

# THE EXTRA-PATRIMONIAL RIGHTS OF THE PERSON FROM THE PERSPECTIVE OF THE NEW ROMANIAN CIVIL CODE

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## Abstract in original language

După mai bine de 100 de ani de aplicare a Codului civil român, modificat nesemnificativ în perioada 1945-1989, „moda” reformării legislative a afectat și legislația civilă română.

Noul cod civil român vine cu abordare modernă în materie de drepturi personale nepatrimoniale, reglementând în art. 58 „dreptul la viață, sănătate, la integritate fizică și psihică, la demnitate, la propria imagine, la respectarea vieții private, precum și alte drepturi recunoscute de lege”.

În raport de aspectele la care se referă drepturile nepatrimoniale, acestea se împart în drepturi care privesc calitatea de om, drepturi care au în vedere atributele personalității și identificarea persoanei și drepturi care se nasc în strânsă legătură cu personalitatea realizatorilor de creații intelectuale. Întâlnim deci reglementate (în art. 59-81 din Noul Cod civil român) următoarele categorii de drepturi nepatrimoniale:

– drepturi nepatrimoniale ce privesc existența și integritatea fizică și morală a persoanei (dreptul la viață, dreptul la sănătate și integritate fizică, dreptul la libertate, onoare);

– drepturile referitoare la atributele de identificare a persoanei (dreptul la nume, dreptul la domiciliu).

## Key words in original language

Drepturi nepatrimoniale, personalitate, viață privată

## Abstract

After more than 100 years of Romanian Civil Code, modified slightly in 1945-1989, "the fashion" of legislative reform affected the Romanian civil legislation. A New Romanian Civil Code comes with a modern approach in extra patrimonial rights, regulating in art. 58 "right to life, health, physical and mental integrity, to dignity, to their own image, to privacy and other rights recognized by law."

The extra - patrimonial rights are divided into rights concerning the quality of human rights, rights that are considering personality attributes and rights that arise in conjunction with the authors of intellectual creations. In this respect, are regulated (in Art. 59-81 of the New Romanian Civil Code) the following categories of extra-patrimonial rights:

- extra - patrimonial rights relating to the existence and physical and moral integrity of the individual;

- rights related to the identification of the person.

### Key words

Non-patrimony rights, private life,

## 1. REGULATIONS PRIOR TO THE NEW CIVIL CODE

The Romanian Civil Code has been applied for more than 100 years, slightly modified during the period from 1945 to 1989. Then, Romanian civil legislation came to be affected by the "trend" of reforming too.

In the former regulation of the private law's domain, (consisting in the 1864 Civil Code, the law nr. 119/1996 and the Family Code), only the rights to own a name, a domicile, a civil status and the author's non-patrimony rights were recognized. Yet the doctrine has appreciated, especially due to the existence of their constitutional regulation, that the non-patrimony rights concerning the individual's physical and moral integrity were also acknowledged.

## 2. PERSONAL NON-PATRIMONY RIGHTS IN THE NEW CIVIL CODE

The New Civil Code comes with a modern approach for the domain of personal non-patrimony rights, since it rules, in its Article 58: "the rights to life, health, to physical integrity, to dignity, to one's own public image, to the respect of one's own private life as well as other rights recognized by the law. These rights do acquire a peculiar importance, since there is a distinct section, vowed to rule them.

Article 59 enforces the rights to own a name, a domicile, a residence to inhabit and a civil status.

These rights are unanimously acknowledged as being: strictly personal, inalienable, and unnoticeable, imprescriptibly, and perpetual, though the Romanian law does not explicitly state these assets for them.

The motives' exposition itself states the fact that, in the matter of the person's non patrimony rights, the intended purpose was to rule the questions of principle. The legislator's intention was to further rule over the details through special laws. "The highest modernity's norms in this matter" (considered so by initiators of the New Civil Code - <http://jurisprudencedo.com/Niemietz-contra-Germaniei-Viata-privata-Definitie.html>), Quebec's Civil Code has also chosen this method.

As a principle, the Code establishes the fact that the human being's welfare and interest ought to prevail in front of the unique interests of the society itself and of science. What exactly could be the unique

interest of science? Who could infringe the human being's interest, and how such an infringement could be penalized?

The New Civil Code re-enforces dispositions that were previously functioning in special laws. In its articles 62 and 63, it forbids the damages brought to the human species, the medical procedures involving genetically assets, the human cloning, the deliberate choice of future child's sex. Some commonly acknowledged rules concerning the medical intervention upon an individual person the human organs' drawing and transplanting are explicitly stated in order to protect the individual's physical integrity.

The New Civil Code's most important innovation is represented by the regulation of personal non-patrimony rights concerning the individual's dignity and private life.

The texts of articles 70-74 are warrants, even if only at principle's level, for: the right to a free expression; the right to one's own private life; the right to one's own dignity; the right to one's own public image.

Essentially, these texts do forbid interferences within one's personal life, intimate life, or familial one; intrusions into one's domicile, residence, or concerning someone's correspondence. The law's text makes use of two concepts: private life and intimate personal life. The European Court of Human Rights, in the case *Niemietz vs. Germany* (1371/88, <http://jurisprudentacedo.com/Niemietz-contra-Germaniei-Viata-privata-Definitie.html>) has stated that an exhaustive definition of the concept of private life could not be possible, neither necessary. Yet, to limit the domain of its applying to the intimate sphere where people effectively spend their personal lives would be too restrictive. In the case *Bruggeman vs Germany*, The European Court of Human Rights has stated that, when it comes to persons who are involved to public life (as in the case of politicians), the frontier hard to be drawn and the concept of private life might be submitted to restrictions. The New Civil Code's aim seems to have been the delimiting of concepts, when it has made use, in the article's denomination, of the concept: "private life", while in the text itself, it has made use of: "intimate personal or family life". Still, thinking into consideration the European Court of Human Rights jurisprudence, we appreciate that the text of article 71 should not be understood as a definition of the concept: "private life".

The same article 71 forbids the "interference within the domicile", which leads our thought" to an intrusion into the respective domicile. Then, by corroborating the articles 71 and 74, we discover that, by "interferences" are meant the following "prejudices" brought to private life (art. 74):

- a) penetrating or unrightfully remaining in the dwelling or taking from it any object without the consent of the person occupying it legally;
- b) tapping unrightfully a private conversation, made by any technical means, or the use, learnedly, of such an interception;

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

In its Title V, arts 252-257, the New Civil Code creates another innovation, the protecting of non-patrimony rights. It enforces a procedure action which is much alike the one which exists in the matter of disloyal competition (as in the Law 11/1991). It is a lawsuit which might adopt a forbidding purpose, a reparatory purpose or simultaneously both. Its juridical nature has not get been clearly elucidated. The nearest qualifying to be attributed to it would be kindred to the civil misdemeanors liability's lawsuit. Another innovation is the modality of defending the right to a name through a prohibitory lawsuit (aiming to cease the other side's making use of it).

### 3. THE AUTHOR'S NON-PATRIMONY RIGHTS

Author of a creation, his moral rights are tightly related to his own personality. De facto, they usually take the form of a complex aggregate mode of right pertaining to personality. A moral right justifies its existence trough originality. This latter is the one which provides the protection's source and extend. A creation does deserve protection only inssofar it has been shaped and filled in by the author's personality. If the subjective criterion constituted by originality should

be abandoned, the moral right would be deprived of the slightest justifying.

The reason for which moral rights do exist could on by be analyzed in the larger surrounding constituted by the existence of intellectual rights, among which there are patrimony rights. The more ancient French doctrine had chosen to establish the moral right as central vortex of the whole analysis it made upon the author's rights. Its reason was given by the general features of moral rights: they are prior to patrimony rights, they keep lasting after these latter's had ceased to exist and they are also conditioning them. Under these circumstances, moral rights are understood as springing from the personality of the individual who has realized the respective intellectual creation, as being a natural continuation of it, no matter of what might be the material conditionings. This was the intellectual creation and its performer is standing in the limelight.

We are due to say that this attitude towards the moral rights which exist within the contents of the author's right was not unanimously appreciated. For example, some have said that moral rights would so come to be grounded upon a Romantic image of the author, who is nourishing his creation by the substance of his personality. Thus, by making use of this model, moral rights could endow the author, so that he might provide to his creation a status of indestructibility. Other objections brought to the author's moral rights had pointed out that these rights do constitute limiting of the ownership right or, either, that the author's (private) interest is too highly privileged by these rights, in comparison to the disrespect there by shown to the public interest concerning the respective creations.

A moral right, in its quality of personality's right, should not be subject for the confusion with other non-patrimony rights owned by the individual person. For example, the right of claiming the respect of one's authorship is not to be confounded with the right to one's own name, as this latter is ruled by the Decree nr. 975/1968, by the Family Code, arts. 62 and 64 and by the Law nr. 119/1996.

The Law nr. 8/1996, in its art. 10, states, for an author, the following moral rights:

- to decide if, how and when the respective creation will be brought to public knowledge;
- to claim the recognition of the quality of being the creation's author;
- to decide under what name the respective creation will be brought to public knowledge;
- to claim the respect of the respective creation's integrity, and to oppose to whatever modification brought to the respective creation, as well as to whatever prejudice brought to it, should its honor or reputation be prejudiced by them;

- to retract the respective creation, by indemnifying, should the case occur, the owners of the use right, who might be prejudiced by exerting the right of retracting the respective creation.

#### 4. CONCLUSIONS

We are not yet able to evaluate the effects of the major changes which have occurred into the Romanian civil law through the legislative way. After having been applied for more than century, the “old” Civil Code, inspired from French sources, had shown its inherent limitations. Yes it had also brought the advantages of being applied with no derogations and of having created an important jurisprudence. The Romanian legislator has chosen a solution which is fundamentally different from the one French model, which had preferred to successively modify the initial Civil Code. Our own reform aims to be comprehensive and runs into the European trend of rendering as uniform as possible the trading and Civil Laws. Some drafts of the European Commission have been taken into consideration to this purpose. This the ancient Code has been substituted *uno actu* by a new one. Among these European projects, let us mention the: “Project of Regulation for modifying the E.C.’S Regulation 2201/2003 concerning the respective competencies and the institution of rules regarding the law applicable in the matter of matrimony” (Rome III).

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