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The right to private life in Albanian Constitutional and ECHR Case law

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Abstract

The right to private life is one of the fundamental human rights, protected in particular by the constitution and international human rights mechanisms. This paper analyzes the concept, importance and challenges of the protection of this right in the constitutional practice and that of the European Court of Human Rights (ECHR). Within the framework of the Constitution, the right to private life means the protection of personal data, family life, home and communications of the individual against unauthorized interference by the state or third parties. The protection of this right has been extended in a number of provisions of the Constitution, namely Article 35 (protection of personal data), Article 36 (freedom and secrecy of correspondence) and Article 37 (inviolability of residence).

Meanwhile, in the practice of the ECHR, this right is closely linked to the principles of the protection of privacy and the right of the individual to personal freedom. However, key challenges include balancing the right to privacy and state security needs, technological developments that increase the risk of privacy breaches, and differing court positions in different cases.

In this paper we aim to analyze the role of courts in guaranteeing this right, as well as the impact of ECtHR practice on domestic legislation and international standards.

Finally, the need for a careful balance between the right to private life and public interests is emphasized, ensuring effective protection of individual rights in the digital and global age.

Keywords: Private life, Albanian Constitution, ECHR, case law, EU.

1. Introduction

Private life as a concept encompasses the right of every individual for protection from arbitrary or unlawful interference with family life, residence, correspondence, personal data, identity as well as physical and psychological integrity (Oxford

Dictionary of law, 2014). This right includes the right to personal development, as well as the right to establish and develop relationships with other human beings and the outside world, as well as professional activities.

In the Albanian constitution the right to private life is sanctioned in several constitutional provisions, starting with Article 35 which provides for the protection of personal data. If the question arises, who is considered personal data? Referring to the law 'on personal data protection', personal data are defined as any information about a natural person, identified or identifiable, directly or indirectly, in particular by reference to an identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.¹ On the other hand, the scope of Article 35 of the Constitution includes not only personal data within the meaning of Article 3/1 of Law no. 9887/2008, but also sensitive data which are considered any information about the natural person, which has to do with his origin, racial, ethnic or political opinions, membership in trade unions, faith, religious or philosophical, criminal punishment, as well as data on health and sexual life. By their nature, this category of data has greater protection in relation to other personal data. Article 36 of the Constitution sanctions the freedom and secrecy of correspondence as one of the components of the right to private life. This Article clearly stipulates that every person has the right to communicate freely and without interference, including the safeguarding and secrecy of his or her exchanges with other persons through various forms of communication or correspondence. Communication means the forms of verbal communication, electronic communication, written communication, as well as any form of communication or exchange of information.

Article 37 of the Constitution has sanctioned the inviolability of the apartment as one of the components of private life. In this sense, can a violation of the right to the inviolability of the apartment within the meaning of Article 37 of the Constitution and Article 8 of the ECHR be alleged? Is the office included in the notion of the apartment or the environment to which the protection provided by the constitutional and convention provisions are extended? Article 37 of the Constitution includes in the field of its protection not only the apartment of the individual, but also any other environment that is such as to be identified with him. The Court considers that the applicant's headquarters/office, where he/she exercises the professional activity, constitutes a unified environment with the residence within the meaning of Article 37 of the Constitution and Article 8 of the ECHR, therefore its inviolability is guaranteed.²

In the practice of the Constitutional Court, the right to private life is seen as a right of a non-exhaustive character, which should provide the individual with a space within which he can independently develop and complement his personality, including the development or preservation to a certain extent of relations with other people. Respect for private life requires in principle non-interference in the decisions that an individual makes about how to live his or her life.³

¹ Law no.9887, dated 10.3.2008 "On protection of personal data".

² Decision of the Constitutional Court no. 42 dated 01.07.2025.

³ Decision of the Constitutional Court no. 38, dated 02.12.2021; Decision of the Constitutional Court no. 52,

If we refer to the Convention provision, it results that the right to privacy is sanctioned in a single provision of the ECHR, namely Article 8. Despite the fact that it is provided only in one provision, its content includes all the components sanctioned by the Constitution of the Republic of Albania in 3 separate provisions.

Article 8 foresees *“Everyone has the right to respect for his private and family life, his home and his correspondence.”* The four pillars of this right include private life, family, residence and correspondence.

Due to the broad character of private life and the lack of a comprehensive definition, referring to the practice over the years of ECHR, a categorization into three main groups of this concept has been achieved:

- The first group includes physical, psychological and moral integrity. In the practice of ECHR, for the first time in case *X and Y v. The Netherlands* dealt with physical and moral integrity under the concept of the right to private life (Decision no. 8978/80 *X and Y vs Netherlands*). In this area, the ECHR includes elements such as the right to reproduction,⁴ victims of violence, issues of mental illness or disability, or compulsory treatment, issues of sexual orientation, etc.
- The second group includes “privacy”, which relates to the personal data of the individual which fall under the protection of Article 8 in order to ensure the development of the individual without the intervention of third parties. In this context, in the practice of ECHR, issues have emerged that affect these data, including issues such as the collection and processing of personal data, privacy during the detention, where the court has emphasized that and in these situations the authority should grant basic privacy rights such as the use of the toilet not in the collective with other detainees,⁵ recordings by state authorities,⁶ protection of reputation from defamation,⁷ etc.
- The third group includes rights protected by Article 8 of the ECHR related to human identity and autonomy such as origin, right to name and identity, religious belief, civil status, ethnic origin, gender identity, etc.

As outlined in this section, it can be concluded that the concept of the right to private life is multidimensional and strongly based on the principles of the protection of the dignity, autonomy and privacy of the individual. It includes the right to keep personal information secret, to have freedom and secrecy of communications and correspondence, as well as the right to the inviolability of the house or private environment where the individual feels safe. At the constitutional and international level, this right is guaranteed and protected through constitutional and convention provisions, adapting to technological and social developments. The protection of

dated 01.12.2011; Decision of the Constitutional Court no. 16, dated 11.11.2004.

⁴ Decision of the ECHR, *Evans v. the United Kingdom* [GC], § 71; Decision of the ECHR, *R.R. v. Poland*, § 180; Decision of the ECHR, *Dickson v. the United Kingdom* [GC].

⁵ Decision of the ECHR, *Szafrański v. Poland* § 39-41.

⁶ Decision of the ECHR, *Drakšas v. Lithuania*, § 62.

⁷ Decisions of the ECHR, *The Springer AG v. Germany* [GC], § 83; Decision of the ECHR, *Chauvy and Others v. France*, § 70; Decision of the ECHR, *Pfeifer v. Austria*, § 35; Decision of the ECHR, *Petrina v. Romania*, § 28; Decision of the ECHR, *Polanco Torres and Movilla Polanco v. Spain*, § 40.

private life is essential to the personal development of the individual and to the preservation of his autonomy against unauthorized or arbitrary interference by the state or others. In this context, the courts, including the Constitutional Court of Albania and the Court of Human Rights, have emphasized the importance of respecting this right in all aspects of daily life, including in environments such as offices or professional institutions, which can be considered as residential environments in the sense of constitutional and conventional protection. The right to private life may be manifested by individuals even in public spaces and should be protected by the authorities even in these environments. This right is termed “private life” not because of the place where its protection is guaranteed, but because of the reserved personal character of the individual’s space, where authorities, media, institutions or other individuals cannot intervene without an excuse.⁸

2. The Character of the Right to Private Life

Fundamental rights are classified into absolute rights, which means that for any reason they cannot be derogated and relative rights, which can be derogated under certain conditions. The European Convention on Human Rights has made a distinction between rights into non-derogatory⁹ and derogatory rights¹⁰ by the contracting Parties. The right to privacy is categorized as one of the rights of a relative character, which can be restricted for legitimate reasons and under certain conditions. European Convention of Human Rights has sanctioned that *“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

On the other hand, Articles 35 and 37 of the Albanian Constitution provide that the restriction of the rights sanctioned in these provisions is exceptionally foreseen, which concludes in the fact that the right to privacy and in relation to the criteria provided in Article 17 of the Constitution can be limited. Beyond the absolute and relative character of rights, there is a categorization of rights based on the role of public authority on negative rights, which are rights that do not require the intervention of the authorities to guarantee them and positive rights, whereby the state by its actions must guarantee the enjoyment of these rights.

The right to privacy includes both the negative and positive character. Respect for private life requires in principle non-interference in the decisions that humans made

⁸ Decision of the Constitutional Court no. 30, dated 05.07.2021.

⁹ See Article 15/2 of the ECHR *“Derogation in cases of emergency No derogation from Article 2, except in respect of deaths resulting from lawful acts of war; or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision (...)”*.

¹⁰ See Article 15/1 of the ECHR *“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law”*

about how to live their life.¹¹ In case of potential intervention, the authority should be legitimized by arguing the limitation criteria provided for in Article 8 of the Convention and Article 17 of the Albanian Constitution.

On the other hand, the right to privacy is also manifested as a right of a positive character, as it provides for the obligation to protect this right from the interference of third parties not state authorities. This protection is reflected in the criminal or civil legal sanctioning of the violation of this right.

2.1 Restriction of the right to private life according to Constitutional practice – restriction test

The Constitutional Court, despite not having a rich practice regarding the right to privacy, has affected this right in relation to other rights. In analyzing the restriction of rights in general and that of privacy in particular, the analysis is done by subjecting the restriction to the test provided by Article 17 of the Constitution.

In recent years, the Constitutional Court has been asked to decide regarding Article 131 of Law no. 108/2014 “on the state police”, as amended, which provided for measures allegedly contrary to the right to privacy.¹² Specifically, measures for visual surveillance in public places and location tracking by technological means, as measures that serve to identify and apprehend perpetrators of criminal offenses. The Constitutional Court after analyzing the content of Article 131 of Law no. 108/2014 has concluded that the State Police can take special measures in three forms:

- special voice surveillance of non-electronic communications of suspected persons in public or open to the public with the authorization of the prosecutor;
- special visual surveillance of suspected persons in public or open to the public;
- special tracking or surveillance of suspected persons through the use of special tools, equipment or techniques for identifying or locating their location.
- The court assessed that in order to determine whether there are intrusions in private life, it must assess the features of the above-mentioned measures. Where it was concluded that the features of special measures related to these facts are of interest:
- the measures are part of the activity of the state police;
- this activity supervises and traces the individual, in the sense that it collects and processes data of his private life;
- surveillance and tracing of the individual are carried out in secret, in the sense that humans have no idea or notification that are subject of these measures;

Precisely because of these traits, the special measures of Article 131 of Law no. 108/2014 constitute interference of state authorities in the private life of the individual, in a manner similar to the interference made by interceptions. The Court also concluded a violation of the measures provided by this Law in terms of correspondence/communications by audio or messages, which could be recorded or photographed in public premises by “visual surveillance”, at random. On the other hand, tracking the

¹¹ Decision of the Constitutional Court no. 52, dated 01.12.2011.

¹² Decision of the Constitutional Court no. 30 dated 05.07.2021.

person to identify the location through technological devices constituted a violation of privacy in terms of the violation of the individual's residence.

The Constitutional Court has analyzed in a number of its decisions the test of the restriction of rights starting with the first criterion that of the restriction "*only by law*" sanctioned in Article 17 of the Constitution. The Court has concluded that this concept is interpreted in the strict sense of the word by avoiding the extended interpretation of this phrase. By law it refers to the competence of the concrete body, which means that the limitation of the right can only be done by a law approved by the assembly.¹³ This constitutes the formal aspect of the concept "*only by law*", but this topic also has the substantial aspect related to the guarantees provided by this law for the protection of fundamental rights and freedoms. In the substantive aspect, the law should come in line with the rule of law by ensuring security, accessibility and clarity of the law. An incorrect regulation of the legal norm, which leaves the way for the enforcer to give it different meanings and which entails consequences, does not go in line with the purpose, stability, reliability and effectiveness that the norm itself intends.¹⁴

The second criterion relates to the existence of a *public interest* that legitimizes the application of measures that in themselves constitute a violation of rights. The Constitutional Court has emphasized that it is difficult to exhaustively list the issues that constitute a public interest or public reason that lead to the limitation of a fundamental right, as the public interest should be understood in the relative sense, depending on the different situations that arise.¹⁵

Regarding the third criterion, that of *proportionality*, which consists in the ratio that exists between the need for intervention and the effective adaptive measures that respond to that need, thus affecting as little as possible the right and in any case this violation should not affect the essence of the rights. In its practice, the Constitutional Court has held that for the assessment of proportionality certain sub-criteria must be considered:

- if the objective of the legislator is sufficiently important to justify the restriction of the right;
- if the measures taken are reasonably related to the objective, they cannot be arbitrary, unfair or based on non-logical assessments;
- if the means used are not more severe than necessary to achieve the required objective, the greater the detrimental effects of the selected measure, the more important the objective to be achieved, in order for the measure to be justified as necessary.¹⁶

In the analysis of this practice the principle of proportionality seeks to strike a balance between the fundamental rights of the individual and the general interests of society.

¹³ Decision of the Constitutional Court no. 25, dated 28.04.2014; Decision of the Constitutional Court no. 20, dated 04.04.2014.

¹⁴ Decision of the Constitutional Court no. 10, dated 26.02.2015; Decision of the Constitutional Court no. 36, dated 15.10.2007.

¹⁵ Decision of the Constitutional Court no. 70 dated 27.12.2023; Decision of the Constitutional Court no. 20, dated 20.04.2021; Decision of the Constitutional Court no. 16, dated 01.03.2017; Decision of the Constitutional Court no. 1, dated 16.01.2017.

¹⁶ Decision of the Constitutional Court no. 20, dated 20.04.2021; Decision of the Constitutional Court no. 11, dated 09.03.2021; Decision of the Constitutional Court no. 23, dated 08.06.2011.

Any limitation of these rights must be justifiable, necessary for the achievement of the intended purpose, and the measures taken must be reasonable, adapted to the concrete situation and not prejudice the essence of fundamental freedoms and rights. Beyond the sanctioning of the criteria provided for in Article 17 of the Constitution, interference with the right in general and the right to private life in particular should be subject to a due process of law as provided by Article 42 of the Constitution, thus offering all protection guarantees to those whose rights are violated. And in any case, the restrictions undertaken within the framework of internal legislation must respect the criteria of the Convention regarding restrictions.

2.2 Limitation referred to the case of the ECHR

Interventions of state authorities constitute a violation of the negative character represented by the right to private life, which as a rule requires passive behavior of the authority. Where such conduct has not been complied with, it shall be assessed whether the conduct of the authorities has been consistent with the provisions of paragraph 2 of Article 8 of the Convention.

Concerning the concept of law sanctioned in paragraph 2 of Article 8, the Court has become flexible on the concept of law, adapting to the domestic legislation of the Member States. In this sense, unlike the Albanian constitutional practice, the concept of the law in the ECHR refers not only to the law adopted by the Assembly but also to secondary legislation.¹⁷ In the sustainable practice of the ECHR, the concept of the law is not only related to the domestic aspect of this notion, but also to the quality of this law, which must respond to the rule of law. Within the framework of secret measures of surveillance or interception of communications by public authorities, due to a lack of public control and the risk of abuse of power, domestic law should provide protection for the individual against arbitrary interference. Thus, local law should be sufficiently clear in its terms to give people an appropriate indication of the circumstances and conditions under which public authorities are authorized to use such secret measures.¹⁸ In this regard, we note that the standard is the same as that of the Albanian Constitutional Court, i.e., the law should be clearly accessible and predictable and should have clearly defined the limit of discretion of the public body. In these terms the restriction test can be considered a universal test on the sanctioned criteria to assess the interventions of the state authority. Under these conditions, with the analysis of the law, the ECHR passes on the assessment of the existence of the lawful purpose or public interest that justifies the interference of the authorities in private life.

3. Current Challenges

Respect for fundamental rights presents difficulties in their implementation today, where it can be noted that the main challenge in relation to the right to privacy is

¹⁷ Decision no. 44774/98 “Leyla Şahin v. Turkey” (2005) of the ECHR.

¹⁸ Decision no. 9248/81 ‘Leander v. Swedish judgment’ (1987) of the ECHR.

technological development. Access to data that falls under the protection of the right to privacy today has been greatly expanded due to new technological tools. The spread of online data creates a vulnerability of data, making it vulnerable, the lack of awareness of the individual about the danger that this fact brings regarding their privacy.

On the other hand, ECHR has assessed that environmental issues can be considered as part of the right to privacy. In the case *Verein Klimaseniorinnen Schweiz and Others v Switzerland* (2024) the court in particular found that Article 8 of the ECHR sanctions the right to effective protection by state authorities from the serious effects of climate change on health, well-being and quality of life.

4. Conclusion

The concept of the right to private life is multidimensional and essential to the dignity and autonomy of the individual, including the right to keep secrets, free communication, the inviolability of one's residence, and the protection of one's personal identity. This right is strongly based on constitutional provisions, international conventions and judicial practice, always adapting to technological and social developments. However, the main challenges lie in balancing this right with the need for public security and the general interest, requiring reasonable and justified constraints within a clear, accessible and predictable legal system. Full respect for the right to privacy is essential for the full development of the individual and for the preservation of democratic co-existence, always requiring effective protection by the authorities and continuous awareness of society of its central importance.

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