald, *Strategia cercetării. Treisprezece cursuri despre elementele ştiinţelor sociale*, Polirom, Iaşi, 2005.
Kerlinger N. Fred., *Foundation of behavioural research,* (3rd edition), Holt, Rinehart, and Winston: New York, 1986.
Robson Colin, *Real World Research. A Resource for Social Scientists and Practitioner Researches*, (2nd edition), Blackwell: Oxford, 2002.

Consimțământ informat, fraudă și confidențialitate în activitatea de cercetare psihopedagogică

Rezumat

Lucrarea analizează caracterul etic al raporturilor dintre cercetător şi subiecţii asupra cărora se realizează cercetarea psihopedagogica, o temă de interes tot mai larg. Activitatea de cercetare trebuie să fie etică, să manifeste considerație față de interesele și nevoile participanților implicați și ale acelora asupra cărora rezultatele cercetării pot avea efect/impact. În cursul cercetării, trebuie să fim sinceri, deschiși și critici cu ce, cum și de ce efectuăm cercetarea. Cercetatorul trebuie să evite orice activitate care i-ar putea afecta credibilitatea, obiectivitatea si imparţialitatea.

Jus et civitas	Vol. V (LXIX) No. 2 /2018	53-58	A Journal of Social and Legal Studies

EDUCATION, ETHOLOGY AND THE PROBLEM OF OVERPOPULATION

Dragoș Grigorescu

Petroleum-Gas University of Ploiești, București Blvd, 39, Ploiești
E-mail: dragos.grigorescu@unibuc.drd.com

Abstract

In this paper I propose to show that David Benatar's antinatalism is an appropriate response to an old challenge of ethology to the educators of today's world. After the mid-twentieth century, the founder of ethology, K. Lorenz, along with numerous scholars, addressed educators the idea that overcrowding is the main source of threat to the survival of humanity, and educators can do something about it. We believe that Benatar's antinatalism theory is a favorable response to this challenge, which claims that it is a moral duty of today's citizen not to leave offspring. The text follows the description of the problem of overpopulation and the way in which antinatalism can be a solution to this problem.

Keywords: education, ethology, overpopulation, antinatalism, ethics of life

Introduction: The essence of the problem I want to debate is that, according to most ethologists, humanity is facing the danger of its disappearance primarily because of overpopulation. In the famous work of popularizing the ethology, *8 sins of the civilized world*[1], Konrad Lorenz, unanimously considered the father and founder of ethology, at least of human ethology, puts overcrowding first among the destruction factors of mankind. By the syntax of the title of the book, *capital sins* the Nobel Prize laureate underscores the idea of the imminent danger of the extinction of humanity, a sort of deadly sin of its own. This danger was and remain little understood. We can reasonably raise the question of why the increase in the population of the planet can endanger the whole of humanity? This question comes in the context of arguments almost impossible to counteract on the right or even the obligation of each person to have a child. Almost everyone believes that having a baby is the most beautiful thing in the world. If we add the parental instincts, especially the maternal instinct, we will quickly come to the

[1] K. Lorenz *Civilized Man's Eight Deadly Sins* (1974) Harcourt Brace Jovanovich, Hardcover.

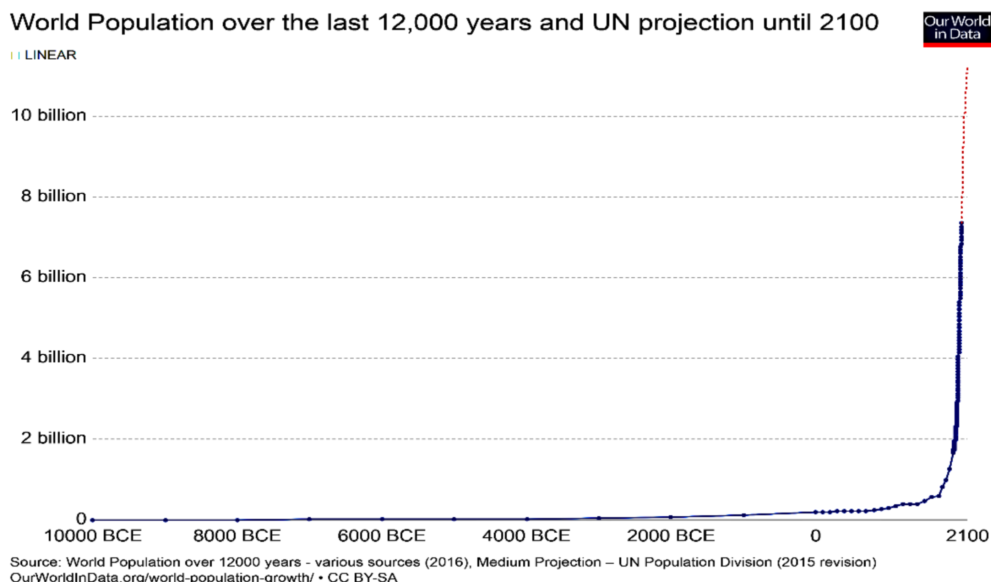
conclusion that challenging this sacred reality of having children is an assault on humanity. And yet, the scientists insist for a century, we have been dangerously proliferating. Lorenz is quite clear in explaining this great danger to humanity. According to the scientific records of biology, a large or too large number of individuals of a species related to other natural or biological parameters cause serious disturbances to the life and environment of that species. Man is no exception to these scientific observations. In Lorenz's view, it is in first place that people understand this danger in order to prevent or even eliminate it: "It would be unpardonably arrogant to believe that the facts one can easily understand they cannot be made intelligible to all and sundry. Everything that follows is much easier to understand than integral or differential calculus (which I never quite mastered, though I understand the principle). Every danger loses some of its terror once its causes are understood. Many neuroses can actually be cured by raising their deep, subconscious roots above the level of consciousness. With regard to both these facts, I hope that my little book could contribute to a slight reduction of the dangers that are threatening us.„[2]

Overpopulation as a biological problem

To understand this danger of overpopulation, other clarifying considerations must be introduced. The first observation is that biologists or ethologists have noticed the evolution of different species of animals throughout the era, and have found that there are nowadays well-known equilibria between the number of individuals and the space they occupy, the proportional ratio between predators and prey, population growth of a species relative to other species or with itself in other periods. Affecting these equilibria between species, their territory, their environment, and their threats meant the disappearance of those species in one form or another. The disturbance of these good functioning parameters of these species involving a number of individuals has led to catastrophic decreases in the number of surviving individuals and eventually the complete disappearance of those populations or species. This disappearance is a natural thing in the living world. The evolution of life on Earth was based on a fundamental condition: death. Without the danger of disappearance, there would have been no evolution as Darwin's theory has shown over 150 years. There is therefore nothing unimaginable and no serious thing - except of course the species concerned - that the population no longer meets the harsh demands of existence and therefore completely exits the scene. The overwhelming majority of the living forms that have lived on our planet have shared this cruel fate. Moreover, this way of life history based on death and disappearance made it possible for people to appear. Therefore, all these specialists in life history, biology or evolutionism have made the very small step from about. 3.5 billion years of life on Earth to our existence in today's cultivated form. Or, in keeping with Lorenz's terms, to civilized humanity whatever that would mean from a historical point of view. For biologists, this step is mandatory and insignificant, by the rudimentary evidence, but for much of this today's humanity this step is a giant leap, of nature and not of degree. Humanity does not share the same history of life with ferns, earthworms, or frogs, but distinguishes itself by reason, language, consciousness, culture, and many other forms of life so much that it is clear that it has another destiny most often attributed to a supernatural being, God. As these divergences are hard to

[2] *Op cit*. p. 6.

overcome and the theme of overpopulation has not made a career in public opinion to this day. Usually, if today we talk about overpopulation, it's only about saving the planet by protecting the natural environment. As if it's bad for the planet that we are many, not for us. Doubtless, the planet also suffers from overpopulation, but ethology shows that it is primarily bad for us as a species. Is it bad to be many or too many? First of all, it's not bad to be many, but it's bad to be too many. According to biology, the survival chances of a species increase as the number of individuals of that species is higher, so it is not bad to be many, but it is bad to be too many when we report, as I said above, that we are destroying by the enormous number the environment, meaning the space and the parameters of the evolutionary equilibrium. For example, the higher the demographic density, the more inter-human aggression increases. Highly appreciated human qualities, such as compassion or empathy, mercy, care, morality diminish as people are more crowded. Lorenz's studies on exotic colorful[3] exotic fish have brought to light the natural mechanisms of aggression. Human overcrowding has led to overcoming these fine barriers of natural aggression as an instinct, and turning it into an atrocious weapon turned to individuals of the same species. The horrors of the 20th century are a testimony to this biologically or naturally aberrant aggressiveness. It is notorious among the ethologists that the extreme self-destruction or aggression of people towards each other has no natural, biological or evolutionary causes. A most important cause is overpopulation. From it comes other, which Lorenz calls moralizing capital sins. But how many are too many? Here comes statistics, demography. It is said that a picture makes a thousand words, in our case makes a few billions:



If we look at the right part of the graph, we see very simply what constitutes the danger of overpopulation that ethologists are talking about. The sudden increase in the evolutionary scale of the population generated disturbances of a natural growth rate.

[3] K. Lorenz *On Aggression*, Taylor and Francis e-Library, 2005, chapter 2 Coral fish in the Laboratory for example, p. 9.

This situation made Th. Mathus believe that we would all be starving, and K. Lorenz launch this alarm signal. The question is: whose? Who can today seriously consider a warning from scientists about the possible extinction[4] caused by overcrowding. Perhaps only an asteroid walking toward the Earth can change the current consuming agenda of humanity. Lorenz also gives the answer: "There is no lack of obstacles that should be overcome if humanity is not to perish, and surmounting them is enough of a challenge to provide every one of us with adequate chances to prove our merit and merit. It would be a rewarding educational task to make young people aware of these obstacles."[5] In other words, it is an educational task, not to be taught in the classroom, especially awareness and action towards the creative minds that have always found a solution to the imminent problems of humanity. We appreciate that such an answer is David Benatar's antinatalist theory.

The Morris Solution

Branding ethologists have themselves advanced possible solutions to overcrowding problem. For example, D. Morris proposed a long-term solution that deserves a quote a bit longer: "If, in such a situation, some controlled anti-reproductive devices could have been introduced into the population when the first signs of over-crowding were apparent, then the chaos could have been averted. Under such conditions, anti-reproductive sexual patterns must obviously be considered in a new light. Our own species is fast moving towards such a situation. We have arrived at a point where we can no longer be complacent. The solution is obvious, namely to reduce the breeding rate without interfering with the existing social structure; to prevent an increase in quality. Contraceptive techniques are obviously required, but they must not be allowed to disrupt the basic family unit. Actually there should be little danger of this. (..) If any family produced two children, the parents would simply reproduce their own number and there would be no increase. Allowing for accidents and premature deaths, the average figure could be slightly higher than this without leading to further population growth and eventual species catastrophe„[6]. Theoretically or mathematically speaking, the solution stands, but how is it put into practice? We also believe that through an educational approach where people are aware of the need for controlled multiplication. Educational process, of course, means creating a stream of ideas that will turn into global public policy. As it is easy to see that it is impossible to achieve, especially in countries with large numbers in the population, the transformation of the danger of overpopulation into a moral lesson is more successful than the political lesson of overpopulation. So how can it be immoral to bring a child into the world? Here comes antinatalism.

Antinatalism

The first step in understanding that antinatalism can be a solution to the problem of overpopulation is to achieve the resemblance between D. Morris's solution and the moral value analysis of life proposed by antinatalism. Therefore, Morris proposes a limit that can be summed up to the principle: Every human should have no more than

---

[4] The term may seem unrealistic and tough, but it is only a summary. Yes, we will not all die when the population reaches 10 billion people, for example, but the related problems, Lorenz's sins, with which overcrowding combines, will ultimately lead to ultimate humanity.

[5] K. Lorenz *Civilized Man's Eight Deadly Sins*, Harcourt Brace Jovanovich, 1974, p. 42.

[6] D. Morris *The Naked Apes*, A Bantam Book, Canada, 1969, p. 84.

one child. The corollary of this principle is to say that in a family of two spouses no more than two children are born. By simply calculating the population would grow at a sufficiently low rate to avoid "catastrophe". It may seem reasonable, but it is totally inadequate for it to happen. Why? First of all because life is considered by itself a value. It is important to understand that life for us, at least for several hundred years when we speak of fundamental or natural rights, is understood as an absolute moral value. Every human exists because he has the right to this, and no one and nothing can threaten that state of being. Socially and politically, this way of looking at life has been the engine of civilization we enjoy today. But if we look at the idea of being alive in a moral context? It is what antinatalism proposes. Without ever questioning the right of a living person to be alive, antinatalism is a philosophical conception that analyzes the moral value of life itself. How good is it to be alive? How good is life? From the perspective of these questions, after the antinatalists, it quickly emerges that life itself is not an absolute well. That it is not necessarily better than not to be in the world. It must be clearly stated that antinatalism, at least in the form of D. Benatar, is a moral analytical philosophy. It is a philosophical analysis of the concept of human life. This analysis results in an ethic of life in which life no longer has absolute value. Benatar goes on and even says it's worse to be alive than not to be. The French philosopher of Romanian origin, Emil Cioran, entitled himself a work with the title "The Trouble with Being Born".Because life indubitably implies much suffering and pain for everyone who is born, we must cease to regard life as an absolute good. It is not our goal to follow closely this analysis of antianatalism, but what I want to emphasize is the importance of the moral analysis of life that antinatalism opens. More specifically, D. Benatar puts some questions relevant to the problem of overpopulation: do people have the moral duty to make children? Or, having a child can be immoral? Beyond Benatar's direct and difficult admissions, such as having no moral obligation to have children, on the contrary, or having a child is immoral,,, Although our potential offspring may not regret coming into existence, they certainly would not regret not coming into existence. Since it is actually very much not in their interests to come into being, the morally desirable course of action is to ensure that they do not.,,[7] we note that abstaining from procreation is a moral duty in antinatalist conception. The context in which procreation can be analyzed can be expanded. We can become more moral to have no offspring for other people before we were wrong with too many children. Having children is both the perpetuation of our species and ours, and a dangerous thing for other people when we have too many children, more than two at least. From antinatalism, we can understand that being alive for someone can be harmful to everyone else, as they form together too many people. How do we already know we are too many on this planet, does it not seem that it should be for the sake of all others to refrain from having many children? If everyone capable of multiplying on the planet had minimal compassion for peers, then they should refrain from multiplying by more than 2. Morris's mathematical solution can be replaced by a moral solution, and we can be illusive that if people are not scared of statistics, at least for the sake of respect for the neighbor, for his fellow men, to refrain from procreation. Beyond this moral scrooge is the love for our own children. The more we, the more today, we multiply, the more our children will suffer than each other. Conversely, the more we abstain from procreation, the fewer our children will have a happier life, and our great-grandchildren will have a life. We are talking about sustainable development,

[7] D. Benatar, *Better Never To Have Been: The Harm of Coming into Existence*, Oxford University Press, 2006, p.102.

and we want to see that what we do today does not in any way jeopardize the chances of the generations behind us, in other words, to preserve equal opportunities not only between us, the contemporaries, but between us and the generations after us. Why is not the same about births? We must morally abstain from making many children today so that our children and next generation can also have one. To multiply us today as much as possible means that the generations after us to multiply less or not at all. The transfer to the ethics of the demographic problem may not be enough for overpopulation to no longer be a fatal threat to mankind, but still bring a numerical solution closer to practice. But people are more sensitive to the feelings they can awaken in the souls of their peers, and then, perhaps knowing that bringing a child to the world in addition produces harm to others, they will think twice about giving birth to a baby.

The intent of the article was to use antinatalism through its ample and percussive discussions of the value of life to make the alarm signal drawn by ethologists more pervasive about the fate of the human race. If, however, the transfer of the problem of overpopulation on the ground of ethics does not change the danger of dehumanization through overcrowding, at least we have the consolation that the challenge of the ethologists was not lost in the ether like a meaningless cry, but from it various solutions were proposed. On the other hand, we leave open the issue of the overpopulation ethics to broader analyzes necessary to include political, educational or religious theories, in any case the factors responsible for public morality.

Bibliography

Lorenz, Konrad, *Civilized Man's Eight Deadly Sins*, H. B J.Hardcover, 1974.
Lorenz, Konrad, *On Aggression*, Taylor and Francis e-Library, 2005.
Morris, Desmond, *The Naked Apes*, A Bantam Book, Canada, 1969
Benatar, David. *Better Never To Have Been: The Harm of Coming into Existence* Oxford University Press University Press, 2006.

Educație, etologie și problema suprapopulării

Rezumat

În lucrarea de față îmi propun să arăt că antinatalismul lui David Benatar este un răspuns potrivit la o veche provocare a etologiei către educatorii lumii de astăzi. După jumătatea secolului XX, fondatorul etologiei K. Lorenz, alături numeroși savanți, adresa educatorilor provocarea că suprapopularea este principala sursă de amenințare a supraviețuirii umanității și educatorii pot face ceva în acest sens. Considerăm că un răspuns favorabil la acestă provocare il constituie teoria antinatalismului a lui Benatar care susține că este o datorie morală a cetățeanului de astăzi să nu lase urmași. Textul urmărește mai întîi descrierea problemei suprapopulării și apoi felul în care antinatalismul poate fi o soluție la această problemă.

Jus et civitas	Vol. V (LXIX) No. 2 /2018	59-74	A Journal of Social and Legal Studies

CHANGES BROUGHT TO THE APPEAL FOR ANNULMENT BY MEANS OF THE NEW CIVIL PROCEDURE CODE

Mihail Lohănel

Transilvania University of Braşov (România)
E-mail: f-dr@unitbv.ro

Abstract
This paper highlights the novelty of the appeal in annulment through the new Civil Procedure Code. Structured on three chapters, the paper begins with some general considerations regarding the analyzed institution and continues in chapter two with the examination of the grounds of the appeal in the joint annulment and then of the special one with highlighting the modifications brought in the previous regulation, including those determined by the qualification as final the appeal decision. The third chapter is devoted to a brief analysis of the court procedure, highlighting the novelties raised in this matter.

Keywords: news, appeal for annulment, procedure

CHANGES BROUGHT TO THE APPEAL FOR ANNULMENT BY MEANS OF THE NEW CIVIL PROCEDURE CODE

GENERAL NOTES ON THE APPEAL FOR ANNULMENT

Short history of the appeal for annulment

Unlike the other remedies at law, the appeal, the second appeal and the motion for revision, the appeal for annulment did not have its own regulation in the first civil procedure code, but it was drafted incipiently on the provisions of the old article 735 of the same code [1] which the case-law appealed to for removing faults within judicial procedure, amongst which the judgments and decrees [2]. But the doctrine [3] pointed out that the nullity of the judicial procedure under article 735 could be brought before the court of second appeal [4] or by means of the appeal on enforcement, logic thinking as a judgment and decree could be dissolved only by remedies at law expressly stated

by the law, but the solution of the case-law and here we talk about the action for annulment which could be exercised against decisions unsusceptible to any means of appeal [5], was a useful one, as the decisions delivered within the second appeal were not safe from procedural faults.

By means of the Law no. 18 of 12th February 1948, on the amendment of the civil procedure code, the appeal for annulment found its legislative place, being qualified as an extraordinary means of appeal and regulated as such in articles 317 – 321 Civil Procedure Code, provisions which, with some amendments [6], were maintained until the entry into force of the current code and entailed a rich doctrine [7] and case-law.

Definition and legal matters

The code does not provide a definition for the appeal for annulment, but from the regulation ensemble and from the enumeration made in article 450 we can acknowledge that it represents an instrument of procedure of extraordinary nature by means of which the interested party requests the retraction of the final judgment affected by procedural faults limitedly stated by the law.

In fact, the appeal for annulment represents a continuation of the civil action and is enlisted in the ensemble of judicial means for protecting the subjective law or other legal situation stated by article 29, the distinctive mark being determined by the nature of the appeal and by the purpose pursued, that of retracting a judgment entered into res judicata, but which suffers from a procedural point of view. As shown before, even if the trial has covered all trial phases, including the second appeal, the possibility of a procedural error slipping in is not excluded, the case-law demonstrating fully that there are numerous judgments delivered when the procedure of summoning the parties was not legally complied with, judgments delivered by courts without jurisdiction or the court of second appeal settled formally the appeal without taking into account if the formal requirements of the petition for second appeal had been complied with or the court failed to investigate in full the second appeals delivered in the case so the regulation of a procedural means like the appeal for annulment is useful. One must not omit, though, that the current regulation does not cover all situations of nullity which may affect the final judgment and this is why it is necessary to expand the reason for the appeal for annulment, of course, only for essential procedural faults, as I have proposed on a different occasion [8].

Description. Types of appeal for annulment

§ 1. Description

As it happened in the past, the appeal for annulment maintains its elements specific to the trial phase in which it may be exercised, namely:

a. It is a means of appeal, a judicial means available for the party, for the prosecutor or, under the conditions of the law, for other bodies [9] or persons, to request that the court annul a final judgment and decree;
b. It is an extraordinary means, as it is exercised against decisions under res judicata and available only for the reasons limitedly stated by the law;
c. It is a common means, which means that the party doesn't need to have a certain capacity in order to exercise it;
d. It is a means for retraction, nature which results from the construction of article 505, being settled by the court which delivered the judgment appealed.

e. It is a non-suspensive means for enforcement, but on demand, the court may decide the suspension until its settlement.

§ 2. Types of appeals for annulment

From the manner of structure and drafting of the text of article 503, one may reach to the conclusion that in the current regulation too, the appeal for annulment has two forms, namely a common and regular one which can be exercised against all final judgements (paragraph 1) and another, a special one, available only against decisions delivered by the courts of second appeal or, as appropriate, by courts of appeal, when their decisions cannot be subjected to second appeals, in accordance with the law.Given the special legal regime, the cases and conditions for exercise shall be examined separately.

APPEAL FOR ANNULMENT IN COMMON LAW

Object of the appeal

As I have already demonstrated, in the sense of article 503, paragraph 1, the object of the appeal for annulment is represented by final judgments, unlike the previous regulation which referred to irrevocable judgments, but the essence of the appeal is that the judgments against which there cannot be exercised any means of amendment are retractable.

The phrase "final judgments" is criticisable as it can create confusions, as the decisions delivered by the court of first instance, even enforceable ones, become final at different trial moments, dependent on the fact whether they are or not subjected to the means of appeal for amendment – the appeal and/or the second appeal and the decisions delivered by the courts of appeal receive this attribute in the same manner.

The notion of final judgment is not referred only to the decisions delivered by the court of first and last instance, but also to the ones which, being subjected to the appeal and/or second appeal, become final after the exercise of the means of appeal or at the expiry of the term when this was supposed to be submitted and the party let it pass without exercising his/her option for these purposes.

Subjects of the appeal

As the name of the means of appeal suggests, the parties of the appeal for annulment are called appellant and appelle. As the appeal for annulment represents, as I have demonstrated, a continuance of the civil action, the general requirements regarding the capacity, competency, law and interest [10] must be complied with. If regarding the conditions of competency there are no special issues, with respect to the second one, from the analysis of article 503, paragraph 1, it results that a party who may have the capacity to sue or be sued and thus be subject of the appeal is the party who was not legally subpoenaed and who was absent at the hearing when the case was tried. Thus, it is necessary that the appellant have the capacity of a party in the dispute settled as final, which means that any of the parties, plaintiff, defendant, voluntary or forced intervener, the person brought forward ex officio, appellant, second appellant or appelle may request the retraction of the judgment. The capacity as party is not sufficient and the special condition must be complied with, namely that the said party not to have been legally subpoenaed for the trial moment mentioned in the text, at the hearing when the trial took place, respectively, thus being absent [11].

Finally, under the conditions of article 92, paragraph 4, the prosecutor [12] may submit the appeal for annulment in two situations: a) when the appealed judgment was delivered in the cases concerning the protection of legitimate rights and interests of minor children, of persons under adjudication of incapacity and of people missing, as well as in other cases stated by the law, even if he/she did not initiate the civil action and b) when he/she attended the trial, under the conditions of the law.

The party must also justify an interest and we consider that a party does not have it, when, although not subpoenaed, won the case, for example the defendant against whom the plaintiff's action was dismissed on a final basis. Instead, the party who shall have an interest is the party who is in the situation pointed by the text, who lost the trial because, due to this reason, he/she could not submit his/her defences.

Conditions of the common appeal for annulment

From the analysis of the provision of article 503, paragraph 1, it results that the admissibility of the appeal for annulment is determined by the cumulative compliance with the following conditions, which we consider as being common:

1. The appellant not to have been legally subpoenaed;
2. The appellant not to have been present before the court;
3. The illegal summoning and the absence from court to have occurred at the hearing when the case was tried

§ 1. The condition of illegal summoning

With reference to the imperative provisions comprised in articles 153-173 which regulate the summoning and the service of judicial documents, we observe that from the entire ensemble of the summoning procedure regulation, it results a multitude of situations which generate the appeal for annulment. Practically, for complying with the requirement of article 503, paragraph 1, regarding the legal summoning, it is sufficient that one of the essential conditions, either with respect to the judicial documents of the subpoena, of the proof of delivery and of the protocol, or the non-compliance with judicial hearings or with the obligations imposed on the court, on the other persons bound by law to comply with the procedure or on the parties, not be complied with under the law. The same applies if the summoning procedure was not complied with during the trial because in reality, the appellant lived somewhere else than it was indicated by the plaintiff even from the notice made to the court of first instance or if the summoning was not complied with in the cases presented in article 229, paragraph 2 or a change of hearing occurred and the provisions of article 230, 2nd sentence were not complied with. In other words, every time the summoning was compulsory or, although not compulsory, was decided upon by the court, the non-compliance with the mentioned rules allows the retraction. There are as many guarantees that the trial is in progress or that is shall be resumed under full legal conditions. We reiterate that the irregularity must occur when the party was not present at the hearing, conditions which we shall further analyse.

§ 2. The condition that the party was absent

Unlike the current regulation, the code imposes a new requirement in connection with the first, being obvious that the illegal summoning usually determines the absence of the

party as it is presumed that he/she was not aware of the trial. So, the absence must be determined by a faulty procedure and not by the party's will, who has the right to be absent [13] from the trial, even at the hearing when the case is tried.

The phrase "he/she did not even attend the trial" from the content of article 503, paragraph 1, must not be construed in a rigid manner, such as a physical absence of the party from court, as the party may be represented, legally or officially, his/her presence being enough to cover the condition of the legal text. Furthermore, the area of application of the appeal for annulment is reduced considerably, taking into account that in the second appeal, the representation is compulsory (article 13, paragraph 2, 2nd sentence, article 83, paragraph 3), as it's unlikely that a final judgment in this judicial phase be subject to retraction based on the reason of the party's absence. Anyway, the representation of the party before the courts of first instance – trial court and court of appeal – does not allow the retraction, even if the summoning procedure was not legally complied with, but the party's representative was present before the court.

The analysed condition is not fulfilled also when the party is aware of the hearing date, as, in the sense of article 229, paragraph 1, "the party who submitted the petition personally or by attorney-in-fact and who is aware of the hearing, as well as the party who was present at a hearing, personally or by legal or official representative, even if he/she does not have the powers to know the hearing date, shall not be summoned during the entire trial at that court, considering that the said party is aware of the subsequent hearing dates. These provisions also apply to the party to whom, in person or by legal or official representative or by the clerk or person empowered with receiving the mail, the subpoena was served for a certain hearing, considering that, in this case, he/she also knows the hearing dates subsequent to the one for which the subpoena was served".

§ 3. The condition "at the hearing when the case was tried"

In the current regulation, the trial passes through two phases, one of investigation, when the legal activities stated by article 237 are fulfilled and one of hearing the merits, carried out under the conditions of article 389 – 394. Which interests us in the analysed matter is the last phase, if the party was not legally summoned and was absent, conclusion which results from the expression used by the lawmaker in the final part of article 503, paragraph 1. Unlike the appeal, where in article 480, paragraph 3, 1st sentence, is used the phrase "the trial was made in absentia because the party was not legally summoned" [14], which leads to the conclusion of an entire faulty trial and a second appeal where the quash with reference to retrial may occur only once if "the trial was made in absentia because the party was not legally summoned, both when the evidence was submitted and when the merits were heard (article 498, paragraph 2), so the procedure was faulty in both phases of the trial, in the case of the appeal for annulment, the lawmaker refers to the hearing of the merits. The provision is logic, as, during the trial and until the final hearing, the provisions of article 160 are applicable, provisions which regulate the manner of invocation and removal of irregularities on the summoning, possible until the hearing when the case is tried, under the sanctions stated by the text. Furthermore, if the faulty judgment is submitted to the remedies at law – appeal, second appeal – the irregularity must be removed within these phases, under the sanction of inadmissibility of the appeal for annulment, thus restricting even more the area of the means for retraction.

Basically, it is imposed that a party not to have been legally summoned and to have missed the hearing when the case was tried on the merits, when the chairmen opens the arguments and hears the merits so that each of the parties support their claims and defences submitted in the trial.

But, it is possible that the arguments have different moments, as it results from the analysis of article and of article 392 – 393, respectively:

a. They follow after the investigation at the same hearing, case in which the illegal summoning is reflected upon the first phase, too, but this situation does not drift away from the requirements of the analysed norm;
b. They follow after the investigation at different hearings, situation in which the conditions of article 497, paragraph 1, must be complied with at this last moment;
c. There may be two hearings on the merits, being sufficient that the procedure be faulty and the party miss only one of them, because the hearings on the merits have started, or, as appropriate, have continued, but, in reality, the two moments complete the same phase.

§ 4. Special conditions of admissibility

The requirements we have analysed represent as many conditions of admissibility, but they regard the merits of the appeal for annulment. We add to these the data presented in article 504 which engage the solution of inadmissibility, the court appealing to "an exception of inadmissibility" as, once complied with, the conditions of article 503, paragraph 1, are no longer analysed.

I. The first condition consists in article 504, paragraph 1, the common appeal for Annulment being inadmissible if the reason could have been invoked based on the appeal or second appeal [15], which means that it appeared either in the court of first instance or in the court of appeal.

The phrase "by means of appeal or second appeal" does not necessarily mean that the party who has the right to invoke the reason must have submitted himself/herself the appeal or, as appropriate, the second appeal, as he/she might have the capacity of appellee in the means of appeal, but he/she is obligated in this capacity, too, to raise the issue of the lack of the summoning procedure if he/she was not present at the hearing on the merits, under the sanction of not being able to exercise the means of retraction, not being possible that dependent on the fate of the trial, to "reserve" a means of appeal which would turn into "appeal to appeal" or "second appeal to second appeal" [16].

Several situations are possible:

a. The judgment is delivered by the court of first or last instance. Obviously, the party cannot invoke the reason, so the means of retraction may be exercised;
b. The judgment delivered by the court of first instance is subjected only to the appeal, situation in which the reason must be invoked during this last instance;
c. The judgment delivered by the court of first instance is only subjected to the second appeal, case in which the party is obligated to invoke the reason during the means of appeal;
d. The judgment is subjected both to the appeal and to the second appeal. The reason must be invoked by means of appeal or during the trial of the appeal, not being allowed in the second appeal unless it could not be invoked in the ordinary means of appeal or, although invoked during the hearing, the court dismissed it or failed to decide anything

with regard to it (article 482, paragraph 2), and if the reason came up during the appeal, it must be invoked by means of the second appeal.

e. Although the situation is very rare, if the reason was invoked, however, in the second appeal, the party has at hand the means of retraction.

f. Finally, if the party was not at all legally summoned during the entire trial and due to this he/she could not invoke the reason by means of appeal and/or the second appeal, he/she shall be able to exercise the appeal for annulment.

I1. The exception results from paragraph two of article 504, the appeal for annulment becoming admissible if the reason was invoked by means of the petition for second appeal but the court proceeded to try the case because it needed verifications in fact incompatible with the second appeal or if the second appeal, without any fault from the party, was dismissed without being heard on the merits.

We must make some observations:

a. The text is incident only if the judgment and decree is subjected to the second appeal and the reason was invoked through the petition for second appeal, becoming inapplicable for the appeal due to its ordinary nature, where verifications in fact are always possible.

b. Two admissibility hypotheses are regulated if the reason was invoked but the court proceeded to try the case:

b1. The reason needed verifications in fact incompatible with the second appeal [17], logic provision as in this means of appeal, the only evidence are documents, the facts remaining at the level of the court of first instance. For example, the testimonial evidence was requested or proving that the opposite party knew the real domicile and he/she indicated on purpose a different one or caused the service by publication. The same applies if the graphology expertise evidence was requested for the defamed documents of the summoning procedure.

b2. The second appeal received, with no fault of the party, a solution by means of which its merits were not investigated. The term "dismissed" must not be construed in its strict sense, but in a wider meaning, including the solutions for annulment as not legally stamped or for expiration.

The law demands that the solution delivered by the court of second appeal not be the result of the second appellant's fault who submitted tardily the second appeal and thus the court is not regularly vested or the second appeal is inadmissible, null for not being justified, was cancelled due to the fact that the party did not legally stamped it or considered expired as the court left it unworked based on its fault. Such reasons are harder to imagine, taking into account that the solutions by means of which the merits are not investigated are adopted in the filtering procedure of the second appeal and which occurs without the summoning of the parties.

II. The second condition results from paragraph three of article 504, the appeal for annulment in common law being inadmissible if previously, the party had submitted another based on the special reasons stated by article 503, paragraphs 2 and 3 and he/she did not invoke the reason within it, as the dismissal of the first appeal doesn't allow the exercise of another based on the same reason. Of course, the party has the right to submit the appeal against the judgment and decree delivered within the first appeal if, in this case too, he/she was not legally subpoenaed.

SPECIAL APPEAL FOR ANNULMENT

Object of the appeal

In accordance with the amendments brought in the matter of remedies at law, the appeal becoming the rule and the second appeal the exception and because both decisions delivered in the second appeal and in the appeal, which are not subjected to second appeal, are final, the lawmaker uses the expression "the decisions of the courts of second appeal" and "the decisions of the courts of appeal", thus the conclusion that the object of this type of appeal can only be the decisions delivered by tribunals, courts of appeal and supreme court which settles the case or by tribunals and courts of appeal when trying the appeal, if the decision is not subjected to the second appeal. Synthesising, the object of special appeals for annulment can only be the decisions of the court of last instance, second appeal or, as appropriate, appeal, these being in their turn final, although the law does not call them as such, but it was desired a clear difference against the decisions object of the appeal for annulment in common law.

The decisions delivered by the judges of first and last instance do not make the object of this type of appeal for annulment and neither do those delivered in appeal and which are subjected to second appeal, in this last case being excluded the alternative of the means of reformation with the one of retraction [18].

Reasons for the appeal

Unlike the old regulation, the current framework is wider, both pursuant to the amendments on the object of the appeal and to the reorganization of the reasons which allowed the special appeal for annulment.

Under the first aspect, the reasons of the appeal have grown quantitatively, being included reasons from the old code, but also some new ones, which, on the one hand, have as object decisions delivered in appeal and on the other hand, new reasons, such as the ones from article 503, paragraph 2, points 1 and 4.

Under the second aspect, the qualitative one, one can observe another structure of the reasons, even a detailing, such as the ones from points 3 and 4 from the said norm.

We shall examine them by turns.

§1. Reason 1 – the decision in the second appeal was delivered by a court without full jurisdiction or with breaching the norm on the formation of the judicial panel and, although the appropriate exception had been invoked, the court of second appeal failed to deliver a decision regarding it.

This first reason regulates two hypotheses:

1. Breaching the norms on full jurisdiction

The old code acknowledged this reason as one of the regular appeal for annulment, but now it was included amongst the ones which regard the special appeal for annulment and we believe that this occurred due to exceptional situations in which this reason may appear an also due to the legal regime of the exception for lack of jurisdiction.
The lawmaker is not consistent in terminology, using the expression "absolute jurisdiction", unlike the second appeal, where in article 482, paragraph 1, point 3, it uses the phrase "public order jurisdiction", found also in article 125, but with no doubt, the

reason for appeal only appears when there is a breach of public order provisions (which are also "absolute") and not of the ones of private order.

The special appeal for annulment may be, thus, exercised, only if the norms which regulate the exclusive general, subject-matter and territorial jurisdiction of the courts [19] are ignored by means of the decisions delivered in second appeal or, as appropriate, in appeal.

A second condition is added to this one, namely the court to have failed to deliver a decision on the exception for lack of jurisdiction. For this, it is necessary that the exception for lack of jurisdiction to have been invoked also in the petition for second appeal or, as appropriate, for appeal and the court to have failed to deliver a decision regarding this matter. If the exception was not invoked under these conditions, the appeal for annulment becomes inadmissible. This happens too when the court analyses the exception and dismisses it, but not when the court actually omitted, "forgot" to deliver a decision concerning it.

2. Breaching the norms on the formation of the judicial panel

It is a reason not acknowledged by the old code and, on another occasion [20], when I analysed the first quash reason in the matter of second appeal, I demonstrated that it regards the norms of judicial organization with respect to the formation of the judicial panel and establishment of the court, which are of public order nature. Although it's hard to believe that such a reason is to appear in case-law, it must not be omitted that errors may appear, especially concerning the formation of the panel, when, for example, by mistake, the prosecutor did not attend the trial although it was compulsory that he be part of the judicial panel.

In this case too, it is necessary that the exception of the illegal formation of the judicial panel to have been invoked in second appeal, or, as appropriate, in appeal and the court to have failed to deliver a decision concerning this issue, the reason becoming inadmissible if the court had dismissed it.

§2. Reason two – the judgment delivered in second appeal is the result of a clerical error.

It is not a new reason, but one notices the difference in terminology, the phrase "clerical mistake" not being used anymore, but "clerical error", enunciation which we consider criticisable, creating confusion with the institution of correcting the decision (article 442, paragraph 1) where the same phrase is used or, it is certain that between the two norms – the analysed one and the evoked one – there are net differences of substance. A more proper phrasing would have been "procedural mistake", given the fact that the clerical error in the matter of the appeal for annulment does not regard but procedural mistakes [21].

The decisions enclosed in the analysed matter and thus the decisions to be retracted are the final decisions by means of which the second appeal, or, as appropriate, the appeal, was dismissed as tardive, although submitted in due time, existing to the case file the envelope with the postmark date within the legal deadline [22]; dismissed for not paying [23] the judicial fees, although the receipt for paying the legal stamp duty was submitted to the case file or the condition for legal stamp duty was not compulsory; dismissed for lack of demonstrating the capacity of representative, although the power of attorney for

representation was submitted to the case file; the second appeal was considered null although it was justified by a separate memoir not noticed by the court.

It is acknowledged that by means of the appeal for annulment, one cannot invoke reasons with regard to the merits of the appeal/second appeal, such as the erroneous appreciation of evidence or failure to comply with the law and, in general, the quash cases stated by article 488 as they regard possible errors of trial and the means of retraction would transform inadmissibly into one of reformation.

§3. Reason three – the court of second appeal by dismissing the second appeal or by admitting it in part, failed to investigate any of the quash reasons invoked by the second appellant at the hearing.

The hypothesis is connected with the solution delivered by the court of second appeal, being excluded in case of decisions delivered by the court of last instance in appeal, as it expressly states article 503, paragraph 3. The solution chosen by the lawmaker is not free from criticism as the decisions delivered in appeal which, according to the law, are not subjected to the second appeal, are also final and the omission of the court of appeal to decide upon any reason which may be essential for the just settlement of the case, cannot be repaired in any other way. If the party is imposed a certain judicial discipline in drafting the petition for appeal, being necessary that he/she invoke the reasons de facto and de jure which the appeal is based upon (article 470, paragraph 1, letter c), in the same manner the court must respond to each reason for appeal invoked, no matter if the appeal is a primary one, incidental or provoked. Furthermore, the decisions delivered in appeal and subjected to second appeal under the defect of not containing grounds, equivalent to the non-investigation of the reason for appeal, are annullable (article 488, paragraph 1, point 6), argument which determines us to assert that it was by mistake that the hypothesis sighted by the analysed text was excluded from the case of decisions delivered in appeal not subjected to second appeal. *De lege ferenda*, it is imposed to eliminate the defect by creating the opportunity that the decisions delivered by the court of last instance be retracted too by means of the appeal for annulment if the court of appeal, adopting one of the solutions nominated by the text, failed to decide upon a reason of appeal.

There are three conditions so that the norm be incident:

1. The solution delivered in second appeal be one of dismissal or of admittance in part of the second appeal [24], reflected as such in the operative part of the judgment and not of total admittance, case in which the appeal for annulment would have no grounds. Of course, both solutions can be adopted simultaneously if at least two second appeals were promoted, but it's most important that the court of second appeal to have settled the second appeal "on the merits", edifying for the purposes of the conclusion being the term "investigation" included in the legal text. Accordingly, the appeal for annulment cannot be received on this ground if the second appeal received a formal solution, of being dismissed for not paying the judicial fees or for not being signed, if it was acknowledged null, expired, dismissed as being inadmissible or tardive, as in these situations there is no investigation on the merits, but a formal one of the second appeal and thus one cannot sustain that the court failed to deliver a decision upon the reasons of illegality invoked in the second appeal [25].
2. The court failed to investigate any of the reasons for quash; the text is adapted to the new regulation on the solution to admit the second appeal which cannot be amended

as an alternative to quash. One notices that the phrase "by mistake" has been eliminated, phrase which was included in the old regulation, but essentially, not investigating a reason for second appeal is still a mistake from the court.

The omission is investigated within the appeal for annulment by comparing the reasons of illegality invoked in the petition for second appeal with the recitals of the judgment, which, as I have demonstrated before, it must contain the response to all reasons for second appeal.

Most of the times, in supporting the same reason for second appeal, the parties invoke more arguments, but the court doesn't have to respond to each of them, so the appeal for annulment is not available if the court had condensed them and responded in this manner to the reason for second appeal. That is why the petition for second appeal is subjected to high strictness and it is imposed that each reason of illegality to be distinctly developed de facto and framed de jure even if the argumentation [26] for each is wider in order to allow the court which tries the retraction to analyse the compliance with the condition of omission imposed by the norm under discussion, namely to actually be a lack of investigation of a reason and not of an argument.

The omission must be essential, that is, in case of admittance of the appeal for annulment and of annulling the judgment, it must be able to change the solution delivered in second appeal, namely to lead to the admittance, even in part, of the second appeal, if it initially was dismissed or to the total admittance of the means of reformation.

3. The reason for quash to have been invoked by the second appellant in due time, which suggests that a reasoning of the second appeal occurred in the judicial hearing for exercising the means of appeal, while the reasons invoked tardily were not taken into account. The law demands the reason to have been invoked by the second appellant, as the appeal for annulment is not available if the reason, even if it is of public order, was invoked ex officio by the court [27] under the conditions of article 489, paragraph 3, but its investigation was omitted.

§4. Reason four – the court of second appeal did not deliver a decision regarding one of the second appeals submitted in the case

The norm must be corroborated with the provision of paragraph 3, article 503, being incident also when the court of appeal failed to deliver a decision upon any of the appeals submitted against the judgment delivered by the court of first instance, if the appeal is the only remedy at law for reformation. The text has no applicability if the decision delivered in appeal is subjected to second appeal, the interested party having the possibility to exercise this last means of appeal, not existing a right of option between the means for reformation and that of retraction, even if the provision of article 459, paragraph 3, 1st sentence would let on otherwise and this in consideration of the provisions for exception comprised in article 503, paragraph 3, which limit the possibility to exercise the appeal for annulment only in case of decisions made final in appeal.

The hypothesis regulated by the analysed text may appear if several second appeals had been submitted in the case or, as appropriate, appeals, no matter their nature, primary, incident or provoked and the court which tried it actually left unsettled at least one of

the means of appeal submitted in the case, aspect reflected in the operative part of the judgment too, even if, the court had reminded tangentially of it in the recitals. With respect to the incident or provoked second appeal/appeal, we should discuss the cause and legal interest of the second appellant/appellant who exercised it in promoting the appeal for annulment if the primary second appeal/appeal received one of the solutions presented in article 472, paragraph 2, namely the court took into account its withdrawal or it was dismissed as tardive, inadmissible or dismissed on grounds which do not involve the investigation on the merits and the court failed to deliver a decision upon any of the incident or provoked second appeals/appeals.

We believe that in view of the solution adopted by the lawmaker in this situations and when the incident or provoked second appeal/appeal remains invalid, the appeal for annulment submitted by the second appellant/appellant who exercised it, on grounds that the court did not deliver a decision upon it, is causeless and the appellant has no real legal interest as the means for reformation submitted cannot be analysed on the merits.

The special condition of article 504, paragraph 3 and which we have referred to in the first part of the study is added to all these conditions.

THE TRIAL PROCEDURE

Court of competent jurisdiction

Unlike the means of reformation, the appeal for annulment is submitted to the court which delivered the judgment to be appealed (article 505, paragraph 1) and which can be, as appropriate, any of the courts within the legal system which delivered the final judgment or delivered a decision in second appeal or, as appropriate, in appeal, when the judgment is not subjected to second appeal.

It is desired to be pointed out that it is a means of retraction and with nature of novelty and by article 505, paragraph 2, it is expressly decided that it shall not operate an extension of jurisdiction if the reasons invoked would lead to different jurisdictions. Thereby one must observe from case to case if the reasons lead to or not to different jurisdictions of the courts, dependent on the one which delivered the judgment, situations which may be met in practice, given the obligation to invoke all incident reasons by means of the same appeal for annulment. If there are such situations, the vested court, approaching the exception of lack of subject – matter jurisdiction, shall split the claims and decline jurisdiction in favour of the competent court, considering for settlement only the reasons which fall under its jurisdiction.

Deadline for exercise

In the matter, the code brings important amendments, deciding upon the deadline for exercise and upon the deadline for reasoning the appeal for annulment. For these purposes, article 506 states that “The appeal for annulment may be submitted within 15 days from the date of service of the judgment, but no later than one year from the date when the judgment was made final.

The appeal for annulment is to be reasoned within the 15-day deadline stated by article 1, under the sanction of its nullity”.

From the analysis of the text, one may come to the following conclusions:

a. The deadline for submitting the means of appeal is 15 days and it accrues from the date of service of the final judgment. The date of service is of little importance, the essential point is that the submittal of the appeal for annulment be made within the 15-day deadline which, being a procedural one, is calculated dependent on free days. If the judgment was not served, the 15-day deadline would not accrue, but the appeal for annulment must be submitted within maximum one year which is accrued from the date when the decision was made final.
b. Due to the fact that both deadlines are procedural, the sanction of not complying with them is the loss of the right to bring before the court the means of retraction.
c. The appeal for annulment must be reasoned too within the 15-day deadline for submitting it before the court. It is not necessary that this condition be complied with at the same time with submitting the appeal for annulment, but the deadline for its reasoning must be complied with, under the sanction of the appeal for annulment's nullity.
d. Obviously, the reasoning must be supported on one of the reasons limitedly stated by article 503 and which we have already analysed.

The actual procedure

By and large, the Code takes over the current provisions, but with some amendments which we point out:

a. Unlike the current regulation which did not state expressly, article 508, paragraph 1, states that the trial of the appeal for annulment occurs in accordance with the procedural provisions applicable to the trial finalized by the appealed judgment. As such, one may notice in which trial phase the final judgment was delivered (for the appeal for annulment in common law), namely if we are talking about a judgment delivered in appeal or in second appeal (for the special appeal for annulment), according to which the procedural provisions regarding the trial shall apply, of course the ones compatible with the means of retraction.
b. The statement of defence is compulsory, just as now, and is submitted to the case file 5 days before the hearing, but it is not served, the appellant becoming aware of the appelle's defences by analysing the case file.
c. A novelty too is the norm from article 508, paragraph 3, which regulates the solutions which the court of retraction may deliver. Although the code does not state it, it is obvious that a first solution is to dismiss the appeal for annulment as ill-founded or tardive, another one would be to dismiss it because the legal fees have not been paid or paid insufficiently, or because it was not reasoned in due time.
Instead, if the reason for the appeal for annulment is well-founded, the court shall deliver only one judgment by means of which it shall cancel the appealed judgment and settle the case. If the settlement of the case is not possible in the same hearing, the court shall deliver a judgment to cancel the appealed judgment and shall set a new hearing for settling the case by means of a new judgment, as it usually happens in practice.
d. Finally, we must state that the judgment delivered in the appeal for annulment is subjected to the same remedies at law as the appealed judgment, the text being applicable to the common appeal for annulment, as by definition, in case of the special appeal for annulment, the judgement which is retracted is final and thus unsusceptible

to any appeal and the judgment delivered in the appeal for annulment has the same fate. The judgment delivered in appeal for annulment, by means of which the appealed judgment was cancelled, is not subjected to any means of appeal if the trial doesn't occur at the same hearing, but at another when the court shall settle the case.

References:

1. Article 735 stated three hypotheses in which the nullity would operate: a) if the procedure was completed by an incompetent magistrate; b) if the non-detection of the form caused damage which cannot be corrected but by the annulment of the procedure; c) if the nullity of the procedure is formally stated by the law.
2. For further details, *V.G. Cadere*, Tratat de procedura civila, Cultura Nationala Publishing House, Bucharest, 1928, p. 28-29.
3. *Gh. Nedici, C. Gr. Zotta*, Recursul in casare, Tipografia Ziarului "Universul" Publishing House, Bucharest, 1935, p. 134, point 752.
4. The nullity for breaching certain "procedure forms essential for validating judgments and decrees" was the reason for quash stated by article 30, point 6 of the 1934 Law on the Court of Cassation.
5. Please see *V.M. Ciobanu*, Tratat teoretic si practic de procedura civila, National Publishing House, Bucharest, 1997, vol. II, p. 415-416.
6. Legislative measures were brought by the Decree no. 649/1967 on the term for submitting the appeal against judgments unsusceptible to forced execution, the Government Emergency Ordinance no. 138/2000 by means of which the provisions in article 318, paragraph 2 were repealed and obligation to submit a statement of defence was inserted in article 320, paragraph 2.
7. For vast development, please see *M. Tabarca Gh. Buta*, Codul de procedura civila comentat si adnotat, Universul Juridic, Bucharest, 2007, p. 909-930; *G. Boroi, D. Radescu*, Codul de procedura civila comentat si adnotat, ALL Publishing House, Bucharest 1995, p. 526-545; *I Les*, Tratat de drept procesual civil, ALLBECK Publiching House, 2001, p. 608-623.
8. Please see *M. Lohanel*, Recursul in procesul civil, Hamangiu Publishing House, 2011, p. 390, point 32.
9. For example, the official receiver / trustee in bankruptcy have the capacity to submit the appeal for annulment, being the debtor's legal representative under the conditions of the Law no. 85/2006 on the insolvency procedure.
10. For further details, *I. Les*, op. cit., p. 610.
11. Please see *M. Tabarca, Gh. Buta*, op. cit., p. 911
12. In the sense that the prosecutor may submit the appeal no matter if he/she attended the trial of the case, *G. Boroi, D. Radescu,* op. cit., p. 527.
13. The absence of the party who was legally summoned cannot stop the case to be tried if the law does not decide otherwise (article 223, paragraph 1). In case the parties do not answer the roll call at the appeal, the court shall verify if the summoning procedure was complied with and, as appropriate, it shall proceed, under the conditions of the law, to the postponement, suspension or trial of the case (article 219, paragraph 2). It results that the absence of the party from the trial does not represent a circumstance to stop the trial.

14. In order to decide upon the annulment of the judgment appealed and upon quash by the superior court, *emphasis added.*
15. *I. Deleanu*, Tratat de procedura civila, Servo-Sat Publishing House, 2000, p. 449.
16. The party has no option right between the appeal and the appeal for annulment – *G. Boroi, D. Radescu,* op. cit., p. 533.
17. For further details, *G. Boroi, D. Radescu,* op. cit. p. 533.
18. For these purposes, *M. Tabarca, Gh. Buta*, op. cit., p. 912.
19. For further details, *M. Tabarca, Gh. Buta*, op. cit., p. 911.
20. *M. Lohănel*, op. cit., p. 193-198.
21. *I. Deleanu*, op. cit., p. 453.
22. For these purposes, *G. Boroi, D. Radescu*, op. cit., p. 536.
23. In this case, during the second appeal, the appellant was summoned four times to legally stamp the second appeal and for the last hearing, she was informed on the condition of the legal stamp duty even by means of a letter, so the solution to dismiss the second appeal does not represent a clerical error to stand for the appeal for annulment – Court of Appeal of Brasov, civil division, Civil Decision no. 1068 of May 29th 2012, republished.
24. For further details, *M. Tabarca, Gh. Buta*, op. cit., p. 921.
25. As I have demonstrated, the formal solution may be appealed under the conditions of reason two of article 503, paragraph 1, if we are talking about a clerical error.
26. For these purposes, *I. Les*, op. cit., p. 619. Court of Appeal Timisoara, civil division, Civil Decision no. 714/1999 in the Case Law Journal for the year 1999, p. 13.
27. If the court fails to deliver a decision upon a quash reason of public order invoked verbally by the second appellant at the hearing on the merits, the appeal for annulment is admissible – *M. Tabarca, Gh. Buta*, op. cit., p. 921.

Bibliography

Boroi Gabriel, Rădescu Dumitru, Codul de procedură civilă comentat şi adnotat, ALL Publishing House, Bucharest, 1995.
Cădere Victor G., *Tratat de procedură civilă,* Cultura Naţională Publishing House, Bucharest, 1928.
Ciobanu Viorel Mihai*, Tratat teoretic şi practic de procedură civilă*, Naţional Publishing House, Bucharest, 1997.
Deleanu Ion*, Tratat de procedură civilă*, Servo-Sat Publishing House, 2000.
Leş Ioan, *Tratat de drept procesual civil*, ALL BECK Publishing House, 2001.
Lohănel Mihail, Recursul în procesul civil, Hamangiu Publishing House, 2011.
Nedici Gheorghe,Zotta Constantin. Gr., *Recursul în casare*, Tipografia Ziarului „Universul" Publishing House, Bucharest, 1935.
Tăbârcă Mihaela, Buta Gheorghe*, Codul de procedură civilă comentat şi adnotat*, Universul Juridic " Publishing House, Bucharest, 2007.

Noutăți aduse contestației în anulare prin noul Cod de procedură civilă

Rezumat

Prezenta lucrare reliefează noutățile aduse contestației în anulare prin noul cod de procedură civilă. Structurată pe trei capitole, lucrarea debutează cu unele considerații generale privind instituția analizată și continuă în capitolul doi cu cercetarea motivelor contestației în anulare comune și apoi a celei speciale cu evidențierea modificărilor aduse în raport de reglementarea anterioară, inclusiv a celor determinate de calificarea ca fiind definitivă hotărârea din apel. Capitolul trei este dedicat unei scurte analize a procedurii de judecată cu evidențierea noutăților aduse în această chestiune.