ON THE FREEDOM OF EXPRESSION AND THE RIGHT TO PRIVATE AND FAMILY LIFE

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ABSTRACT*: The essential aspects related to the freedom of expression and the right to private and family life – as human rights – are consecrated by the international regulations in the matter, but they are also consecrated as fundamental rights regulated at the level of the constitutions and regulations within the national legal systems of all democratic states.*

The freedom of expression and the right to private and family life are two of the fundamental human rights which grant significance to the social respect due to the individual.

KEYWORDS*: freedom of expression, right to private and family life, human rights, fundamental rights, public liberties.*

JEL CLASSIFICATION*: K 00, K 36*

Conceptions regarding the human rights and liberties, expressed in the works of certain prestigious philosophers and jurists, have been found in numerous documents with constitutional character highlighting a logical conception and good structure along time.

A summary examination of the conceptions concerning the human rights, regarded in their historical evolution, proves that the philosophical "load" of this concept is directly reflected in the definition of the political and legal traits of the concept itself. One must underline the fact that the elaboration of the concept of *human rights* was the resultant of certain legal acts with a rich moral and political content, of their consecration under the form of certain documents drawn up by prestigious jurists. Moreover, these documents have meant the highlighting of certain principles of political organisation, grounded in theoretical works of universal value which resisted time. The concept *in se* of *human rights* has represented thus a synthesis of the best of human thinking, highlighting the principles of the humanist philosophy, repeating the valuable elements from the religious thinking and the general aspirations of liberty and dignity which had been felt with such vigour in the 17th and 18th century.

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1. THE NOTION OF HUMAN RIGHTS. NECESSARY DISTINCTIONS. CATEGORIES OF RIGHTS.

The human rights comprise a system of ideas, interpretations or values signifying certain conceptions regarding the human being, the society and the state power, postulating liberty, equality among all people and the observance of their dignity[1].

The analysis of the legal meaning of the notion of "human rights" supposes taking into consideration its double meaning in the order of law[2]: the meaning of *objective law* of human rights (the totality of the international instruments consecrating and protecting the human rights and the institutional mechanisms guaranteeing their observance) and the meaning of *subjective law* (as set of prerogatives recognised to a certain subject of law).

In the content of the international legal instruments regulating the human rights, but also in the constitutional regulations of diverse states, one uses both the term of "right" and the term of "liberty" or "freedom" for the consecration of certain human rights.

In the doctrine one has raised the famous question if there are differences of legal nature between right and freedom or if we are in the presence of a single legal notion.

In the conception of H. Kelsen this terminological nuancing would have at least two explanations. "One explanation is of historic order. In the beginning, in the catalogue of human rights, liberties appeared as requirements of man in opposition with the public authorities, and these liberties supposed from the part of the others a general attitude of abstaining. The evolution of liberties in the wider context of the political and social evolution has led to the crystallisation of the concept of law, concept with complex content and legal significance. The second explanation is related to the expressiveness and beauty of the legal language that enhance the value of the initial meaning and certainly the tradition". Kelsen concludes that the formulation of the notion of *fundamental human rights and liberties* is incorrect, as liberties are human rights"[3].

This conception is also shared by other authors who consider that: the denomination of "human rights" is used in a conventional sense, with a significance connected rather to a terminological abridgement, as, in fact, by this name one equally understands the human liberties, both categories being inherent and proper to all human beings. When we speak thus of human rights, we shall understand also the corresponding liberties"[4].

The notion of "*human rights"* needs to be related to another concept, often used in the matter, i.e. the concept of "*public liberties*". What is the relation between these two notions? The literature provides different answers to this question.

J. Rivero claims that the notion of *human rights* and the notion of *public liberties* are distinct. Liberty is conceived as a power to act or to not act, and all liberties are public liberties as they penetrate into the positive law only when the State consecrates them in the national law system, regulates their exercise and assures their observance. The notion of *human rights* is considered by the author as having a wider significance, as it results

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[1]Dan Lochok, *Les Droits de l'homme,* Ed. La Découverte & Syros, Paris, 2002, p. 4.
[2]Corneliu Bârsan, *Convenţia Europeană a drepturilor omului – comentariu pe articole, vol. I. Drepturi şi libertăţi,* Ed. C.H. Beck, Bucureşti, 2005, p. 17.
[3]Hans Kelsen, *The Law of the United Nations,* Londra, 1951, p. 5-6 şi p. 29.
[4]Ioan Vida, *Drepturile omului în reglementări internaţionale,* Ed. Lumina Lex, 1999, p. 18.

from the conception of natural law, according to which the human beings have a set of rights inherent to their very nature[5].

Similarly, Fr. Sudre retains that the expression "human rights" has a wider meaning, originating in the natural law, evoking the moral, even imaginary, dimension of these rights, whereas the expression "public liberties" evokes rights and faculties assuring the freedom and dignity of the human person and benefits from institutional guarantees[6].

At the opposite pole, Fr. Terré claims that it is difficult to make the distinction between human rights, as subjective rights, and public liberties. The author admits that both notions refer to the subjective rights recognised to their bearer[7].

One of the Romanian doctrine-setters, Gh. Iancu, when it came to the relation between the notions of human rights and public liberties, showed that by the expression of "public liberties" one must understand both human liberties and rights, which belong however to the public law, especially to the constitutional rights and which benefits from a special legal regime[8].

One opinion to which we subscribe is that expressed by Corneliu Bârsan who claims that the notion of human rights belongs to the international law, and the notion of public liberties belongs to internal law, both notions referring to subjective rights. The author adheres to the option expressed in the Romanian legal literature according to which, from the legal viewpoint, the "right is a liberty and the liberty is a right"[9], adding that the equivalence between rights and public liberties on the internal level can be transposed also onto the international level, but the occurrence of these rights and liberties on the international plane is to be retained under the name of human rights, as universally recognised values[10].

Certain explanations also include the phrase "human rights" and fundamental rights".

One considers, in the literature[11], that the phrase "human rights" evokes, at the international level, the rights of the human being, endowed with reason and conscience and to whom one recognises his natural rights, as inalienable and impresricptible right. These rights, on the level of internal legal realities, in which man becomes citizen, are proclaimed and assured in the constitution of the respective state, acquiring thus life and legal efficiency, under the name of *fundamental rights (*liberties).

Some authors make the distinction as regards the relation between the two notions belonging to the internal and international law. One appreciated thus that, if in the internal law the distinction between *human rights* and *fundamental rights* has a sure criterion, given by the comprising of certain rights and liberties in the constitution of a state, in the international law this distinction becomes ambiguous and uncertain.

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[5]Jean Rivero*, Les libertés publiques,* Ed. Thérnis, P.U.F., vol.I, ediţia a 8-a, 1997, p. 22-28.

[6]Fréderic Sudré, *Drept european şi internaţional al drepturilor omului*, Ed, Polirom, Bucureşti, 2006, p. 12.

[7]François Terré*, Sur la notion des droits et libertés fondamentales,* în R. Cabrielac, M.A. Frison- Roche, T. Revet (sous de direction), *Libertes et droits fondamentaux, ediţia a -8-a,* Ed. Dalloz, Paris, 2002, p. 7-11.

[8]Gheorghe Iancu, *Drepturile, libertăţile şi îndatoririle fundamentale în România,* Ed. All Beck, Bucureşti, 2003, p. 3.

[9]Ioan Muraru, Elena Simina Tănăsescu, *Drept constituţional şi instituţii politice,* ed. a -12-a, Ed. All Beck, Bucureşti, 2005, vol. I, p. 141.

[10]Corneliu Bârsan, *Convenţia europeană a drepturilor omului – comentariu pe articole, vol.I. Drepturi şi libertăţi,* Ed. C.H. Beck, Bucureşti, 2005, p. 10-11.

[11]Gheorghe Iancu, *Drepturile, libertăţile şi îndatoririle fundamentale în România,* Ed. All Beck,Bucureşti, 2003, p. 3.

One claims consequently that the notions of human rights and fundamental rights and liberties, in the international law, are equivalent, as they appear as inherent to the development of human personality, are considered as such by the international community and are protected through international law instruments.[12]

As for the classification of rights and liberties, in the literature one operated with a diversity of classifications, based on several criteria.

Thus, according to the criterion of the beneficiaries of the rights, one made the distinction between general human rights (applied to all individuals) and specific rights (recognised only to certain categories of persons) or between individual rights (recognised to each individual) and collective rights (stipulated for the protection of the interest of an ensemble of persons)[13]; according to the criterion of the manner of regulation one made the distinction between the rights comprised in conventions and rights comprised in the customary law[14]; finally, according to the criterion of the content of rights and liberties, they have been classified into: civil and political rights (as set of rights whose exercise assures the democratic development of society, in its political dimension) and economic, social and cultural rights (which are meant to assure within society the creation of an economic democracy) [15]or into rights of the first, second or third generation[16], or into: inviolabilities, social-economic and cultural rights and liberties, rights that are exclusively political, social-political rights and warrantee rights[17].

We shall not insist upon these classifications, and we shall look only into the rights we consider relevant for the present study. We consider thus as relevant for the present paper the classification of rights and liberties according to their content. In accordance with this criterion, *the freedom of expression and the right to the private and family* life belong to the category of civil and political rights.

2. FREEDOM OF SPEECH AND EXPRESSION. THE NOTION AND ITS ROLES WITHIN FUNDAMENTAL RIGHTS AND LIBERTIES.

The freedom of expression includes several fundamental rights being the „*mother – liberty"* of all the rights of communication. It is closely connected to the warrantee of human dignity and it occupies an important place among human rights and liberties and that of the constitutional liberties.

From the content of the regulations comprised within the international legal instruments in the matter of human rights and from the dispositions comprised in the constitutions of some countries, it follows that the *freedom of expression* is designed either under this denomination, under the denomination "right to the freedom of

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[12]Corneliu Bârsan, *Convenţia europeană a drepturilor omului – comentariu pe articole, vol. I. Drepturi şi libertăţi,* Ed. C.H. Beck, Bucureşti, 2005, p. 12-13.

[13]Didier Rouget, *Le guide de la protection internationale des droits de l'homme*, Ed. La Penseé Sauvage, Paris, 2000, p. 61-64.

[14]Benedetto Conforti*, Diritto internationale, ed. a-3-a,* Ed. Scientifica, Napoli, 1987, p. 23.

[15]Didier Rouget, *Le guide de la protection internationale des droits de l'homme,* Ed. La Penseé Sauvage, Paris, 2000, p. 63.

[16]Ioan Vida, *Drepturile omului în reglementări internaţionale,* Ed. Lumina Lex, 1999, p. 19-20.

[17]Gheorghe Iancu, *Drepturile, libertăţile şi îndatoririle fundamentale în România,* Ed. All Beck,Bucureşti, 2003, p. 52.

expression" or under the name of some of its aspects: *freedom of speech and freedom of the press.*

We shall remark that both notions are used, that of *right* and that of *freedom*, the freedom of expression being a right and a freedom at the same time, as long as the majority opinion in the legal literature is in the sense of the equivalence of the two notions.

Taking into consideration that the freedom of expression is a right consecrated both by the international legal instruments in the matter and at the constitutional level, through the vision of previous terminological explanations, we may conclude that the freedom of expression is at the same time a human right, a public freedom and a fundamental and civil right. As all three notions refer to *subjective rights*, the right to the freedom of expression is itself a subjective right.

Under the aspect of the classifications operated in literature regarding the fundamental rights and liberties, we remark that the freedom of expression is a political right, part of the second generation of rights and liberties, but is also an individual right, belonging to the spiritual freedom of each person, and a collective right – or rather convivial – allowing communication with the others[18].

Under the aspect of the content of the freedom of expression comprised in the international regulations and in the constitutional ones, we remark that this is also different.

Thus, some legal instruments expressly include in the content of the freedom of expression the *freedom of opinion and the freedom of information*. In other regulations one expressly include in the content of the freedom of expression only the *freedom of speech* i.e. the freedom of opinion; the freedom of information is regulated as separate right, like the freedom of the press. Other regulations include in the content of the freedom of expression, along with the freedom of opinion and information, or the freedom of speech, the freedom of the press. Part of the aforementioned international and constitutional legal instruments, although they do not expressly provide – in the content of the regulations they contain – they refer to the liberty of the press as an element of content of the freedom of expression.

We may conclude thus that the freedom of expression is a right with a complex content. In our opinion the freedom of expression comprises in its content other three liberties: the freedom of opinion, the freedom of information and the freedom of the press. These three liberties are independent and they cannot manifest themselves one without the other.

We may also remark that the freedom of expression is manifested both as negative freedom, and as positive freedom. As negative freedom – in relation with the State, that cannot intervene to limit it, and as positive freedom – from the point of view of the individual or the group involved in the political process. The positive and negative element cannot exist distinctly, the political effect of the public opinion could not affirm itself without the protection and guarantee of this freedom.

The source of the freedom of expression, of the shaping and choice of opinion, is criticism. Criticism can raise questions about already acquired perceptions or simply stated and, moreover, it can create new ideas and opinions. Without an adequate criticism there

[18]Fréderic Sudré, *Drept european şi internaţional al drepturilor omului,* Ed, Polirom, Bucureşti, 2006, p. 351.

cannot be the possibility of choosing opinions, and the suppression, interdiction of limitation of opinions would block any development. History has proved that any attempt to stop or suppress different opinions has been more or less dramatically refused by mankind.

The freedom of expression in a wide sense, of the expression of individuality, is the element which, besides the physiognomic differences, individualises a person and makes him or her different from the others. Without the fundamental freedom of expressing personal ideas and perceptions where would not be individualities and no evolutions possible.

J. S. Mill, who defends the freedom of expression with powerful conviction, shows in his work "*On Liberty*" (1859) that this is a condition necessary for the intellectual and social progress: "We can never be sure – he affirms – that an untold idea could not contain useful elements". Moreover, he claimed the fact that listening to *false opinions* it something productive for two reasons: first, because the individuals are more disposed to renounce to the erroneous opinions when they are in debate and second because the correct theories will be continually supported and reaffirmed, as they are not only sentences unanimously accepted as true. Everybody must understand why he or she adheres to a certain set of ideas or not.

The constraint upon a person cannot appear from the desire to impose upon him or her other people's conceptions as regards the lifestyle or conduct. The only manner of attempting to change an individual is the discussion of any kind (either reprimand, requirement of begging), as "upon himself (…) the individual is sovereign". In conclusion, Mill affirms that society has more to gain if it observes the individual freedom, especially the freedom of expression. As long as the deeds of a person do not have negative consequences upon another, it must be left to live according to their own rules and not in accordance to norms imposed form the exterior.

3.THE RIGHT TO PRIVATE AND FAMILY LIFE. NOTION. ITS PLACE WITHIN THE FUNDAMENTAL RIGHTS AND LIBERTIES.

There is no doubt that intimacy is an essential element for the harmonious development of man, especially in a democratic system. This is the reason why the great super-national organisms, as well as several States, included this value along the essential rights, nominally protected through declaration of the fundamental right and consecrated them as superior and inalienable.

In the doctrine[19] one highlighted the causes having consecrated this right as a distinct fundamental right, i.e. : technologic development, occurrence of the mass societies, formation of a market economy, of the attributes of personality, pluralism from the moral and value domain.

Within the sphere of privileges that intimacy represents, man can act freely, can remove the mask imposed by the social norms. The intrusion into this intimate sphere of the individual can destroy the personality of individuality of the person who knows that he

[19]François Rigaux, *La liberté et la vie privée, în* ,,Revista internaţională de drept comparat nr. 31/1991, p. 546-548.

or she does not have intimacy anymore. The clandestine intrusion affects these values even more profoundly.

In the legal literature there were and still are debates in relation with the legal nature of the right to private and family life, as a right of jurisprudential nature.

Paul Rubier, for instance, considers that this is a subjective patrimonial right, because only the patrimonial rights may be qualified as subjective rights.[20]

In another opinion one considers that this would be an extra-patrimonial right which would constitute a category of rights different from the real ones, or debt.[21]

In an opinion embraced by authors from Switzerland and Germany, this right is regarded as a non-patrimonial subjective right.

In another interesting opinion in accordance with the French jurisprudence and legislation, as well as with the German ones, on the protection of the literary and artistic property, it is shown that this right has attributes both of moral and intellectual order, but also attributes of patrimonial order. The right to private and intimate life was defined by the European Commission, in its jurisprudence, as being the "right to intimacy, the right to intense life, as much as a person desires to be protected from publicity .. the right to establish and develop relationships with other human beings, especially from the emotional viewpoint, in order to develop and fulfil the personality of each person."[22]

One may conclude that: the right to private and family life it is in fact a subjective extra-patrimonial or non-patrimonial right mainly referring to the issues of the physical and moral protection of the human being, to the individuality or personality of the latter, this right protects values such as private life, family, dignity, honour, image, which cannot be concretely assessed in any amounts of money.

The right to private and family life, in an expression close to that of the French doctrine[23], is a right inherent to the capacity of human person and belonging to each individual grace to the very fact that he/she is human. Starting from the idea that it exclusively evokes a range of moral values, the French courts have considered that this right belongs to the moral patrimony and constituted the extension of the personality of the natural person.[24] This does not signify however that he acquires patrimonial characteristics.

In general, the right to private life is perceived as a negative right, which excludes any arbitrary or illegal intervention in the private sphere.

From the viewpoint of the provisions comprised in the international legal documents of reference in the matter of human rights and of the dispositions comprised in the Constitutions of the democratic States, we remark that the right to private life is designed either under the name of the right to intimacy, or under the name of right to private and family life, or under the name of right to intimacy, family and private life.

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[20]Paul Rubier, *Droits subjectifs et situations juridiques*, Paris,1983, p. 340-353.

[21]Roger Nerson, *Les droits extrapatrimoniaux*, thèse, Lyon, Bosc Frère M. et L. Riou, 1939, p. 340-353.

[22]Comisia E.D.H, *The decision given in the case Oosterwijk versus Belgium*,1979.

[23]Ambroise Colin, Henri Capitant, éd. par L. Julliot De La Morandière, *Cours élémentaire de droit civil français*, Ed. Dalloz, Paris, 193; (*Curs elementar de drept civil francez*, traducere de V. G. Cãdere, I. Miloaie, vol. I, ediþia a VII-a, Ed. Imprimeria Centralã, Bucureºti,1940), p.127.

[24]The Appelate Court of Seine, *Decisions of 23 June 1966 and 25 June 1966*, quoted în R. Lindon, *Le droits de la personalite*, Paris, Dalloz,1974, p. 20.

Under the aspect of the content, the right to private and family life is a complex right, which includes in its composition several rights, i.e. : the right to private life, the right to family life, the right to the domicile inviolability and the right to the secrecy of correspondence – each of these elements, in its turn, protecting multiple values, which constitute in their turn in autonomous rights.

The right to private and family life, as well as the freedom of expression, is a right consecrated both by international legal instruments in the matter, and on the constitutional level, being both a human right, a public freedom and a fundamental and civic freedom.

Under the aspect of the classifications operated in the literature as regards the fundamental rights and liberties, the right to private and family life is a civil right, belonging to the second generation of rights and liberties, as well as the freedom of expression, but it is an individual right grace to its essence.

In conclusion, the essential aspects related to the freedom of expression and the right to private and family life – as human rights –are consecrated by the international regulations in the matter but they are also consecrated as fundamental rights regulated at the level of constitutions and regulations within the national legal systems of all democratic states.

The freedom of expression and the right to private and family life are two of the fundamental rights, which give significance to the social respect due to the individual.

The freedom of expression is considered to be the most powerful weapon for the defence of the persons' rights and liberties against any anti-democratic manifestations..

Usually defined as the "right to be left alone", the life to private life today, in the era of high technology, has more than one dimension in its original meaning, the life to private life is equivalent to the right to enjoy intimacy, to communicate in conditions of confidentiality, and free from any monitoring, of respect of the sanctity and inviolability of the private persons. For most people the right to private life is reduced to having control upon what it is known about them and by whom exactly.

However the right to private and family life means much more, it represents "that particular expectation of each individual to see his own intimate, personal and family sphere protected against indiscreet regards and to be able to decide if and when to bring to third parties' cognisance information regarding his own lifestyle and tot the manifestation of his own personality". It is important to remark that the right to private and family life also constitutes a limit for the freedom of expression.

From the viewpoint of the evolution in time, the freedom of expression has a long history, which precedes the adoption of the main international legal instruments in the matter of human rights. The struggle to win the freedom of expression is as old as censorship. Censorship has followed man's freedom of expression along history, but the institution of certain forms of censorship constituted at the same time an impulse to defend the freedom of expression. Despite this oppressive factor, the freedom of expression has evolved in time, to become a right guaranteed by all essential legal instruments in the matter of human rights, as well as by the vast majority of national constitutions throughout the world.

Under the aspect of its historical evolution the right to private and family life has its roots in the concept of "*privacy",* the evolution of this concept marking the evolution of

the right to private life, which was consecrated afterwards in the reference legal documents in the matter of human rights.

In the past, for a long time private and intimate life were protected only by the moral rules and by customs. The cause of its penetration into the public sphere, into the positive law, is jurisprudential, the right to private and family life gaining its recognition along with the first legal decisions regarding to the protection of private life, which occurred in the first half of the 19th century in England and France.

Keeping in mind the notions of "law" and "freedom", the notions of "fundamental rights" or "human rights" , considering the notions of "human rights and public liberties, as they are defined in the doctrine, we had to remark that the freedom of expression is a right and a freedom at the same time (the two notions being similar in the opinion of most authors) and it is equally a human right In relation with the division of law into objective and subjective law, the freedom of expression is at the same time a subjective right. The freedom of expression is both an individual right and a convivial right, which allows the communication with the others.

The right to private and family life is in its turn a human right and a fundamental right, it is a subjective extra-patrimonial or non-patrimonial right mainly referring to the protection of the physical and moral characteristics of the human being, to his or her individuality or personality. This right protects values such as private life, family, dignity, honour, image, which cannot be assessed in any amount of money.

The freedom of expression and the right to private and family life are among the right benefiting from consecration, both at the level of international instruments and at the constitutional level.

The analysis of the international and constitutional regulations defining the freedom of expression and the right to private and family life highlights s the fact that these rights are consecrated in these instruments under diverse denominations and in diverse forms of content.

As second-generation rights, the holders of the freedom of expression and the right to private and family life are natural and legal persons, mainly as subjects of internal law, but also as subjects of international law, as they are recognised the aptitude to act directly for the optimum benefit of this right.

These rights induce correlative obligations to the States, both negative and positive, the State authorities having not only the general and negative obligation to abstain from harming, in any way, the freedom of expression and the right to private and family, life but also the positive obligation to take all the necessary measures in order to enforce the exercise of these rights and adequate protection measures.

The right to free expression, the only right to which a cross-border protection is guaranteed by the international legal instruments in the matter, has a wide scope of application, gathered around the notions of : opinion, idea, information – notions whose content was explained and enriched thorough the jurisprudence of the European Court of Human Rights.

Besides its wide range of application, the freedom of expression has also a complex content that, in our opinion, covers three distinct liberties: the freedom of opinion, the freedom of speech and the freedom of the press.

The content of the three liberties forming the right to free expression was determined by means of jurisprudence grace to the extremely rich jurisdiction created by the Court of Strasbourg.

Grace to the three liberties it contains, the freedom of expression assures the expression of opinions, as judgements of value and their free circulation, as it assures the free access to the general interest information. Through its corollary, the freedom of the press – freedom belonging to the very essence of a democratic society – the freedom of expression assures the free debate of information and ideas, through the pluralism of the sources of information it offers.

The right to private and family life, under the aspect of the domain of application, is a complex right, focused usually on two notions: secrecy and observance. From the regulations contained in the international and constitutional legal documents, it follows that the field of application of the right to private and family life is focused on the notions of private life, family life, domicile and correspondence.

The domain of application of the right to private and family life contains a wide range of interests of personal nature. Personal identity, physical and moral integrity, sexual life, environment, family, marriage, relations between parents and children, correspondence, domicile, and the enumeration is not limiting. The range of the private and family life was constantly extended by means of jurisprudence, the jurisprudence of the European Court being relevant in this respect.

This extension was done nevertheless with a certain conceptual confusion, the Court often referring to the vague notion of "private and family life", without operating strict delimitations between the domains of application of the two aspects.

As regards the content of this right, it is equally complex, the right to private and family life comprising in its area another four right: the right to private life, the right to family life, the right to domicile, and the right to correspondence.

Grasping the international regulations in the field of human rights and the landmarks set in its jurisprudence by the European Court of Human Rights, the Romanian Constitution and the national legislation with incidence in the matter contain regulations assuring the adequate protection of the two rights, under the condition of their appropriate application.

The freedom of expression constitutes one of the essential fundaments of a democratic society. In its jurisprudence, the Court of Strasbourg conferred the freedom of expression a prime role among the rights guaranteed by the Convention, especially in relation with one of the liberties belonging to its content, the freedom of the press, which is a condition *sine qua non* of the present constitutional democracies.

The right to private and family life is a fundamental right, relying on the respect of the human dignity and closely related with other liberties, such as the freedom of association and the freedom of expression. The existence of a right to private life is subordinate to the belief that every human being is guided by intrinsic values, which are relevant only for himself/herself. The respect for this values has become the main source for the observance of all rights inherent to the human being.

For the freedom of expression and the right to private and family life to really exist, however, it is not enough to simply proclaim them in the international and constitutional documents, but it is necessary that the internal judge applies and defends these rights both

on the level of common law courts, and on the level of the court of constitutional contentious.

The general role of the judge as warrantor of fundamental rights and liberties is accented in the case of the freedom of expression, the freedom for which the positive law provides multiple limitations. In this respect it is necessary to perform an adequate control of proportionality, which should not tend towards the impunity of those who abuse the freedom of expression, but ought to lead to the establishment of certain appropriate sanctions.

The right to private and family life, constituting a limit for the freedom of expression, also requires an adequate control of proportionality enforced by the national judge, meant to assure an appropriate protection of this right.

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