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THE PROTECTION OF THE PRIVATE LIFE IN THE PRESENT AND NEW CRIMINAL CODE

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THE PROTECTION OF THE PRIVATE LIFE IN THE PRESENT AND NEW CRIMINAL CODE[1]

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Abstract:

The paper treats the actual way in which our legislation protects the private life from the criminal and constitutional few. We have presented also the perspective in which the new criminal code assures the protection of this right. The paper proposes also to make a general analysis of the principles aplicable in the Romanian law.

Keywords:

private life, criminal protection, Convention of European Human Rights, actual and future protection.

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1. Introduction.

The private life is one of the elements of civilization which the legal position has brought to the attention of the modern world. The way in which each period of time, the society and implicitly, the way it reflected this protection has differed, pointing out the mentation particularities of the people of those times. Though it is obvious that the problem of the protection of the private life has become critical at the same time as the development of technical means which made possible the interference in our lives. The classical or traditional way through which the criminal code understood to protect the private life, is by incriminating the misdemeanor of trespassing and later on by incriminating the misdemeanor of violating the correspondence secrecy and divulging the professional secret. But nowadays these means are no longer sufficient. That is why the new criminal code has addapted, as we say, to the needs of the contemporary life, which drive some people more and more towards a hectic rush for knowing everything, or at least trying to, for prying in people's lifes and souls, by any means possible and depriving more and more of any substance the intimacy and the family life.

The right to the protection of private life and dwelling place has been stipulated for the first time in the Universal Declaration of the Human Rights[4], where in art.12 is written: „*Nobody shall be subjected to arbitrary intrusions into his/her private life, family, home or correspondence, nor to harm of his/her honour and reputation. Any person has the right to legal protection against such intrusions or harm*". But this declaration of principles has not remained the only document of general value which reminds of the protection of the private life. Subsequently, in a short while, in Rome was being signed, in 1950 by the founder states of the European Council, the European Convention of the Human Rights[5], which came into effect 3

[4] The Universal Declaration of the Human Rights has been adopted by the General Gathering ONU on 10th of December 1948.

[5] The Convention for the Protection of the Human Rights and of the Fundamental Liberties, known and acknowledged in the specialised language as the European Convention for the Human Rights, has been adopted by the founder states of the European Council on 4th of November 1950 and has came into effect on 5th of Sepember 1953, along with the tabling of all the ratification instruments. The convention has been amended by multiple aditional protocols, which have happily completed the list of preserved rights, thus proving that the legal institution can *also* exercise versatlity when

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years later and which stipulates through the provisions of art. 8 that: *„1. Any person has the right to keep his/ hers private and family life and correspondence. 2. The interference of any public authority in excerting this right is not allowed, but in the measure in which such an interference is stipulated by the law and if it constitutes a measure which, in a democratic society is necessary for the national security, public safety, economic welfare of the country, protection of order and prevention of criminal acts, health or moral protection, or protection of the rights and liberties of others ."*

The stipulations of art. 8, par.1 from the European Convention have been undertaken also by the European Charter of Human Rights[6], act which dedicates a series of rights and liberties to the citizens of the European Union.

However the criminal protection of the private life must be also sustained by the dispositions of our contitutional laws. According to art. 26 from the Fundamental Law, the public authorities must obey and guard the intimate, homelike and private life. Also, according to the stipulations of art. 27, par.1 from the same regulatory document, the dwelling place and the residence are intangible, the following articles (2-4) stipulating the cases in which authorities can enter the house of a person, with a waiver from this constitutional principle. In completion to these two fundamental rights and in order to ensure a full protection of all the essential aspects of the private life, the stipulations of art. 28 of the Constitution impose keeping the secrecy of correspondence.

2. The indictable protection of the private life.

Reaching this point, it is necessary to point out that the keeping of private life is thus asserted in many forms, not only annunciating and of principles, but also by protecting its certain aspects, such as the residence, correspondence or keeping the professional secret. These three elements are recaptured protected by norms of the criminal code, especially in the Criminal Code, art.192 which incriminates the tresspassing of residence, art.195 which incriminates the violation of the correspondence secrecy and art. 196 which incriminates the divulging of professional secret. The three misdemeanors can be retrieved in the II-nd Title *Misdemeanors*

society's needs require it. Romania ratified the Convention after it joined the European Council in 1993 by Law no. 30/1994, published in Of. M. no. 135/31.05.1994.

[6] The Chart of Fundamental Rights of European Union has been adopted in year 2000 and has been published in the Oficial Journal of UE no. 2000/C-364/01.

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Against the Individual, II-nd Chapter *Misdemeanors against the freedom of the individual*.

Their juridical object, as it results from the title and the chapter in which they have been included, refers to the liberty of individual (Basarab, Matei, 2008: 229-230). Making reference only to the first two misdemeanors mentioned above, although by means of them certain ways of expressing the individual freedom are altered, we consider that mainly these potect the private life and not the freedon of the individual. That is why we appreciate as being a good fact including them in a special chapter dedicated to the private life, which shows that our legislator has asimilated a new form for manifesting democracy, which implies also respecting the individual, in his most private, most familiar aspects. This opinion and the way these misdemeanors are included in the new criminal code in a special chapter, are not shared by all pedants. For example, prof. George Antoniu, while commenting on one of the criminal code projects, shows that the two misdemeanours must be kept in the chapter *Misdemeanours against Private Liberty*, since they refer to different aspects of liberty, mainly the liberty for an individual to choose his/ her own dwelling place (in case of trespassing) as well as the freedom to communicate (in case of violation of correspondence secrecy) or to entrust certain secrets to some professionals (in case of divulging the professional secret) (Antoniu, George, Revista de drept penal, nr. 1/2008: 15). The author mentioned demonstrates that the new proposal is of Spanish influence[7], without having a reason for such a change of protected judicial object. Still, in our opinion, without denying the connection with the private freedom, it seems that the protection of the household has as a main goal the protection of family life and secundary, the possibility of choosing a dwelling place. For that matter, from the text of art. 192 c.p., it does not result that the individual is protected to choose or to settle his/ her

[7] In deed, the Spanish Criminal Code incriminates the two misdemeanours in the X-th Title *Crimes Against Intimacy, the Right to Own Image and Trespassing*, in two separate chapters, one which incriminates the violation of the correspondence secrecy under all its aspects – art. 197 and a second one which incriminates home and professional headquarters trespassing – art. 202-204. The wording for art 197 regarding the violation of correspondence secrecy, from the Spanish criminal code is revealing for its inclusion in a separate title and not in the category of crimes against private liberty. We render now a fragment from this text: „The one who, for uncovering the secrets and violating the privacy of another person, will appropriate letters, papers, messages from electronic post, ”.

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residence, but in those aspects which are connected with his/ her right to receive or not, or to keep in his/ her household only those persons whom he/she cares for, fact which in our opinion is connected more with the protection of the private life, than with the freedom of choosing or keeping the household.

As far as the misdemeanour of violating the correspondence secrecy is concerned, what the purport of art. 195 c.p. aimes at is at the same time securing the freedom of any of us to correspond with whomever we want, by any means, but also the right of having the intimacy of such a correspondence be respected, aspect which again is connected with the protection of the private life. As the purport of the art. 195 describes the incrimination of the violation of the correspondence secrecy, it is made the difference between the situation when a correspondence is detained without being open, or without a content of interest, case in which in deed it is injured mainly the freedom of communication, and the situation in which the correspondence is left to circulate, but it is opened, case in which it is injured the private life of the person sending the correspondence and not his/ her freedom to correspond, which has not in any way been violated.

Furthermore, even if this way of looking at things is a traditional one, it is not less true that the law must keep up with the changes in mentality, of which we were reminding from the begining of this study. Thus, at the time of elaborating the code, due to the less democratic regime, the emphasis was laid on one's possibility to choose a residence, a private life, being known to be of less interest for the communist regime. Actually, the new methods of access to resources, but also the access to one's private life, impose a new thinking and perspective pattern. People may choose more easily a household, the market is free, but what is felt more intense is the need for intimacy and respect for the family and personal values.

That is why we consider that especially these two misdemeanours have a more complex character, the present code placing the accent exclusively on the individual's liberty, while the new criminal code is offering the possibility to manifest also their protective side on the private life.

As far as the third misdemeanour is concerned, the one regarding divulging the prodessional secret, it can sometimes affect, depending on the circumstances of the case, the work relations, the private life of a

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person, and then one's freedom to entrust to a professional a certain special aspect of his/ her life.

For that matter, this way of looking at things has been again validated by the new criminal code, which includes the misdemeanour of divulging the professional secret (art. 227) within Chapter IX regarding the *Infractions which Bring Harm to the Domicile and the Private Life,* but, from this perspective, it presents a major amendment versus the present purport, poining out that divulging data and information refers to the private life of a person.

The new criminal code brings important amendments and additions to the protection of the private life. It is for the first time when the Romanian criminal code includes among its titles and chapters one dedicated exclusively to the protection of the private life, I-st Title *Misdemeanours Against the Individual,* Chapter IX *Misdemeanours which Bring Harm to the Domicile and the Private Life*. The new criminal code considers that only 4 misdemeanours are connected with the protection of the private life: trespassing (art. 224), violation of professional headquarters (art. 225), violation of private life (art. 226) and divulging of the professional secret (art. 227).

We make notice that the new regulation introduces two new indictments, the one regarding the violation of the professional headquarters and the one regarding the violation of the private life, but we remark that the misdemeanour regarding the violation of the correspondence secrecy has not been included in the group of infractions which trespass against private life, being considered a work misdemeanour. Definetly that such a view is due to a certain reality, meaning that in most cases, the people having access to the postal, electronic or telephonic mail of any citizen, are those with certain positions; for example a post office clerk, a S.R.I. official, or one from the mobile or fix phone companies. Still, the wording of paragraphs 1, 2 and 4 for this misdemeanour show us that the activ subject can be any person, without having defined circumstances and is otherwise preferred to remain this way, since access to somebody's correspondence, no matter what kind – mail, electronic mail, fix or mobile phone – can be detained by any person, by mistake or intentional. I would remind here the possibility of opening a postal box from the hall of a block of flats, place accessible in principle to anyone, or the possibility to store or intercept any phone call or e-mail, by any person agile in working with computers

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and internet, without being restricted to. That is why it would be preferred for this misdemeanour to complete the group of four included in Chapter IX and as the legislator chose to differentiate the regulation regarding offence, creating a special misdemeanour of judicial offence (in art. 279 N.C.P.), it could have created a judicial regulation differentiation in this case as well. Otherwise the proportion in which the new misdemeanour sustains a qualified active subject for the situation in which the misdemeanour is committed by any person is reduced. Just one of the four paragraphs stipulates that the deed is committed by a public officer who has the obligation to keep the professional secret and the confidentiality of information[8]. The new misdemeanour regarding the violation of the correspondence secrecy presents a regulation different from the current one. In the first place it makes the difference between classic, traditional correspondence, by use of mail and the telephonic and electronic correspondence. In this context, the 1-st paragraph from the new criminal code is a mixture of the first two paragraphs of art. 195 of the current criminal code. Thus, if the current code incriminates in first paragraph – referring only to correspondence by letters – only *the opening of a correspondence addressed to another*, only to add in the second paragraph that it represents also a misdemeanour *the taking, distruction or withholding of a correspondence , even if it has been sent open or opened by mistake*. In the new criminal code these two regulations have been combined, in a logical way, we would say, and 1-st pararaph of art. 302 from the N.C.P. has been created: *the opening, taking, distrucion or withholding, with no right, of a correspondence addressed to another, as well as the divulging without permission of the content of such a correspondence, even when it has been sent open or opened by mistake*. Besides the stipulations of the current code, the new criminal code adds to the purport also another hypothesis, namely *the divulging of the content* of the open correspondence or even opened by mistake. Such an increment strengthens even more our conviction that such a misdemeanour would have been better placed in the I-st Title, Chapter IX, than in the contents of the V-th Title *Misdemeanours of Corruption or of Work*, II-nd Chapter *Misdemeanours of Work*. It is a natural increment, which does nothing else but complete and unify the entire regulation. Thus, the new criminal code incrimnates the entire range of situations which might arise in connection to a correspondence:

[8] Art. 302 par. 3 from the new criminal code.

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- *its opening,* which implies the fact that the letter has been closed in the first place, the misdemeanour consisting in ungluing, cutting-off, clipping the envelope in which it has been sent, removing the cover protecting its content (Toader, Tudorel, 2009: 107) and why not, reading its content, even if afterwards it is dispatched and left to follow its course to the initial destination (what else could be the purpose, if not exactly to have the letter's content known, no matter if the addresser or the addressee might become aware of that or if the one who opens it uses its content in any way or not) – fact which can affect *the private life of the addresser or of the addressee of the letter, as well as the work relations*, if the letter has been opened by a postal office clerk, for example, who is thus transgressing his/ her work responsibilities;
- *its taking*, which implies the fact that the letter will no longer reach the destination given to it by the addresser, if it is *appropriated by the transgressor*. It does not matter, in this context, if it is or will be opened, if its content is read or not, the deed consists, in this case in the „simple" taking of the letter, so that it no longer reaches its rightfull addressee. It is possible that such a situation should affect either the addresser or the addressee, or even both of them, both ethically and physically, but the law does not conditions by such a situation the incrimination of the deed; in such a case, it is up to the judge to set the punishment, to determine a fair customization for it;
- *its distruction*, means the letter is dissolved in its concreteness, no matter the way this is done: burning, cutting, tearing;
- *its withholding*, presupposes, just like in case of taking, that the letter will no longer reach its addressee, but unlike this way of perpetrating the deed, the correspondence is no longer acquired by the trespasser, but just detained from reaching its destination, it is stopped somewhere on the post office flux or circuit, it is made lost by the trespasser, but it is not taken by the latter. In these last three proceedings, the deed affects *the freedom of speech and the job*, if it is committed by an officeman who has in his responsibility sorting and deliverying the correspondence (obviously, it is most often a post office factor).

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- finally, the last proceeding, but not lastly, is *its divulging* which assumes that opened or not, the content of a letter is known by more persons, it is revealed (Toader, Tudorel, 2009: 107), as a consequence of its presentation by the trespasser. In our opinion, this proceeding has an impact on *the private life of the addresser, the addressee or both of them*, and, only if the deed is committed by a post office clerk, also *the work relations*.

The second paragraph of the new criminal code comprises of what was left from the 1-st paragraph from the current code and which had not been inlcuded in the prior paragraph, regarding communication by means of modern distance communication methods, such as e-mail. Thus, the second paragraph refers only to the proceeding in which the deed is committed by *intercepting* a phone call (be it done by means of fixed phone network, or by any other mobile phone networks), or *a communication made by telephone*. The term interception is especially used so to suggest hearing or recording a communication done by means of modern techniques, namely by phone or electronic resorts and means surprising or listening to a conversation between two or more persons (Toader, Tudorel, 2009: 107). The expression newly input in the purport, that of *communication made by telephone* presupposes that the text is referring here to the phone messages, no matter their content and means of transmission (regular text, pictures and text or only pictures message, or a message sent by bluetooth or any other way in which in the future the messages on mobile or even fix phone will be sent). Also, the new purport covers the situation of communication by means of electronic devices, since it refers as well to intercepting a conversation or a communication done by *electronic means of communication*, means which make us thinking of direct communication, by *messenger, facebook* or any other socializing methods which exist or which will appear in the future, but also to indirect communication, by means of electronic post.

In this situation, we appreciate that the main special juridical object should be the private life of the person or persons affected by the illegal interception, and only secondary the work, since the deed can have as an active subject any person and not just the workers specialized in secret services who normally have the technical and sometimes even legal possibility to undertake such interceptions.

What the new purport of art. 302 from N.C.P. adds is the fourth pararaph, which comprises the proceeding for *divulging* the interceptions

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from second paragraph, second thesis of art. 195 from the current code, but which contains three new proceedings: *the distribution, presentation or transmission* to the public of the information which has made the object of the intercepted communication. In all these cases the four nominated terms are just synonyms of the main, first one, *to divulge*, or means to accomplish this divulging. *To divulge* implies *spreading, presenting, broadcasting or transmitting the intercepted information*, all these being done before one or more individuals. The text of art. 302 adds, as an essential condition, the fact that the divulging must take place towards another person or an audience, but by its inherent nature, any of the proceedings to accomplish the deed from 4-th paragraph imply the presentation of the content of the intercepted communication before one or more persons. For example, the presentation or the transmission can be done also to just one person, while the divulging or the broadcasting imply more individuals. In this case also, we consider that *relations regarding private life are mainly affected and only secondary the work relations*, when the deed is committed by a clerk who was benefitting from his priviledged status and which would have made it easier for him/ her to transmit the information. But the deed as we have constantly highlighted within this article, can be committed by anyone.

The third paragraph of art 302 from N.C.P. contains one of the aggravated forms of this misdemeanour, aggravation, otherwise the only one, which is determined by the qualification of the active subject and which is identical with the one in art 195, included in year 2007 by Law no.337/2007[9]; this purport alone could justify the inclusion of this misdemeanours among the work offences.

As a mutual aspect of all the paragraphs previously presented, we bear in mind that the deed becomes a misdemeanour after the violation of the correspondence secrecy occurred *with no right*. Moving on, the 5-th paragraph explains to us which are the situations in which the „violation" of the correspondence secrecy would be done *with right,* instituting two causes which discard the criminal character of the deed, named in the new criminal code causes of lack of imputability:

- if the culprit intercepts the committing of a crime or contributes to proving the commission of a crime, and
- if the culprit intercepts deeds of public interest, which have significance for the life of the community and the divulging of

[9] Law no. 337/2007, for the completion of art. 195 form the Criminal Code, published in Of. M. no. 841/08.12.2007.

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which present public advantages greater than the prejudice produced to the harmed person.

Still, the two situations, but especially the second, cand arise multiple interpretations and contradictory solutions for practice, since it is missing the definition of some important terms such as *facts which have significance for the life of the community*, or some minimal criteria for determinating that the public advantages are greater than the prejudice caused to the harmed person. The second hypothesis can create an unjustified interference in the private life of one or more persons, by means of intercepting their correspondence.

Returning to the misdemeanours foreseen now exclusively in Chapter IX of I-st Title, *Misdemeanours Against the Person*, we shall observe that the misdemeanour of trespassing presents a slight difference from the one in the current regulation as a proceeding for incrimination[10]. From a pecuniary point of view, the aggravating of the perpetrating of the deed by two or more persons has been eliminated, and from the procedural point of view the deed is beeing pursued at the previous complaint of the harmed person both in the case of the simple form as well as in the case of the aggravated form.

But the trespassing has been completed with the one of the violation of the professional headquarters[11]. There are two differences between one misdemeanour and another; the first is regarding the nature of the harmed object: in the first case (art. 224 N.C.P.) it is a *dwelling place*, room, outbuilding or its surrounding place, which represent the dwelling place or the residence of a *private person*, while in the second case, it is violated *any of the headquarters* where *a legal or private person* carries out his/ her actvity, which include the main headquarters as well as the secondary headquarters, or the working places of the legal person. However the text enforces an essential requirement: at the respective headquarters, for the private or legal person to undertake his/ her activity, meaning for he/ she to have begun his/ her activity.

The second difference is the one regarding the passive object. In case of trespassing, the passive object can only be a private person, because it is the only one identifiable by name and address, according to art. 12 and 13 from the Decree no 31/1954[12], while in case of the

[10] See the dispositions of art. 224 from the new criminal code.
[11] See the dispositions of art. 225 from the new criminal code.
[12] Decree no. 31/1954 published in Of.B. no. 8/30.01.1954.

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misdemeanour of violating the headquarters, the passive object can be a legal person, since it is identified by name and professional headquarters, according to art. 38 and 39 from Decree no 31/1954, as well as a private person. Still, in this last case, although the law text does not stipulate it, we consider that it is regarding a private person undertaking an activity which imply the existence of a headquarters, such as the authorized private person, who is undertaking his/her work based on the provisions of Law no. 300/2004[13], such as the proceedings for practicing their job by lawyers[14], mediators[15], attorneys[16], auditors[17], physicians[18] etc.

It is interesting that in such cases, when many times, the professional organization method of one of the above mentioned professions finds its headquarters at the dwelling place of the private person titular of the profession. Entering without permission in such a space or refusing to leave the premises, reunite the constitutive parts of the two misdemeanours, in other words we have an ideal conjuncture of infractions. Or should we have to analyze the situation depending on the objective and special situation from each test case? If somebody who has the status of client enters the headquarters of a lawyer, which is at the same time his/ her residence and then refuses to leave, was there

[13] Law no. 300/28.06.2004, regarding the authorization of private persons and of family associations which independantly undertake economic activities, published in Of. M. no. 576/29.06.2004.

[14] Lawyers undertake their activity on the basis of the stipulations of Law no. 51/1995, modified and completed, republished in the Of. M. no. 98/07.02.2011. According to it (art. 5), the ways of exercising a profession are: individual cabinets, associated cabinets, professional civil societies or professional limited societies.

[15] The mediation is organized and functions on the basis of Law no. 192/16.05.2006, regarding the mediation and the organization of the mediator profession, modified in 2009 and 2010. According to art. 22 par. 1, the mediators undertake their activity within a professional civilian society, a bureau of associated mediators, or within a non-governmental organization.

[16] Law no. 36/1995, regarding the attorneys and notarial activity, published in the Of. M. no. 92/16.05.1995, modified and updated. According to it (art. 14), the attorneys can organize themselves in associated private practices.

[17] Auditors and authorized accountants undertake their activity in the basis of the OG no 65/1994, republished in the Of. M. no. 13/08.01.2008. According to it (art. 8) the auditors can have practices and can be organized in merchant societies, accroding to the law.

[18] Physicians, generally undertake their activity according to Law no. 306/2004, regarding the exercising of the profession of a physician, as well as the organization and activity of the Romanian Physicians College, published in the Of. M. no. 578/30.06.2004. Physicians can form cabinets of medical practice, or can work as employees.

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committed only the misdemeanour of violating the headquarters or the one of trespassing as well? Will it count if the person has the quality of a client and if he/ she realizes that he/ she enters both somebody's professional headquarters and his/ her dwelling place?

The Spanish criminal code from which this misdemeanour was inspired presents a different regulation[19]. For the Hispanic peninsulars, the violation of the headquarters is referring to the case in which somebody enters, without the acceptance of the owner in the headquarters of a juridical person of public or private right, or in his/her personal office or the one opened to the public, or in a commercial place or in any other place opened for public, outside the opening hours. The aggravating form of this misdemeanour shows us that, no matter the moment he/ she refuses to leave the headquarters as explained above, the doer commits this misdemeanour either he/ she does it by violence or intimidation.

The simple form of the Spanish version seems more close to reality. The professional headquarters of certain companies are built so that various individuals – client or possible clients – to enter. In the version chosen by the Romanian legislator, most often the deed is seen as the refusal to leave the premises, since it is normal for access of all individuals to be allowed in the headquarters of companies, with some small exceptions, which we might come across. It is just as true, that the regulation form chosen by the Romanian legislator covers most of the situations, leaving the field work to take advantage of this legislative opening.

Differences from the current regulation we find also within the misdemeanour of divulging the prefossional secret. Unlike the current regulation, where the purport is referring to any kind of information which shall be divulged, according to the new text (art. 227 from the N.C.P.), divulging of data and information must refer to *the private life* of a person, data or information which by its nature might bring prejudice to a person, the doer taking a note of it by reason of the profession or held position. In addition to this regulation, there have been created more misdemeanours, namely the divulging of state secret information (art. 303 N.C.P.), the divulging of secret or unpublished work related information (art. 304 N.C.P.) and the neglect in keeping the information (art. 305

[19] See the stipulations of art. 203 from the Spanish criminal code.

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N.C.P), which are comprised in the category of work related misdemeanours.

We left behind, not at all by chance, one of the misdemeanours provided in Chapter IX. It is the misdemeanour of violating the private life (art. 226 N.C.P.), newly embeded among the misdemeanours of the code, just as the new chapter, it being representative by the marginal designation and by means of the regulation for *Misdemeanours which Bring Harm to the Household and the Private Life*. The misdemeanour has a simple form and two qualified forms (par.2 and par.5 art 226 N.C.P.), as well as more causes of lack of imputability . The misdemeanour is defined as being: *„The harm brought to the private life, wrongfully, by photographing, interception or recording of images, hearing by means of technical devices or the audio recording of a person being in a residence or a room or a outhouse belonging to it or of a private conversation"*.

The special legal object is obvious and without doubt, the protection of the private life. The misdemeanour has a real object, wich consists in the produced photographs, in the produced audio-video recordings. Both the active and the passive subject can be any person, unlike the active subject who can be also a legal person.

As far as the real element of the objective side is concerned, the deed is committed only by an action, which consists in the harm brought to the private life. This „harming"can be done in various ways: by photgraphing or by audio or video recording of a/ some persons present in a household, room or outhouse belonging to it. In other words, if art. 24 guarantees that anyone entering the household of another person with no permission or refuses to leave it will be sanctioned for trespassing, this new misdemeanour will insure us that nobody, with no right, has the possibility to „*peep through the keyhole*" and more, to make any kind of recordings with what is going on in that room or outhouse. The deed provided in this paragraph, if it stops here and it does not reach the broadcasting of the images or the conversations recorded, meaning the qualified form stipulated in 2–nd paragraph of art. 226 N.C.P., can enter the competition with the blackmail misdemeanour (art. 207 par. 2 from the N.C.P.), if the photographs or the recordings are used for threatening a person or a member of his/ her family with revealing them, with the purpose to gain an injust real benefit.

The purport of the simple form is completed by the first qualified form, where it is stipulated that will be a misdemeanour *the divulging,*

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broadcasting, presentation or transmission of the conversations or images taken according to 1-st paragraph, to either one person or to a public. We have defined the terms from this purport before, when analizing the misdemeanour of violation of the correspondence secrecy, that is why we shall not dwell on it anymore. In order to eliminate any possibility to pry into the intimacy of a person, the 5-th paragraph of art. 226 from N.C.P. incriminates the placing without right of technical means of audio or video recording, with the purpose of committing the facts stipulated in 1-st and 2-nd paragraph. The term „placing" can be defined as representing the situation in which somebody puts, places in a spot in which he/ she can film, shoot or audio record somebody in a household, room or outhouse, microphones or video or photo cameras. This case is the only one in which the misdemeanour is sanctioned only with prison.

From a procedural point of view, the misdemeanour in its simple form and for the qualified form as stipulated in the 2-nd paragraph, is followed up only in the prior complaint of the harmed person.

However more interesting than the regulation itself are the reasons for which the legislator has chosen for the deed not to be a misdemeanour, instituting more causes of lack of imputability:

- if the deed has been committed by the one who participated in the meeting with the harmed person, if that justifies a legitimate interest;
- if the harmed person has acted with the explicit intention of being seen or heard by the doer;
- if the doer intercepts the commission of an infraction or contributes to proving the commission of an infraction;
- if the doer intercepts deeds of public interest which have significance for the life of the community and the divulging of which presents public advantages greater than the prejudice brought to the harmed person.

The last two situations are identical to the ones we came across in the case of the misdemeanour of violating the correspondence secrecy. As in the analysis of that misdemeanour, we are also expressing here our doubts regarding the way in which these causes of lack of imputability could be used against the harmed person and without a noble purpose, which could result from the regulation. For example, which might be the rightful interest of the doer to divulge his/ her own conversation with the perpetrator? How could we define the explcit character with which the

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harmed part might act in order to be seen or heard by the doer? Yes, in deed, where there is surprised the commission of an infraction, the filming or any other recording or photographing is justified. But who interprets whether there has been committed a misdemeanour or not? And if the deed has just been left in the stage of a penal act without becoming a misdemeanour?

It is obvious that in these cases a middle ground is required. But is Romanian society prepared for such a moral and civic justice effort? Time alone will be able to validate either one or the other of the hypothesis launched here.

3. Conclusion.

From the analysis done here regarding the current regulation, the way of protecting the private life is more indirect, resulting from the incrimination of the three misdemeanours: trespassing, the violation of the correspondence secrecy and the divulging of the professional secret, all being considered misdemeanours against the freedom of the individual. The new criminal code brings important adjustments not just to the purport, but even in the penal vision, instituting for the first time a chapter dedicated exclusively to the protection of private life, thus giving efficiency both to the Constitutional dispositions and to the European standards which Romania validated, either by the adheration to the EU, or by the ratification of some treaties or conventions. We are just waiting for these dispositions to come into effect.

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