

# The New Civil Code for Everyone

## PERSONALITY RIGHTS

- A newly introduced institution in Chapter II - „Respect due to the human being and its inherent rights” from Title II „Natural Person”, of Book I – „On Persons” from the Civil Code (articles 58-81);
  - **The notion of personality rights** appears in the margin title of article 58. Paragraph (1) of this article provides that: „*Any natural person is entitled to 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*”.
  - Some of these rights originate in the European Convention on Fundamental Rights and Liberties or in the Constitution.
- Characteristics of the personality rights:
- **they are inherent to the quality of human person:** they belong to any individual by the fact that he/she is a human and protect especially the physical and moral characteristics of the human being, their individuality or personality.
  - **they are non-property rights:** life, dignity, honor, image, private life cannot be evaluated in money
  - **they are not transmissible.**

### **Rights to life, health, integrity of the natural person**

- Life, health and the physical and psychic integrity of any person are guaranteed and protected equally by law.
- The interest and the best interest of the human being must have priority on the unique interest of society or science.
- No one is allowed to prejudice the human species.
- Any eugenic practice which is intended to lead to the organization of a selection of persons is forbidden.
- Any medical interventions on the genetic characters intended to modify the descendents of a person are forbidden, except for those which concern the prevention and treatment of genetic disorders.
- Any intervention is forbidden if intended to create a human being genetically identical to another living or dead human being, as well as the creation of human embryos for research purposes.
- The use of medically assisted human reproduction techniques is not allowed to select the sex of the future child unless for the purpose to avoid a serious hereditary disorder related to his/her sex.
- The human body is inviolable. Any person is entitled to his/her physical and psychic integrity. One is not allowed to prejudice the integrity of the human being unless in cases and in conditions expressly and limiting provided by law.
- The examination of the genetic characteristics of a person can only be performed for medical or scientific research purposes, according to the law.
- Identifying a person based on his/her genetic prints can only be done within a judicial procedure, civil or criminal, as the case may be, or for medical or scientific research purposes, according to the law.
- Any acts which are intended to bestow a property value to the human body, its elements or products are absolutely null and void, except for the cases expressly provided by law.
- No person may be exposed to experiences, tests, samplings, treatments or other interventions for therapeutic or scientific research purposes unless in the cases and under the conditions expressly and

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limiting provided by law.

- The sampling and transplant of organs, tissues and cells of human origin from living donors are made exclusively in cases and under conditions as provided by law, with their written, free, previous and express consent and only after they have been previously informed on the risks of the intervention. In all cases, the donor can withdraw the given consent until the moment of sampling.
- It is forbidden to sample organs, tissues and cells of human origin from minors, as well as from persons alive, mentally incompetent due to a mental handicap, a serious mental disorder or other similar reason, except for the cases expressly provided by law.

#### **The right to dispose of oneself (art. 60):**

The natural person is entitled to dispose of him/herself, if this does not prejudice other people's rights and liberties, public order or the good moral.

#### ***Respect of the private life and dignity of the human person***

- **Right to free speech:** Any person is entitled to free speech. The exertion of this right cannot be restrained unless in cases where prejudices are allowed by law or the international conventions and pacts on human rights to which Romania is a party.
- **Right to private life:** Any person is entitled to the respect of their private life. No one may be subject to any intrusion in their intimate, personal or family life, neither in the house, residence or their correspondence, without their consent, against the law, the international pacts and conventions to which Romania is a party. It is forbidden to use, in any way, the correspondence, manuscripts or other personal documents, as well as information from the private life of a person, without their consent or by infringing legal limits.
- **Right to dignity:** Any person is entitled to the respect of his/her dignity. Any prejudice brought to the honor and reputation of a person is forbidden, without his/her consent or by infringing the law.
- **Right to one's own image:** Any person is entitled to their own image. While exerting the right to their own image, he/she may prohibit or prevent the reproduction, in any way, of their physical appearance or their voice or, as the case may be, the use of such a reproduction.

#### **Prejudices against private life**

- a) penetrating or unrightfully remaining in the dwelling or taking from it any object without the consent of the person occupying it legally;
- b) tapping unrightfully a private conversation, made by any technical means, or the use, learnedly, of such an interception;
- c) capture or use of the image or voice of a person situated in private premises, without his/her consent;
- d) broadcasting of images which present the inside of private premises, without the consent of the person occupying it legally;
- e) keeping of the private life under observation, by any means, except in cases provided by law;
- f) broadcasting of news, debates, investigations of written feature audiovisual reports on the intimate, personal or family life, without the consent of the person concerned;
- g) broadcasting of materials containing images regarding a person under treatment in medical assistance institutions, as well as of data with personal character on the health status, diagnostic issues, prognostic, treatment, circumstances related to the illness and any other various facts, including the result of the autopsy, without the consent of the person concerned, and in case the latter is deceased, without the consent of the family or of the entitled persons;
- h) the mala fide use of the name, image, voice or similarity with another person;
- i) publication or use of the correspondence, manuscripts or other personal documents, including of data concerning the domicile, residence, as well as the phone numbers of a person or of the members of his/her family, without the consent of the person to whom these belong or who, as the case may be, is entitled to dispose of them.

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### **Limits of exertion of these rights**

Interferences allowed by law or the international conventions and pacts concerning human rights to which Romania is a party do not constitute an infringement of the rights to a private life and dignity.

The exertion in good faith of the constitutional rights and liberties and observance of the international pacts and conventions to which Romania is a party does not constitute an infringement of the rights to a private life and dignity.

### **Presumption of consent**

When the person himself/herself to whom an information or a material refers makes them available to a natural or legal person of whom he/she knows that they carry out their activity in the domain of public information, the consent to use them is presumed, a written consent is not necessary.

### ***The Respect Due to the Person also after their Death***

- **The respect due to the body and memory of the deceased person:** The deceased person is entitled to respect in relation with their memory, as well as with their body. The memory of the deceased person is protected under the same conditions as the image and reputation of the living person.

- **Respect of the will of the deceased person:** Any person may establish the way of their own funerals and may dispose on their body after death. In case of the legally incompetent persons or those with limited legal capacity the written consent of the parents or, as the case may be, of the legal guardian is required. In default of an express option of the deceased person, will be respected in order: the will of the spouse, parents, descendants, collateral relatives up to and including the 4th degree of kinship, sole legatee or general devisees or order of the mayor of the commune, town, municipality or sector of the Bucharest municipality on the territory of which the death took place. In all cases the religious affiliation of the deceased person will be taken into account.

- **The sampling of organs, tissues and human cells,** for therapeutic or scientific purposes, from the deceased persons can be made only as provided by law, with the written consent, expressed during their lifetime, of the deceased person or, by default, with the written, free, previous and express consent issued, in order, by the surviving spouse, the parents, the descendants or, finally, by collateral relatives up to and including the 4th degree of kinship.

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