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**LEGAL REGULATION AND ENSURING INVIOABILITY
PRIVATE, FAMILY AND INTIMATE LIFE**

Specialty: 552.01. CONSTITUTIONAL LAW

SUMMARY

the PhD thesis in law

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CONCEPTUAL HIGHLIGHTS OF THE RESEARCH

The relevance and importance of the addressed topic . Human rights have evolved during the development of humanity to be able to acquire the current legal guarantees, mostly due to legal doctrines and practices. Thanks to the importance and scale of human rights for the progress of mankind, they have experienced a remarkable rise in the last half of the last century.

It is remarkable the doctrinal assertion that human rights and public freedoms have always been a particularly sensitive issue, difficult to avoid and impossible to avoid in public debate¹.

We mention that the right to intimate, private and family life is a dynamic right that evolves over time, thus acquiring the connotations and characteristics specific to the era in which it is regulated and respected.

At present, we are witnessing an information revolution, the development of information technologies have led to the creation of eminent dangers for guaranteeing the right to intimate, private and family life.

Namely, the scientific progress made by the branches of Computer Science, which have created unprecedented possibilities until recently to store, process and transmit a colossal volume of data, has put before the legislators the task of providing adequate protection to the private life of the individual.

Therefore, we conclude that at present the right to intimate, private and family life acquires a special importance in the context of the personification of information with the use of automated electronic means. In order to meet the challenges facing the state in terms of protecting the right to private, private and family life, new approaches are needed on the content of this fundamental right.

Thus, given the qualitative changes taking place in society, at present the importance of the right to intimate, family and private life derives from the fact that the right represents a guarantee for the respect of all other individual human rights.

Given the dynamic evolution of the right to intimate, family and private life, as well as the multitude of component elements that the right under consideration currently encompasses, we welcome the realization of a theoretical study of the fundamental right to intimate, family and private life, which would include an analysis of its national and international legal regulation, the historical evolution of the right in question, the clarification of scientific concepts and the definition of the components and aspects inherent in this right, the analysis of the development trends of this fundamental right.

¹ MAZILU, Dumitru. *Human rights, concept, requirements and contemporary realities*. Bucharest: Lumina Lex, 2000, p. 8. ISBN: 973-588-244-2.

Legislation in the field of protection of intimate, private and family life has a complex structure in which norms belonging to different legal fields are applied, such as constitutional law, contravention law, Family Law, Criminal Procedural Law, Civil Law, etc., regulating similar legal relations, using different approaches.

The actuality and importance of the topic of the study is highlighted both internationally and nationally, because the guaranteed level of protection of privacy depends on the degree to which the person can exercise his fundamental rights and freedoms.

The importance of the study of the right to intimate, private and family life lies in the fact that it aims to analyze and define modern, current notions that are discussed and vehemently polemized in the present society such as: the protection of personal data, the right to image, the right to sex life, the right of transsexuals and homosexuals, the right to a healthy environment, etc.

Purpose and objectives of the research. Taking into account the actuality and importance of the topic of the thesis, considering the multidimensionality and complexity of the aspects of the right to intimate, private and family life, this paper aims to carry out a scientific research of the essence and content of the right to intimate, family and private life, the complex approach of that right in the light of the provisions of national legislation, international mechanisms, doctrines and judicial practice in the field.

In order to achieve the set goal, we have proposed to achieve the following ***objectives***:

- Determination of the multidimensional content of the right to intimate, private and family life;
- Research on the right to intimate, private and family life, in an evolutionary aspect;
- Examination of the judicial practice of the ECtHR on cases alleging infringement of the right to private, intimate and family life;
- Analysis of the right to intimate, private and family life in the light of the national doctrine and legislation in the field;
- Highlighting the shortcomings and gaps existing in the national legislation and formulating theoretical and practical proposals on guaranteeing the right to intimate, private and family life;
- Formulation of recommendations for improving the regulatory framework in the field.

Research hypothesis: The fundamental right to intimate, private and family life is a complex, chameleonic right, the content of which includes a number of aspects such as: the right to image, the right to name, the right to identity, the right to physical and moral integrity, the right

to family, the right to sentimental life, the right to correspondence and domicile, the right to use contraceptives, the right to abortion, the right to sexual identity, etc.

Thus, the solved scientific problem consists in identifying all the "traditional" and "modern" aspects currently embedded by the notion of private life and determining the degree of legal protection conferred on them by national and international norms, which led to the formulation of some definitions of the notions of private, intimate and family life, as well as proposals to *lege ferenda* in order to improve the normative framework in the field.

Synthesis of the research methodology and justification of the chosen research methods.

In the elaboration of this thesis, a number of analysis methods specific to the legal field were used, such as:

- the logical method (analog, deductive, inductive) necessary for the research of a number of concepts (definitions of the right to intimate, private and family life) and the deduction of similarities or differences, the formulation of conclusions based on the examples stated. This method consists in the use of logical reasoning in the process of analyzing the concepts presented by the doctrines and the provisions of the normative acts regulating the right to intimate, private and family life;

- historical method, used to show the evolution of the concept of the right to privacy over the years, both internationally and nationally;

- systemic method, used to study various normative acts at national and international level regulating intimate, private and family life;

- the comparative method, which focuses on the logical process of comparison and is expressed in establishing similarities and differences between different legal phenomena, allowed to identify similarities and differences between national legal norms and those of other states.

- the analytical-synthetic method, which consists of alternating the synthetic presentation (the whole) with the analytical one (by parts) of the right to intimate, private and family life.

The use of the above mentioned methods allowed to investigate in evolution the right to intimate, family and private life, to analyze in a comparative manner the provisions of the national and international legislation on intimate, family and private life, to formulate conclusions and recommendations.

Summary of thesis compartments: The paper includes the following structural compartments: annotation (in Romanian, English and Russian), list of abbreviations, table of contents, introduction, four chapters systematized in paragraphs, general conclusions and recommendations, bibliographic list, statement on assumption of responsibility, resume of the

author. Overall, the work includes 158 pages of text, 241 titles being included in the bibliographic list.

Introduction it constitutes a substantiation and justification of the investigated problem and includes the following compartments: the actuality and importance of the approached topic, the purpose and objectives of the research, the research hypothesis, the synthesis of the research methodology and the justification of the chosen research methods and the summary of the thesis compartments.

Chapter 1 "Analysis of the situation in the field of protection of the right to intimate, family and private life" it consists of three paragraphs: 1.1. Analysis of scientific concepts on the right to intimate, family and private life in the context of theoretical and practical research of domestic authors; 1.2. Analysis of scientific concepts on the right to intimate, family and private life in the context of theoretical-practical research of foreign authors and 1.3. Conclusions in Chapter 1.

This chapter has a predominantly theoretical character, presents the results of the scientific investigation of the theoretical basis existing in the specialized literature, necessary to highlight the complex content of the right to intimate, family and private life. In this chapter, the theories and opinions of local and foreign doctrinaires regarding the determining components of the right to intimate, private and family life are analyzed. Particular attention was paid to recent scientific results in the literature.

In **Chapter 2**, titled "**Theoretical dimension and essence of the right to intimate, family and private life**", five paragraphs are unclosed: 2.1. Evolution of the right to intimate, family and private life; 2.2. The right to intimate life; 2.3. The right to family life; 2.4. The right to privacy and 2.5. Conclusions in Chapter 2.

This section of the paper contains the results of the scientific investigation and represents the central section of the thesis. In this chapter, the evolution over time of the chameleonic right to intimate, private and family life is investigated, which denotes the way in which different periods of the development of human society have left their mark on the characteristics of that right.

Chapter 3 "Legal Regulation of the right to intimate, family and private life" it consists of four compartments: 3.1. International regulation of the right to intimate, family and private life; 3.2. National regulation of the right to intimate, family and private life; 3.3. The right to intimate, family and private life in ECtHR case law and 3.4. Conclusions in Chapter 3.

This chapter represents a study of the legal norms governing the right to intimate, private and family life.

In **Chapter 4**, titled "**Mechanisms for the protection of intimate, family and private life**", four paragraphs are included: 4.1. The role of the Constitutional Court in the protection of intimate, family and private life; 4.2. The role of national courts in protecting the right to private, family and private life; 4.3. The role of the Ombudsman (Ombudsman) in the protection of intimate, family and private life; and 4.4. Conclusions in Chapter 4.

This chapter is dedicated to the research of the national mechanisms for the protection of human right, highlighting the role of the Constitutional Court, the courts and the Ombudsman in guaranteeing the inviolability of private, family and intimate life.

General conclusions and recommendations develops final reasoning based on scientific research and presents some conceptual and practical benchmarks in addressing the right to intimate, family and private life. There are also proposals for *lege ferenda* which aim to improve the legislation in the field and to uniformize the practice in the field.

The bibliography section includes the list of bibliographic sources that were the basis for the elaboration of this paper.

CONTENT OF THE DOCTORAL THESIS

The structure of the thesis is determined by the regulatory requirements of ANACEC, as well as the purpose and objectives of the research. The paper includes the following structural compartments: annotation (in Romanian, English and Russian), list of abbreviations, table of contents, introduction, four chapters systematized in paragraphs, general conclusions and recommendations, bibliographic list, statement on assumption of responsibility, resume of the author. Overall, the work includes 158 pages of text, 241 titles being included in the bibliographic list.

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Given the dynamic evolution of the right to intimate, family and private life, as well as the multitude of component elements that the right under consideration currently encompasses, we welcome the realization of a theoretical study of the fundamental right to intimate, family and private life, which would include an analysis of its national and international legal regulation, the historical evolution of the right in question, the clarification of scientific concepts and the definition of the components and aspects inherent in this right, the analysis of the development trends of this fundamental right.

Legislation in the field of protection of intimate, private and family life has a complex structure in which norms belonging to different legal fields are applied, such as constitutional law, contravention law, Family Law, Criminal Procedural Law, Civil Law, etc., regulating similar legal relations, using different approaches.

The actuality and importance of the topic of the study is highlighted both internationally and nationally, because the guaranteed level of protection of privacy depends on the degree to which the person can exercise his fundamental rights and freedoms.

The importance of the study of the right to intimate, private and family life lies in the fact that it aims to analyze and define modern, current notions that are discussed and vehemently polemized in the present society such as: the protection of personal data, the right to image, the right to sex life, the right of transsexuals and homosexuals, the right to a healthy environment, etc.

Chapter 1 "Analysis of the situation in the field of protection of the right to intimate, family and private life" it consists of three paragraphs: 1.1. Analysis of scientific concepts on the right to intimate, family and private life in the context of theoretical and practical research of domestic authors; 1.2. Analysis of scientific concepts on the right to intimate, family and private life in the context of theoretical-practical research of foreign authors and 1.3. Conclusions in Chapter 1.

This chapter has a predominantly theoretical character, presents the results of the scientific investigation of the theoretical basis existing in the specialized literature, necessary to highlight the complex content of the right to intimate, family and private life. In this chapter, the theories and opinions of local and foreign doctrinaires regarding the determining components of the right to intimate, private and family life are analyzed. Particular attention was paid to recent scientific results in the literature.

In paragraph 1.1. of the thesis "analysis of scientific concepts on the right to intimate, family and private life in the context of theoretical and practical research of domestic authors" it is mentioned that the right to private life has two sides, the inner side aims to protect the personal life of the individual from external interference that can be manifested by private and state institutions, as well as by third persons, and the outer side aims to provide the possibility for the individual to establish relationships with those around him, to socialize, to develop his personality.

In the literature it is mentioned that the right to marriage and family protection is a right that expresses at the level of human rights the reality, in the sense of which the family is the material and fundamental element of society. Thus, the Constitution and laws recognize and guarantee to

man and woman: the right to marry and found the family from a noble age. No marriage can be concluded without the free and full consent of future spouses.²

In the Republic of Moldova this right is regulated by art. 28 of the Constitution, according to which: "the state respects and protects intimate, family and private life".

Paragraph 1.2. the thesis "Analysis of scientific conceptions regarding the right to intimate, family and private life in the context of theoretical-practical researches of foreign authors" highlights that in the specialized literature the jurisprudential origin of the right to private life is highlighted, there are several opinions regarding it:

- "the right to privacy according to the opinion of authors from Switzerland and Germany is considered as subjectively non-patrimonial";
- "Extra-patrimonial law, different from real rights";
- "subjective patrimonial law, because only patrimonial rights can be qualified as subjective rights, according to the opinion of Paul Roubier".

According to another opinion, which we share, "this right carries both moral and intellectual attributes, as well as patrimonial attributes. Respectively, this right from a historical point of view was born under the extra-patrimonial sign, in order to progressively access to the market economy, thus acquiring patrimonial elements".³

Private life is a chameleonic notion that does not have a concrete definition, the constituent elements of which change depending on the historical stage, society, the level of progress of science, religion, etc. Likewise, we would like to emphasize the contribution brought by the technical-scientific revolution in the development and diversification of the component aspects of private life, a process generated by the secularization of society and the distance from religious customs.

While in the case of certain categories of persons the right to privacy tends to diminish, in the case of others it tends to expand. "The right to privacy is increasingly a right to independence", even "individualism", "a right to difference". It is no longer about claiming a hidden livelihood, but a different one. The right to privacy is not asserted in order to avoid mere glances of another, but more and above all to prevent him from judging you. In this case "personality rights" are very close to "civil liberties".⁴

The constitutional provisions impose on the public authorities the constitutional obligation to respect and protect the intimate, family and private life, against any encroachment on the part

² CARNAT Teodor, CARNAT Mariana. *Legal protection of human rights*. Chisinau, 2006, p.109. ISBN: 9975-932-62-2

³ IANCU, Gheorghe. *Fundamental rights, freedoms and duties in Romania*. Bucharest: all Beck publishing house, 2003, pp. 143-144. ISBN: 973-655-247-0

⁴ Ibid.

of any subject of law, thus recognizing that everyone has the right to intimate, family and private life.⁵

Respectively, we conclude that the state is to take all conclusive measures in order to protect private life and to contact any interference in the intimate, family or private life of the person, carried out contrary to his will.

Paragraph 1.3 of this chapter reflects the main conclusions on the topics covered in this chapter.

In **Chapter 2**, titled "**Theoretical dimension and essence of the right to intimate, family and private life**", five paragraphs are unclosed: 2.1. Evolution of the right to intimate, family and private life; 2.2. The right to intimate life; 2.3. The right to family life; 2.4. The right to privacy and 2.5. Conclusions in Chapter 2.

This section of the paper contains the results of the scientific investigation and represents the central section of the thesis. In this chapter, the evolution over time of the chameleonic right to intimate, private and family life is investigated, which denotes the way in which different periods of the development of human society have left their mark on the characteristics of that right.

The chapter in question devotes a separate paragraph to each component element of the fundamental right under consideration, such as the right to private life, the right to family life and the right to private life. Given that the constitutional provisions do not describe the content of the components and do not give legal definitions to the listed elements, this referring to the field of legal theory and jurisprudence in the field, in Chapter II of this paper was carried out a detailed research of the legal nature of each of these elements. Namely, the separate examination of the concepts the right to intimate life, the right to private life and the right to family life allowed to identify the dimension of each notion, to outline the similarities and differences between them.

Paragraph 2.1. "The evolution of the right to intimate, family and private life" gives an appreciation of the development over time of the right to intimate, family and private life. The cause of its entry into the public sphere, in their positive law is jurisprudence. The first judicial decisions related to the protection of privacy appeared in the first half of the XIX century in England and France. This jurisdictional protection complemented the insufficient protection that was granted to copyright, which is why at the end of the nineteenth century it strengthened the new nation, emerging at that time, of moral copyright.⁶

⁵ IANCU, Gheorghe. *Fundamental rights, freedoms and duties in Romania*. Bucharest: all Beck publishing house, 2003, p.146. ISBN: 973-655-247-0

⁶ IANCU, Gheorghe. *Fundamental rights, freedoms and duties in Romania*. Bucharest: all Beck publishing house, 2003, p.143. ISBN: 973-655-247-0

The legal theory mentions a number of premises that led to the consecration of the right to privacy:

- liberalization of moral opinions and values;
- the scientific-technical revolution;
- political pluralism;
- economic growth and, respectively, raising the standard of living.

In the history of the development of mankind information was one of the determining characteristics of civilization. Namely, information was the source for decision-making, its presence or lack determined the fate of both individual personalities and entire states. The entire history of mankind can be imagined as the history of the development of the means of accumulation and transmission of information. Along this path civilization has undergone a series of changes, which are also called information revolutions. Each of the following information revolutions cardinally changed the entire civilization and exerted a much more significant influence, than any state or ruler:

- the First Information Revolution-the invention of writing;
- the second information revolution (mid-XVI century BC). - the invention of printing;
- the third Information Revolution (the end of the century XIX) . - the invention of electricity;
- the fourth information revolution (mid-XX century BC). - invention of computing tools, personal computer, creation of telecommunication networks;
- the fifth information revolution (the end of the XX century). - creation of global information networks.⁷

In the 60s and 70s of the twentieth century, interest in increasing privacy regulations grew as a result of the boom in new technologies. The German state of Hesse passed the world's First Data Protection Law in 1970. Other states followed suit and, in 1977, a law was passed at the federal level entitled The Federal Data Protection Act. Sweden drafted a law in 1973, and in 1978 France, Austria, Norway and Denmark passed their own information protection laws.⁸

In this context we mention that the first international document that spoke about privacy was the United Nations Universal Declaration of Human Rights of 1948, which in Article 12 states: "No one shall be subject to arbitrary interference in his private life, in his family, in his domicile or in his correspondence ,nor to any encroachment on his honor or reputation. Everyone

⁷ Информационное общество и право. Available: /<http://referat.mirslouvrei.com/gosudarstvo-i-pravo/119732-informacionnoe-obshhestvo-i-pravo.html>

⁸ CARP, Radu, SANDRU, Simona. *Right to privacy and protection of personal data*, Bucharest: all Beck publishing house, 2004, p.8. ISBN: 973-655-455-4

has the right to the protection of the law against such interference or touching.”

Paragraph 2.2. ”The right to intimate life” mentions that despite the attention paid in recent years to intimacy, there is still no agreement on the exact meaning of the term. The right in question is a special value for life and freedom of the person. Under it, man has the freedom to participate or not as a subject of inquiries, investigations, sociological, psychological, medical research, to agree to undergo scientific experiences, to accept by legal acts organ transplantation, etc. By enshrining the right in question, the legal, constitutional framework of the regulations that have appeared or will appear in the respective fields has been created.⁹

Given the evolution over time of the notion of privacy, as well as taking into account the sensitive connotations that it entails, we could define the right to privacy as follows: **”The right to intimate life is a right to individualism, which consists in the ability to live free from the eyes of others, as well as the ability to establish and develop relationships with others”**.

Paragraph 2.3. ”The right to family life” comes to give a broad explanation of the right to family life, mentioning family life is a complex notion encompassing a diverse spectrum of family relationships such as: the right to sever marriages, the right to divorce, patrimonial relations between spouses, relations between grandchildren and grandparents, etc.

Loysel, the French jurist who became famous for putting civil law into verse, wrote: “...boire, manger, coucher, ensemble, c'est mariage il Ma ce me semble”.¹⁰

The family has been recognized since ancient times by religious norms and customs as the basis of society. The institution of the family survived through the ages, despite many liberalist conceptions that invoked its futility.

We believe that in order to promote and develop a family life policy in the Republic of Moldova, taking into account the current deplorable demographic situation in the country, it would be welcome to create a family ministry, following the example of developed countries. At the same time, it is absolutely necessary to increase the number of non-governmental organizations aimed at promoting family values in society.

A direction of great theoretical and political interest would be the determination of relevant forums and organizations in our country to campaign for the international recognition of the right to family development as one of the fundamental human rights.¹¹

Following the analysis of scientific opinions on the elements inherent in the notion of family life, we could define the right to family life in the following way: **”The right to family**

⁹ Ibid., pp. 65-66. ISBN: 9975-947-63-0

¹⁰ ZLATESCU, Dan, MOROIANU ZLATESCU, Irina. *Romanian Institute for Human Rights, Human Rights in action*. Bucharest: 1994, p.21. ISBN: 9781852787080

¹¹ ZLATESCU, Dan, MOROIANU ZLATESCU, Irina. *Romanian Institute for Human Rights, Human Rights in action*. Bucharest: 1994, p.30. ISBN: 9781852787080

life is the right to carry out an effective family life, to establish and maintain relationships with other people in the affective field, being protected from the interference of other people".

In the context of the above, we mention the following fact – how diverse would not be the aspects of the right to respect family life, no one can interfere or intervene in the family of another person without the consent of the latter, consent that must be explicit and freely expressed, the public authorities being obliged to take all possible measures and provisions in order to protect this fundamental right.¹²

Legally we can say that if the family is not a subject of law, it is therefore not a legal person, it represents, precisely because of its amazing character, a subject of protected legal interests.¹³

In paragraph 2.4. "Right to privacy" , it is mentioned that the concept of "privacy" was first explained as "the right to be left alone", but it has evolved to this day into a broader concept, which could be defined as the right of an individual to decide how much personal information to disclose, to whom and for what. Private life encompasses all aspects of man's individual activity, actions and relationships in which he manifests himself as an individual. The state being the exponent of Public Power, must not interfere in the private life of the individual. Namely, in order to guarantee respect for Man and to ensure his protection, art was entered in the convention.²⁸, according to which: "The state respects and protects intimate, family and private life".¹⁴

Jean Revero, in his work "Les libertes publiques" mentions that private life is that place of existence of everyone in which no one can interfere without being invited. Freedom of privacy is the recognition, for each, of an area of activity of its own and which it is the master to prohibit to others.¹⁵

We infer that private life involves not only moral, religious and family aspects (hidden from the eyes of the world), but also aspects of friendship, career and professional development relationships, as well as aspects of material (patrimonial) relationships in which the individual is involved. Man being a social being cannot ignore the features projected on his life by the community in which he lives and develops. In everyday life, the aspects of the individual's social life become part of his private life, and these notions are sometimes difficult to dissociate.

¹² BUTNARU, Iulia. *Dimensions of the fundamental right to the protection of family life*. In: Chisinau, 2014, No. 3-4 (27-28). pp. 193. ISSN: 1857-4122

¹³ Ibid., p.22.

¹⁴ MUNTEANU, Anatolie, GRIGORIU, Aurelia, RUSU, Svetlana, etc. *Handbook of the civil servant in the field of Human Rights*. pp. 65-66 [online] [quote 27.03.2022] available: http://old.ombudsman.md/sites/default/files/document/attachments/manualul_functionarului_public_0.pdf

¹⁵ VOICU, Marin. *European protection of Human Rights*. Bucharest: Lumina Lex, 2001, p. 64. ISBN: 9735883759

The right to respect for privacy is a fundamental right, protected both by national laws in which it often receives constitutional protection, and by major international human rights texts. It is very difficult to give a satisfactory definition of this modern right, which does not appear in the present conception, except with the Code of Napoleon (it does not appear in either The Declaration of the rights of Man and citizen of 1789 or the Bill of rights of 1791). Sometimes it is presented in relation to society, as being in private law what freedom is in political law, sometimes as constituting a network of individual rights and freedoms at the confluence of which what we call personality is formed, and sometimes it is defined in relation to both, as constituting "the sphere of every existence in which no one can chew himself without being invited".¹⁶

As a result of the extensive analysis of both the doctrinal opinions in the field and the ECtHR jurisprudence, we could give the following definition of the right to privacy: "**The right to secrecy of privacy is the ability of the person to individually determine the limits within which third parties will have access to information about their personal life**".

Paragraph 2.4. the thesis briefly represents the conclusions in Chapter 2, noting that:

1. The right to intimate, family and private life is a third generation right that appeared relatively recently in the catalog of rights, being in the past protected only by moral and customary rules.

2. Although at the beginning of its evolution as a fundamental right the right to privacy was explained as the "right to be left alone", at present it can be defined as the right of an individual to determine the limits, the circle of persons and the purpose of disclosing personal information.

3. Because of the abstract nature of the right to intimate life it is very difficult to measure and define this legal category. The difficulty of defining privacy is generated by the fact that this concept changes its connotation evolving according to the period, the environment and the society in which the individual lives.

4. The right to privacy is not an absolute one, so the privacy of a person may conflict with the privacy of a third person, or with the interests of society. Thus, it remains for the competent authorities applying that rule to determine the limits of privacy, taking into account the circumstances, the status of the person (depending on whether the person holds a public office or not), the period and the concrete circumstances of the case under consideration.

¹⁶ CHARRIER, Jeann-Loup, CHIRIAC, Andrei. *Code of the European Convention on Human Rights*. Chisinau: Balacron printing house, 2008, pp. 312-313. ISBN: 978-9975-100-40-3

5. Neither national law nor the European Convention on Human Rights give a concrete definition of the right to family life. The ECtHR has dynamically interpreted the notion of family, which has undergone changes in content over time.

6. The legal doctrine emphasizes the evolution over time of the notion of family, so if in the past it was shaped around the notion of traditional family, cell of society, having a narrower regulatory sphere, at present, the field of regulation of this right has expanded, encompassing feelings, biological connection, etc.

7. The private life of the individual is the secret area of the person, behaving characteristics contrary-different from his public life.

Chapter 3 "Legal Regulation of the right to intimate, family and private life" it consists of four compartments: 3.1. International regulation of the right to intimate, family and private life; 3.2. National regulation of the right to intimate, family and private life; 3.3. The right to intimate, family and private life in ECtHR case law and 3.4. Conclusions in Chapter 3.

This chapter represents a study of the legal norms governing the right to intimate, private and family life.

In the first paragraph of Chapter Three the international framework for regulating the right to intimate, private and family life is submitted to the research, mentioning the international agreements that have as purpose the consecration and protection of private life.

The development of human rights in international law and national legislation was crowned with the creation of a system of rights that globally regulates the harmonious existence of personality.¹⁷

By mid-XX century this insistence in affirming the sacred and absolute right to privacy can be seen as a counterbalance between the rights of the citizen and the pressure of a society that imposes precise limits, in the name of social good. In this conflict, the right to privacy privileges the individual aspect "the right to be left alone", preserving in favor of the individual this imbalance, even when the social climate changes. Indeed, with the 60s we are witnessing a progressive change in the trend, the freedom of decision and the privacy of the individual tend more and more to precede the considerations related to social values, that is, of common welfare. It is in this context that the third phase of the legal guardianship of privacy opens in the United States.¹⁸

Respectively, it is concluded that states that aspire to a harmonious development and evolution arm to take the example of states that have already managed to provide a regulation and

¹⁷ COSTACHI, Gheorghe, ZAHARIA P. *Development of the concept of human rights in modern and contemporary times*. In: law and life, no.1, 2000, p.19.

¹⁸ *Ibid.*, p. 6.

protection due to the right to private care, because the level of guarantee of this right depends on the level of security and confidence of the person in his present and future actions.

Subsequently, in the second paragraph of the chapter concerned, the provisions of national normative acts are examined, such as constitutional provisions, provisions of the Civil Code of the Republic of Moldova, norms of the Family Code of the Republic of Moldova, articles of the Criminal Procedure Code of the Republic of Moldova and the Labor Code of the Republic of Moldova, as well as other laws.

Currently, in the Republic of Moldova there is a clear trend to create namely "those mechanisms and levers for implementing a national system for promoting and respecting human rights that are based mainly on international legal instruments".¹⁹

The Constitution of the Republic of Moldova laconically enshrines the right to intimate, family and private life, attributing to the state prerogatives to respect and protect intimate, family and private life. The Constitution being the supreme law, which occupies the top place in the hierarchy of any legislation establishes the principles and values to be protected, all laws and other normative acts, must be drafted in accordance with the Constitution. Therefore, the manner of observance and protection of intimate, family and private life must be regulated by laws and other normative acts subordinate to the law, in the spirit directed by art.28 of the Constitution. Respectively, no regulation can be in contradiction with the provision of art.28 of the Constitution.

In several articles, the basic law outlines a high level of protection of the right to private life, imposing the obligation to respect this in charge of other subjects of law.

Essentially, that protects the right to privacy and, in a certain way, restricts it. the right to information is the "boundary" between public and private, between the intimate aspects, protected by law in a person's life and those that can be brought to the attention of the consumer by the media.²⁰

Of particular importance for ensuring the right to intimate, family and private life are also the provisions of art.11 of the Law on freedom of expression no. 64 of April 23, 2010, which regulates the "right of public persons and individuals exercising public functions to respect for private life".

An important step in the Prohibition of discrimination on the basis of sexual orientation was the adoption of Law No. 121 of May 25, 2012 on ensuring equality. According to art. 7

¹⁹ Ibid.

²⁰ BUTNARU, Iulia. *Privacy versus freedom of expression*. International scientific conference of PhD students "Contemporary trends of science development: visions of young researchers", Academy of Sciences of Moldova, Chisinau, 2014.

Paragraph (1) of the Law concerned "the Prohibition of discrimination on the basis of sexual orientation shall apply in the field of employment and labor force".

Of particular importance are the provisions of paragraph three of Chapter 3 "The Right to intimate, family and private life in the case-law of the ECtHR", in which the solutions adopted by the ECtHR in cases alleging infringement of the right to inviolability of privacy are detailed. The respective paragraph also contains an analysis of the cases before the ECtHR filed against the Republic of Moldova, which alleged violation of the provisions of Article 8 of the European Convention on Human Rights.

Given the jurisprudential nature of the right to intimate, private and family life, it is useful to examine cases in the judicial practice of the ECtHR, alleging violation of the right in question, in order to identify new trends, as well as novel aspects that fall under the protection of privacy.

The drafting of a European Convention on human rights (hereinafter referred to as the convention) corresponded above all to a choice of principle, before being subject to a series of compromises. The idea of a regional (European) protection of human rights was indeed found, in the last instance, at the intersection of two great currents of opinion that marked the post-war era: human rights militancy and the European idea.²¹

Given that art.8 of the convention includes the guarantee of respect for a number of aspects of privacy, in the paragraph concerned is examined the practice of the European Court of Human Rights, catalogued in several groups, taking into account the particular aspect of privacy concerned in each case, such as:

- 1) Access to data and information;
- 2) Gay rights;
- 3) Rights of transsexuals;
- 4) The Right to a healthy environment;
- 5) Family.

The European Court of Human Rights has repeatedly condemned the Republic of Moldova for interference in private and family life, materialized in particular by publishing defamatory statements in a newspaper and not ensuring the protection of reputation (Petrenco V. Moldova, application no. 209285/05 decision of March 30, 2010, final on October 04, 2010), the refusal of the authorities to enter in the identity documents the applicant's ethnicity (Ciubotaru V. Moldova case, application no. 27138/04, decision of April 27, 2010, final on July 27, 2010), lack of sufficient guarantees in the legislation to prevent abusive interception of telephone

²¹ POPESCU, Corneliu-Liviu. *International protection of human rights*. Bucharest: all Beck publishing house, 2000, p. 9. ISBN: 973-655-058-3

conversations (Iordache and others against Moldova, application no. 25198/02, decision of February 10, 2009, final on September 14, 2009), the lack of guarantee of protection of lawyer-client confidentiality when searching a lawyer's office and home (case Mancevschi V. Moldova, application no. 33066/04, decision of October 07, 2008, final on January 07, 2009), illegal entry of police officers into the court of the applicant's House (Gutu V. Moldova case, application no. 20282/02, decision of June 07, 2007, final on 7 September 2007), the prohibition for the detained applicant to have meetings with his family (case Ciorap V. Moldova, application no. 12066/01, decision of June 19, 2007, Ostrovar versus Moldova, application no. 35207/03, decision of September 13, 2005), censorship of prisoners ' correspondence (Ciorap V. Moldova case, application no. 12066/02, decision of 19 June 2007, Ostrovar versus Moldova (application no. 35207/03, decision of 13 September 2005), Serban versus Moldova (application no. 3456/05, decision of 4 October 2005, final on 4 January 2006).²²

Paragraph 3.4. Chapter 3 outlines the following conclusions:

1. The United Nations Universal Declaration of Human Rights of 1948 is the document that formed the basis of the legal regulation of privacy, subsequently it was codified by various universal and regional international treaties.

2. It is relevant and multi-factual judicial practice of the ECtHR regarding cases concerning the violation of art. 8 of the European Convention. Regretfully, we find multiple examples when the ECtHR condemned the Republic of Moldova for violating the inviolability of privacy due to the imperfection of the internal normative framework, due to the prescribed action and/or inaction of the exponents of state power, etc.

3. Although certain steps have been taken in the Republic of Moldova to create a legal framework meant to guarantee the right of each person to intimate, family and private life, the existing stereotypes in society represent an impediment for the behavior of the authorities and society to reflect international standards in the field.

4. Modern technical and program systems offer a number of possibilities for employers to easily collect information on the privacy of employees, video and audio surveillance, which represents an eminent danger to the privacy of employees, right to be guaranteed to them including at work. The national legislature is to connect the provisions of the National normative acts to the rigors of international norms, in order to guarantee the observance of the right to private life of persons in the process of fulfilling their work obligations, as well as to implement

²² MUNTEANU, Anatolie, GRIGORIU, Aurelia, RUSU, Svetlana, etc. *Handbook of the civil servant in the field of Human Rights*. p. 70 [online] [quote March 27, 2022] available: http://old.ombudsman.md/sites/default/files/document/attachments/manualul_functionarului_public_0.pdf

an efficient monitoring system, which would ensure the observance of the right in question and in the case would punish the perpetrators of the detected violations.

In **Chapter 4**, titled "**Mechanisms for the protection of intimate, family and private life**", four paragraphs are included: 4.1. The role of the Constitutional Court in the protection of intimate, family and private life; 4.2. The role of national courts in protecting the right to private, family and private life; 4.3. The role of the Ombudsman (Ombudsman) in the protection of intimate, family and private life; and 4.4. Conclusions in Chapter 4.

This chapter is dedicated to the research of the national mechanisms for the protection of human right, highlighting the role of the Constitutional Court, the courts and the Ombudsman in guaranteeing the inviolability of private, family and intimate life.

Paragraph 4.1. the thesis mentions that considering the fact that in an authentic democracy constitutional control serves as a fundamental guarantee of the supremacy of the Constitution, in the Republic of Moldova constitutional control is carried out by the Constitutional Court, which is an authority that exercises its powers independently.

Thus, starting with February 23, 1995, since the creation of the Constitutional Court until now, this single authority of constitutional jurisdiction in the Republic of Moldova supervises the observance of the constitutional provisions, ensuring the compliance of normative acts with the supreme law and the interpretation of the Constitution.

During its activity, the Constitutional Court exercised the constitutionality control of a number of laws, regulations, government decisions, which, according to the complaints submitted, violated the provisions of art.28 of the Constitution that enshrines the right to intimate, private and family life.

The principles established by the Constitutional Court on establishing the legality or illegality of interference in the private life of the person are particularly useful to be applied in the parking lot, these being:

- interference must be provided by the law;
- interference must comply with the unanimously recognized norms of international law;
- the interference must be proportionate.

Paragraph 4.2 of the thesis” The role of national courts in the protection of the right to private, family and private life " highlights the importance of the unified practice of national courts in the just judgment of cases that have as their object the violation of the right to private life.

Paragraph 4.3. of the thesis " The role of the Ombudsman (Ombudsman) in the protection of the right to intimate, family and private life" mentions that the right to respect for the private life of the person must be not only regulated by national and international legal provisions but also protected by civil law norms. Seeking to repair the damage and through criminal law norms, private life is protected by criminalizing acts that infringe personal secrecy and tranquility.²³

In this context, we mention that in order for the right to intimate, family and private life to be truly protected and respected, and not simply proclaimed, at the internal level of the state, a viable mechanism is to be created and implemented, equipped with legislation comparable to the international one in the field of privacy protection and last but not least to have a strong technical-scientific basis that could face all cyber attacks.

In the Republic of Moldova, the average citizen does not attach importance to the observance of the right to privacy, as it happens in countries with developed democracy, and does not perceive it as a right inherent to the human being, which imposes on the state not only the duty of interference, but also positive obligations that specifically require the authorities to take reasonable and adequate measures to protect the rights of the individual. This conclusion comes not only from the low number of complaints made to the Center for Human Rights regarding the violation of this right, but also from the lack of addressing the problems through the prism of the right to privacy.²⁴

General conclusions and recommendations develops final reasoning based on scientific research and presents some conceptual and practical benchmarks in addressing the right to intimate, family and private life. There are also proposals for *lege ferenda* which aim to improve the legislation in the field and to uniformize the practice in the field.

²³ POPESCU, Corina-Florenta, GRIGORE-RADULESCU, Maria-Irina. *Legal regulation of the right to privacy in the national legislation, extract from the article aspects regarding the observance of the right to privacy by the media*. Posted in Romanian Pandects no. 10/2014. [online] [quote April 13, 2019] Available: <https://blog.wolterskluwer.ro/reglementarea-legala-a-dreptului-la-viata-privata-in-legislatia-nationala/>

²⁴ Report on the observance of human rights in the Republic of Moldova in 2009, Center for Human Rights of Moldova, Chisinau 2009. [quote January 14, 2019] available: http://ombudsman.md/wp-content/uploads/2018/10/raport_2009_redactat_0.pdf

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Important scientific problem solved in the paper it consists in identifying all the "traditional" and "modern" aspects currently embedded in the notion of private life and determining the degree of legal protection conferred on it by national and international norms, which led to the formulation of definitions of the concepts of private, intimate and family life, as well as the formulation of proposals to *lege ferenda*, in order to improve the normative framework in the field and the correct application of the legislation.

Scientific results obtained they consist of complex and multi-factual analysis from the legal perspective of the right to intimate, family and private life, analysis of the evolution of ECtHR jurisprudence on cases initiated under art. 8 of the European Convention on Human Rights with the indication of the solutions adopted on each case, including the examination of the cases submitted before the ECtHR against the Republic of Moldova, with the same object, in order to highlight the current trends of perception of the law intimate, family and private life, which allowed to obtain new scientific results.

Novelties are embodied in the following basic ideas:

- an analysis of the characteristic elements was carried out and its own definitions regarding the right to intimate, private and family life were argued;
- the essence and distinctive features of each element of the fundamental right to the inviolability of private, family and intimate life have been elucidated;
- a detailed analysis of national legislation aimed at guaranteeing the fundamental right to intimate, private and family life has been carried out;
- the gaps in the legislation of the Republic of Moldova regarding the regulatory mechanisms and ways of ensuring the inviolability of private, family and intimate life were identified, with the formulation of proposals for *lege ferenda* to eliminate these gaps and improve the relevant regulatory framework.

Thus, the research of Legal Regulation and ensuring the inviolability of private, family and intimate life in this paper, constitutes the foundation of the following *conclusions*:

1. After examining the evolution over time of the right to respect for private and family life, it was possible to formulate the conclusion that this right is one of the most chameleonic, multi-factual and abstract of the rights guaranteed by the ECHR. The essence of the right to inviolability of private life lies in the superiority of private life over public. In order to exclude the possibility of the state intervening arbitrarily in the private life of a person, if it intervenes in

the private and family life of a person, the state will be obliged to justify this action by reference to one of the grounds laid down in Article 8 of the ECHR.

2. Examination of the text of art. 28 of the Constitution of the Republic of Moldova allowed to identify its laconic character, the Constitution of the Republic of Moldova limiting itself only with the enumeration of the values "intimate, private and family life" that the state is to respect and protect. Considering the fact that neither the Constitution of the Republic of Moldova nor any other national normative act defines the notion of intimate, private and family life, we conclude that the definition of these categories is left to doctrinaire and jurisprudence.

3. Following the multi-factual examination of the right to privacy, the following definition was proposed: **"The right to inviolability of privacy is the ability of the person to individually determine the limits within which third parties will have access to information about their personal life"**.

4. In view of the fact that intimate life is an aspect of privacy, we propose the following definition of intimacy: **"The right to intimate life is a right to individualism, which consists in the ability to live free from the eyes of others, as well as the ability to establish and develop relationships with others."**

5. Following the examination of the ECtHR case-law, we could define the right to family life as follows: **"The right to family life is the right to carry out an effective family life, to establish and maintain relationships with other people in the emotional field, being protected from the interference of other people"**.

6. The paper highlighted the current trend of automation and informatization of processes due to the implementation of state-of-the-art information technologies in both the public and private sectors, which implies an increased danger to the protection of the individual's intimate and private life, manifested by the collection, storage and processing of a large amount of information regarding the individual's personal data. Modern systems offer a number of possibilities for employers to easily collect information on the privacy of employees, video and audio surveillance, which is an interference in the privacy of employees, a right to be guaranteed to them including at work. The national legislature is to connect the provisions of national normative acts to the rigors of international norms, in order to guarantee the observance of the right to private life of persons in the process of fulfilling their work obligations, as well as to implement an efficient monitoring system, which would ensure the observance of the right in question.

7. It is relevant and multi-factual judicial practice of the ECtHR regarding cases concerning the violation of art. 8 of the European Convention. We found that the conviction by

the ECtHR of the Republic of Moldova for violating the inviolability of privacy is due both to the imperfection of the internal normative framework, but also to the prescribed action/inaction of the exponents of state power.

8. It is notorious the contribution of the Constitutional Court, in its capacity as the sole authority of constitutional jurisdiction in the Republic of Moldova, to guaranteeing the observance of the right to intimate, private and family life, by exercising the constitutionality control of laws and decisions of the government, which in accordance with the submitted complaints violated the provisions of art. 28 of the Constitution. At the same time, in the national system of human rights protection, the courts have a key role to play in ensuring a real and effective guarantee of human rights, including the inviolability of private and family life. At the same time, the important value of the Ombudsman institution in supervising the observance by the public authorities of the Republic of Moldova of the right of persons to intimate, family and private life is justified by the activity of prophylaxis in order to avoid in the future cases of conviction of the Republic of Moldova at the ECtHR, including in case of violation of the fundamental right to private, family and intimate life.

By way of **recommendations**, we propose the following:

1. Considering that the current wording of Article 28 of the Constitution of the Republic of Moldova is rather laconic, following the study of the practice of constitutional regulation of other states of the right to private and family life, we propose to expose article 28 of the Constitution of the Republic of Moldova in the following wording:

„Article 28 private and family life

1. Everyone has the right to respect for his private, family life, protection from encroachment on his honor, dignity and reputation.

2. The person has the right to dispose of it himself, if he does not violate the rights and freedoms of other persons”.

We mention that the proposed wording of the constitutional article:

- it does not provide for the notion of intimate life, because as demonstrated in the content of this thesis, intimate life is a component aspect of private life and separate mention of it, in our view, is superfluous;

- stipulates in paragraph two an important aspect of the right to privacy, namely *”the right of the person to dispose of himself”*.

2. Due to a low level of legal culture in the Republic of Moldova compared to that of countries with secular democratic traditions, in our country there is no importance in respecting the right to privacy and it is not perceived as a right inherent to the human being, which imposes

on the state not only the duty of interference, but also positive obligations that require specifically from the authorities to take reasonable and adequate measures to protect the rights of the individual. Thus, in order to remedy the created situation, it is necessary to impute to the public authorities exponents tasks to mediate, to respect, to develop the right to private, family and intimate life, as well as last but not least, to counter the interference of third parties in the private life of the person, in order to raise the level of awareness and the degree of responsibility regarding the protection of private, family and intimate life, in the spirit of the European Convention for the protection of human rights and the jurisprudence of the European Court.

3. In order to identify a fair balance between the right to privacy and the transparency of the judicial process in the context of the publication of court decisions, we propose the operation of amendments to the regulation on the way of publishing court decisions on the national portal of the courts and on the website of the Supreme Court of justice by including in the regulation concerned provisions that would provide for the right of the applicant who does not wish to disclose his identity to state it with the reasons justifying the derogation and, therefore, the right of the court to authorize anonymity in exceptional and duly justified cases, as provided for by the regulation of the European Court of Human Rights.

4. Considering the fact that the number of authorizations of investigating judges for interception of Communications is increasing annually, proceeding from the fact that the interception of telephone conversations constitutes a very serious interference in the rights of a person, and its authorization must be based only on very serious reasons, based on a reasonable suspicion that the person is involved in a serious criminal activity, it is proposed to operate a series of amendments to the National:

- investigating judges must necessarily justify the authorization of secret surveillance measures;
- The instruction on how to organize and carry out operational investigative measures in electronic communications networks should be re-examined and adjusted to the rigors of the Constitution of the Republic of Moldova, the normative acts in whose execution it was issued, in the spirit of European standards.

5. Taking into account the fact that lately there is a tendency to increase the number of cases of violation of the right to privacy both in the case of the installation of surveillance cameras on the private domain, in whose surveillance perimeter enters the private space of neighbors, and in the case of the installation by employers in the rooms where employees work, of video surveillance cameras, with the real purpose of remotely monitoring the behavior of employees, under the pretext of ensuring the security of property and security of individuals.

In this context it is important that in close terms the "law on video surveillance" be adopted to establish the rules for conducting video surveillance and to establish the liability of natural and legal persons for violation of the provisions of the respective law. At the same time, we believe that delaying the adoption of the law on video surveillance encourages employers, other legal and natural persons to grossly violate the constitutional right to intimate and private life. Likewise, we consider that the National Center for Personal Data Protection is to organize information campaigns for employees and other individuals regarding their right not to be monitored by video, except in cases strictly stipulated by law, with the necessary guarantees.

6. Considering that the concept of a judge of rights and freedoms will mainly reflect the essence of the institution concerned, which includes in itself the guarantee of respect for human rights provided by the European Convention on Human Rights and the Constitution of the Republic of Moldova, we propose that in the national legislation the notion of "*investigating judge*" to be substituted by the notion of "*judge of human rights and freedoms*", following the example of some member states of the European Union.

7. We consider it necessary for the Republic of Moldova to ratify protocol no. 12 to the European Convention for the protection of human rights and fundamental freedoms; the implementation of institutional mechanisms aimed at improving the skills of civil servants in the field of preventing and combating discrimination against minorities, the adoption of legislation in accordance with international standards on non-discrimination on grounds of gender identity, which would provide the necessary protection for minorities against crimes and incidents of transphobia and other forms of discrimination.

Theoretical significance the aim of the paper is to outline a coherent theoretical-scientific framework in correlation with the existing normative framework on the right to intimate, private and family life, which aims to outline the current categories protected by the constitutional right to intimate, private and family life and to identify solutions to guarantee it.

Practical value of the paper lies in the possibility of using the scientific concepts highlighted in it, as a source of documentation for potential petitioners to the European Court of Human Rights, who would claim the violation of the right to intimate, private and family life under art. 8 of the European Convention on Human Rights. The recommendations for improving the legislation will be useful in the process of adjusting to the European rigors of the national legislation in areas related to the right to intimate, family and private life. At the same time, the proposals and recommendations mentioned in this paper aim to elucidate the regulatory gaps found in the legislation on the right to intimate, private and family life. Finally, the conclusions mentioned in this paper may be useful for the legal education process in the Republic of

Moldova.

The impact of the work on the development of science and culture it consists in completing the national doctrine with comparative analytical studies and recommendations on the improvement of the legislation in the field of the right to intimate, family and private life, namely: the research of the ECtHR practice in solving cases in which the violation of the right to private life was alleged, the characterization of the main constituent aspects of this right, the analysis of the historical evolution and of the premises of the emergence and development of the right to intimate, family and private life, the elaboration of conclusions and the formulation of proposals for improvement of the normative framework regulating the right to intimate, family and private life in the Republic of Moldova.

Potential future research directions related to the topic addressed, we believe that can be focused on:

- improvement of the regulatory framework for material and disciplinary liability of both private persons and persons governed by public law for violation of the right to intimate, family and private life;

- research of the right to ecological security, as a component element of the right to privacy;

- analysis of the evolution and prospects of normative regulation of the right to family life of persons of the same sex;

- identification and investigation of the boundary between the right to intimate, family and private life and the right to freedom of expression.

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ADNOTARE

Butnaru Iulia. „Reglementarea juridică și asigurarea inviolabilității vieții private, familiale și intime”. Teză de doctor în drept la specialitatea: 552.01. Drept constituțional. Chișinău, 2022.

Structura tezei: introducere, 4 capitole, concluzii generale și recomandări, bibliografia din 241 surse, text de bază 158 pagini. Rezultatele obținute sunt reflectate în 6 articole științifice.

Cuvinte cheie: viața intimă, viața privată, viața familială, date cu caracter personal, identitate sexuală, jurisprudența CtEDO, intimitate, familia.

Domeniul de studiu: Drept constituțional.

Scopul lucrării constă în efectuarea unei cercetări științifice a esenței și conținutului dreptului la viața intimă, familială și privată, abordarea complexă a dreptului respectiv prin prisma prevederilor legislației naționale, instrumentelor internaționale, opiniilor doctrinare și practicii judiciare în domeniu.

Obiectivele cercetării: Determinarea conținutului multidimensional a dreptului la viața intimă, privată și familială; cercetarea dreptului la viața intimă, privată și familială, sub aspect evolutiv, examinarea practicii judiciare a CEDO pe cauzele ce pretind încălcarea dreptului la viața privată, intimă și familială; analiza dreptului vizat prin prisma doctrinei și legislației naționale în domeniu; evidențierea curenților și lacunelor existente și formularea unor propuneri teoretico-practice privind garantarea dreptului fundamental în cauză; formularea unor recomandări pentru îmbunătățirea cadrului normativ în domeniu.

Noutatea și originalitatea științifică constă în analiza complexă și multiaspectuală din perspectiva juridică a dreptului la viața intimă, familială și privată, analiza evoluției jurisprudenței CtEDO pe cazurile inițiate în temeiul articolului 8 al Convenției Europene a Drepturilor Omului cu indicarea soluțiilor adoptate pe marginea fiecărui caz, inclusiv examinarea cazurilor înaintate în fața CtEDO împotriva Republicii Moldova, cu același obiect, pentru reliefarea tendințelor actuale de percepție a dreptului la viața intimă, familială și privată.

Rezultatul obținut care contribuie la soluționarea unei probleme științifice importante constă în identificarea tuturor aspectelor „tradiționale” și „moderne” înglobate în prezent de noțiune de viață privată și determinarea gradului de protecție juridică conferit acestora de normele naționale și internaționale, fapt care a condus la formularea unor definiții a noțiunilor de viață privată, intimă și familială, precum și a unor propuneri de lege ferenda în vederea perfecționării cadrului normativ în domeniu.

Semnificația teoretică a lucrării rezidă în conturarea unui cadru teoretico-științific coerent în corelație cu cadrul normativ existent privind dreptul la viața intimă, privată și familială, acestea având ca finalitate conturarea categoriilor actuale protejate de dreptul constituțional la viața intimă, privată și familială și identificarea lacunelor necesare a fi elucidate.

Valoarea aplicativă a lucrării rezidă în posibilitatea folosirii concepțiilor științifice reliefate în aceasta în calitate de sursă de documentare pentru potențialii petiționari la CtEDO, care ar pretinde violarea dreptului la viața intimă, privată și familială în temeiul art. 8 al Convenției Europene a Drepturilor Omului. Recomandările de perfecționare a legislației vor fi utile în procesul de racordare a legislației naționale în domeniul tangente dreptului la viața intimă, familială și privată la standardelor europene.

Implementarea rezultatelor științifice. Elucidarea esenței și conținutului vieții private, intime și familiale, precum și prezentarea unor propuneri de lege ferenda în vederea perfecționării cadrului normativ în domeniu pot contribui la protecția efectivă a acestui drept fundamental. Rezultatele studiului au fost reflectate de autor în articolele publicate în diverse reviste, culegeri de articole. Tezele abordate în prezenta lucrare au fost prezentate în cadrul unui șir de conferințe naționale și internaționale. Rezultatele investigațiilor reflectate în prezenta lucrare pot fi utile studenților, masteranzilor din cadrul instituțiilor de învățământ superior cu profil juridic, totodată studiul în cauză poate fi de folos persoanelor care intenționează să înainteze o cerere în fața CtEDO în temeiul art. 8 al Convenției Europene a Drepturilor Omului. De asemenea recomandările de perfecționare a legislației pot servi în calitate de suport doctrinar la o eventuală modificare a actelor normative ce au tangență cu dreptul la viața intimă, privată și familială.

ANNOTATION

Butnaru Iulia. "Legal regulation and ensuring the inviolability of private, family and intimate life".

Thesis for obtaining the scientific degree of doctor of laws.

Specialty: 552.01. Constitutional law. Chisinau, 2022.

Structure of the thesis: introduction, 4 chapters, general conclusions and recommendations, 241 bibliographic sources, basic text of 158 pages. The results obtained are reflected in 6 scientific articles.

Keywords: private life, private life, family life, personal data, sexual identity, ECHR jurisprudence, privacy, family.

Field of study: Constitutional law.

The purpose of the paper it is to carry out a scientific research on the essence and content of the right to intimate, family and private life, the complex approach of this right through the provisions of national legislation, international instruments, doctrinal opinions and judicial practice in the field.

Research objectives: Determining the multidimensional content of the right to private, private and family life; research of the right to private, private and family life in an evolutionary way, examining the ECHR's judicial practice on cases claiming violation of the right to private, intimate and family life; analysis of the right concerned through the doctrine and national legislation in the field; highlighting the existing deficiencies and gaps and formulating some theoretical and practical on guaranteeing the fundamental right in question; formulating some recommendations for improving the regulatory framework in the field.

Scientific novelty and originality consists in the complex and multi-faceted analysis from the legal perspective of the right to intimate, family and private life, the analysis of the evolution of ECHR case law on cases initiated under Article 8 of the European Convention of Human Rights, indicating the solutions adopted in each case, including the examination of the cases brought before the ECHR against the Republic of Moldova, with the same object, in order to highlight the intimate, family and private life.

The result obtained, which contributes to solving an important scientific problem consists in identifying all "traditional" and "modern" aspects currently covered by the notion of private life and determining the degree of legal protection given to them by national and international rules, which led to the formulation of definitions of the concepts of private, intimate and family life having as final result the formulation of some proposals for law enforcement in order to improve the normative framework in the field.

Theoretical significance of the paper consists in shaping a coherent theoretical and scientific framework in correlation with the existing normative framework regarding the right to intimate, private and family life, which have the purpose of outlining the current categories protected by constitutional law to the intimate, private and family life and identification of gaps that need to be elucidated.

Applicative value of the paper lies in the possibility of using the scientific concepts highlighted in it as a source of documentation for potential petitioners at the ECHR, claiming violation of the right to intimate, private and family life under Article 8 of the European Convention on Human Rights. Recommendations for improving the legislation will be useful in the process of aligning the national legislation in the fields related to the right to intimate, family and private life to the requirements of the European standards.

Implementation of scientific results. Clarifying the essence and content of private, intimate and family life, as well as the presentation of proposals for law enforcement in order to improve the regulatory framework in the field can contribute to the effective protection of this fundamental right. The results of the study were reflected by the author in articles published in various magazines, article collections. The theses addressed in this paper were presented in a series of national and international conferences. The results of the investigations reflected in this paper may be useful for students, master students, at the same time, the study in question can be useful to those who intend to bring an action before ECHR under Article 8 of the European Convention on Human Rights. Also, the recommendations for the improvement of the legislation can serve as a doctrinal support to a possible amendment of the normative acts that are related to the right to intimate, private and family life.

АННОТАЦИЯ

Бутнару Юлия. «Юридическое регулирование и обеспечение неприкосновенности частной, семейной и интимной жизни».

Диссертация на соискание учёной степени доктора юридических наук.

Специальность: «552.01. Конституционное право». Кишинэу, 2022 год.

Структура работы: введение, 4 главы, общие выводы и рекомендации, библиография из 241 источника, основной текст на 158 страницах. Полученные результаты отражены в 6 научных статьях.

Ключевые слова: интимная жизнь, частная жизнь, семейная жизнь, личные данные, сексуальная ориентация, юриспруденция ЕСПЧ, интимность, семья.

Область исследования: конституционное право.

Цель работы заключается в научном исследовании сути и содержания права на интимную, семейную и частную жизнь и в комплексном подходе к соответствующему праву сквозь призму положений национального законодательства, международных документов, доктринальных мнений и судебной практики в данной области.

Задачи исследования: определение многопланового содержания права на интимную, частную и семейную жизнь с точки зрения эволютивного аспекта; изучение судебной практики ЕСПЧ по делам о предполагаемом нарушении права на частную, интимную и семейную жизнь; анализ данного права сквозь призму отраслевого национального законодательства и доктрин; выявление текущих недостатков и лакун, а также формулирование теоретико-практических предложений о гарантировании данного основного права; формулирование рекомендаций относительно улучшения отраслевой нормативной базы.

Новизна и научная оригинальность заключаются в комплексном и многоаспектном анализе – с юридической точки зрения – права на интимную, семейную и частную жизнь, в анализе эволюции юриспруденции ЕСПЧ по делам, возбуждённым на основании статьи 8 Европейской конвенции о защите прав человека, с указанием решений по каждому делу, а также в изучении заявлений, поданных в ЕСПЧ против Республики Молдова на ту же тему, в целях выявления текущих тенденций в восприятии права на интимную, семейную и частную жизнь.

Полученный результат, который способствует решению важной научной проблемы заключается в выявлении всех «традиционных» и «современных» аспектов, которые включает в себя в настоящий момент понятие частной жизни, в определении степени юридической защиты, что привело к формулированию определений понятий частной, интимной и семейной жизни, а также некоторых предложений *lege ferenda* в целях совершенствования нормативной базы.

Теоретическая значимость работы заключается в определении рамок последовательной научно-теоретической базы в соотношении с существующей нормативной базы права на интимную, частную и семейную жизнь, а в итоге – в определении границ нынешних категорий, защищаемых конституционным правом на интимную, частную и семейную жизнь и в выявлении тех лакун, которые необходимо прояснить.

Прикладная ценность работы заключается в возможности использования определяемых в ней научных концепций в качестве документального источника для потенциальных истцов ЕСПЧ, заявляющих о предполагаемом нарушении права на интимную, частную и семейную жизнь на основании статьи 8 Европейской конвенции о защите прав человека. Рекомендации по улучшению законодательства будут полезны в процессе гармонизации национального законодательства в сферах, соприкасающихся с правом на интимную, частную и семейную жизнь, с европейскими стандартами.

Внедрение научных результатов. Выяснение сущности и содержания частной, интимной и семейной жизни, а также представление предложений *lege ferenda* в целях совершенствования нормативной базы в этой области могут способствовать эффективной защите этого основного права. Автор представил результаты исследования в статьях, опубликованных в различных журналах и сборниках статей. Тезисы, исследуемые в настоящей работе, были представлены на нескольких национальных и международных научных конференциях. Результаты исследований, изложенные в настоящей работе, могут быть полезны для студентов и магистров высших учебных заведений юридического профиля, данное исследование может быть полезным для лиц, намеревающихся подать заявление в ЕСПЧ на основании статьи 8 Европейской конвенции о защите прав человека. Помимо этого, рекомендации по улучшению законодательства могут служить доктринальной поддержкой в случае возможного изменения нормативных актов, соприкасающихся с правом на интимную, частную и семейную жизнь.

BUTNARU IULIA

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PRIVATE, FAMILY AND INTIMATE LIFE**

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