

The New Civil Code for Everyone

DEFENSE OF NON-PROPERTY RIGHTS

- Newly introduced institution through the Civil Code (articles 252-257);
- *Principle: Any natural person is entitled the protection of the intrinsic values of the human being, such as life, health, physical and psychic integrity, dignity, intimacy of private life, liberty of conscience, creation - scientific, artistic, literary or technical.*

Means of Defense

- *In which situations can the natural person request the court to protect the non-property rights?*
When these are violated or menaced.
- *In what way can the court protect non-property rights?* By ordering:
 - the prohibition of perpetration of the illegitimate action, if this is imminent;
 - the cessation of the transgression and prohibition for the future, if this is still active;
 - the ascertaining of the illegal character of the perpetrated action, if the trouble which it caused subsists.
- *In case of infringement of the non-property rights by the exertion of the right to free speech*, the court may order only the cessation of the infringement and the prohibition for the future, if this is still active as well as the ascertaining of the illegal character of the perpetrated action, if the trouble which it caused subsists.
- *What can the court order to restore the infringed non-property right?*
 - it can oblige the author, on their own expense, to publish the condemnation sentence;
 - any other necessary means to cease the illegal action or to repair the caused damage.
- *Is the property restoration for non-property damage possible?*
Yes, if the damage is imputable to the author of the prejudicial action.
In these cases, the right to action is subject to the extinctive prescription.

Defense of the Right to a Name

- *How can the right to a name be defended?* One can request to a court of law:
 - *The acknowledgement of the right to a name* (by the one the name of which is contested).
 - *The cessation of the illegitimate trespass* (by the one injured by the usurpation, in whole or in part, of his/her name).
- *How can one defend the right to a pseudonym?*
Under the same terms as the defense of the right to a name.

Provisional Measures

- *Who can request the taking of these measures? Under what terms?*
The person who considers her/himself injured and who can prove in a credible way that their non-property rights are affected by an *illegal action, actual or imminent* and that this action *menaces to cause him/her a damage difficult to repair.*

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➤ ***What solutions can the court issue?***

- Prohibition of the transgression or its provisional cessation;
- Taking of necessary measures in order to assure the conservation of evidence.
- In the case of the injuries brought by means of written press or audiovisual, the court of law cannot order the cessation, on a temporary basis, of the damaging action unless the damages caused to the plaintiff are serious, if the action is not obviously justified (it is allowed under law or under the international conventions and pacts on human rights to which Romania is a party) and if the measure taken by the court does not appear as disproportionate in relation to the damages caused.

➤ ***Solution of the demand:***

- according to the orders concerning the ***presiding judge's order (injunction)***, which is enforced accordingly.
- in case the demand is formulated before the action is filed on the merits, the decision by which a provisional measure is enforced will also establish the deadline until which the action on the merits must be filed, under the sanction of cessation by right of that measure.
- the plaintiff can be obliged by the court to ***pay a bail***, if the measures taken are likely to cause a damage to the other party.

➤ ***Cessation of the temporary measures:***

- at the moment established for the action on the merits but no later than 30 days after these are taken.

➤ ***Effect of the temporary measures:***

- the measures ordered by presiding judge's order (injunction) are enforceable from the date when the order is issued but are temporary (they cease if the action on the merits is not filed within the deadline established by the court or are continued by effects of the decision on the merits, if the latter has been accepted).
- if the action on the merits is rejected as ill-founded, the plaintiff has to repair, on request from the interested party, the damage caused by the temporary measures taken. Nevertheless, if the plaintiff was not culpable or had only an ordinary negligence, the court, considering the actual circumstances, may either reject their enforcement to pay the damages required by the other party, or may order their diminution.

- ***Release of the bail:*** If the other party does not request payment of penalties, the court will order the release of the bail, on request from the plaintiff, by a decision issued with summoning of the parties. The request is judged according to the provisions concerning the presiding judge's order (injunction), which apply accordingly. In case the defendant opposes the release of the bail, the court will establish a deadline for the filing of the action on the merits, which cannot exceed 30 days from the date of issues of the resolution, under sanction of termination by right of the measure to freeze the amount deposited as bail.

- ***The death of the holder of the non-property right:*** The action to reestablish the transgressed non-property right can be continued or initiated, after the death of the injured person, by the surviving spouse, by any of the direct relatives of the deceased person, as well as by any of the collateral relatives up to and including the fourth degree. The same persons may also formulate the action to reestablish the integrity of the memory of a deceased person.

- ***The defense of the non-property rights of the legal person*** is done in a similar way to that of the natural person.

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