

## THE RIGHT TO BE INFORMED – THE RIGHT OF PERSONALITY

**Dumitru TOADER**

”Henri Coandă” Air Force Academy, Braşov, Romania (dredaot28@gmail.com)

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**Abstract:** *Should the society’s goal be the release of constructive energies of each individual’s personality, then it is mandatory for the Law to have as its final target the defense of its subjective rights. The rights of personality are subjective rights that follow the availability principle, the law presuming only the interest and not the will - as is the case of human rights. By the right to be informed the human personality has enriched. Having the information weighing it and sharing it one can decide with full responsibility whether to assume an idea, a principle, a value or not, having the obligation of not breaking the rights or fame of others and of not harming the national security, morality and public order.*

**Keywords:** *person, personality, rights, rights of personality, human rights, freedoms, information, right to be informed, liberty to speak freely, restricting rights.*

### 1. INTRODUCTION

The social history of individuals is, from a certain perspective, the history of their social roles, socially formed within the assembly of social relations. The individual changes together with his businesses and reformations – from a simple human being into a social person, inside the environment that he considers his own. The degree of amplification and enrichment of relations shows the degree of freedom, information and expression of what people potentially detain.

Being able to act freely and consciously, a person bears unsuspected psychic and physical resources so as to make his being known to the world, by converting the self into cultural goods, that is – values. This phenomenon is yet limited since it occurs within a normative net of interdictions and moral-judicial obligations, which determine *how-how much* of it has to come true but also *how-where* it has to fulfill.

Man as a bio-psycho-social being, endowed with reason, is aware of his existence in society and nature, and is able to make valuable judgments. Individual life and social life, in general, is a series of decisions that are based on more or less real or effective information. His experience is a sum of verified information, more or less memorized, and which is an important factor in communication.

Information in communication does not always contain the truth one hundred percent. There is no objectivity in information. It is natural for each individual, depending on his own personality or subjectivism, to have his own impression on the event he has witnessed [1]. Thus, any information implies the existence of three variables:

- a) the informer may know the deformed fact, the object of the information;
- b) the means of communication distorts the information;
- c) the informed receives the information with a certain area of subjectivism.

Inherent in the three elements, the information shows a certain percentage of distortion.

Objectiveness cannot exist - even more so than in scientific information, where the same experiment conducted by different researchers always leads to the same results (although here, too, relativity intervenes). Sometimes there is the temptation of intentional distortion of information for some, more or less noble purposes [2]. All of these lead to good reasons for those working in intelligence services, in the military, security and public order system to distinguish between raw information collected and information that is passed through a selection of at least three factors: source evaluation, evaluation of information and corroboration of information [3].

The notions *person* and *personality* refer to the same human being, although under various aspects. Nevertheless, it is not the person able to create values but the personality, that is the individual taken as a whole, able to create epistemologically, pragmatically and axiologically. The individual rejoices over his possessions: rights and moral, judicial and economic obligations, while his personality lies in a cognitive-affective and actionable world.

One of the rights of personality is the right to be informed. The human being needs to know and to establish a spiritual community with various implications over his material life, through information which he can apply while he gets to know it. People are interested in the natural reality, while personalities are interested in the social reality, because there will be commitments within a world governed by the moral-judicial and political aspects. Therefore, the need for information – a hunger of the human social spirit – completely, correctly, and authentically satisfied leads to a complete, correct and authentic directing of behaviour and this behaviour will meet the society's expectations. The data processing by the society before it is sent to its members, so as to satisfy its own interests and which would lead to a distortion of the information, to its truncating and unilateralism, represents a form of manipulation of the society's members and it generates their alienation while inspiring fear and lack of trust.

On the other hand, we equally benefit from information and produce it, we co-inform, inter-inform, we evaluate and co-evaluate. The role of information, as source of knowledge, selection and affinity with others, is amplified or diminished by the right to speak freely. For the juridical body, the easy finding and opting for information, which would be able to meet his landed dignity, means an extra possibility of designing a new appropriate model of adaptation to the world, as well as the possibility of producing as many bridges to understanding. The human personality is enriched by its right to be informed, which better explains the meaning of life, so that it can decide with full responsibility to assume an idea, a principle or value if he/she detains the data that he/she can afterwards judge, endorse, distribute, stock and select.

The right to information is a fundamental human right, without which an individual cannot exist as a social being. As a result, the right to information has been preserved in international conventions, constitutions of states, and laws based on them, in a more or less good manner.

Today's global society relies on increasing the importance of human rights as a priority issue on the world agenda. The fact that, often against the will of the state, human rights are legitimate everywhere in the world, has materialized in recent decades into a global consciousness and an international human rights law (at judicial level) that penetrates the national law of states, uniforming national societies, making them function on the ideal of "good governance" [4].

The universality and primacy of human rights cannot fail to influence the work of the armed forces. Representing an important pillar of society, the armed forces are geared to the protection of human rights through the missions they perform, having the obligation, in turn, to respect them in all aspects of their work, according to the conditions and limitations given by law.

## 2. THE PERSONALITY NOTION AND THE RIGHTS OF PERSONALITY

The defense of the person by the Law equals the defense of the “mask” which the Law itself obliges the individual to wear within the society organized by it. By doing this, one can say that the concern is about only the individual with his given mask, thus, the public order, the security of the state and good manners remain in place. It is visible then that within the social relations regulated by Law the public bodies are modeled as personalities that are not each defended because the Law defends the generic personality, in other words, those epistemic- pragmatic-axiological features through which the individual manifest. Therefore, the law does not define all the features through which a person can be differentiated from others, but only those features bearing judicial relevance, namely, those features able to embody social values sufficiently important to be defended by Law, all the others being left inside the prescriptive sphere of different types of norms, less strict than the judicial system.

The judicial definition of the rights of personality is, if not impossible, certainly very difficult. In the specialty literature, it is regulated that the rights of personality are subjective rights. They consist of the prerogative attributed to a person to ask all the other persons to respect his/her personality (rights of personality), or his/her exclusive power over one thing (real rights), or to oblige another person to give back a thing or to execute some business for him/her (personal rights).

Accordingly, based on the two constitutive elements – interest and volition – subjective rights may be grouped into:

a) subjective rights where there is no prior presumption over the interest or volition of the holder; the interest is to be approved and the volition has to be expressed judicially. These are pecuniary rights;

b) subjective rights where both the interest and the volition are presumed by the legal representative in favour of the holder. These are the person’s attributes: name, address, social status;

c) subjective rights in which the interest is presumed and the manifestation of volition is at the potential holder’s will. These are the rights of personality.

Consequently, the subjective rights in which the interest is presumed and the manifestation of volition is at the potential holder’s will are rights of personality which, technically speaking constitute what may be called “civil liberties”. Yet, not all subjective rights may be seen as a “liberty” by visible analogy with the “public liberties”. One needs to understand that a subjective right without material expression expresses a civil liberty. Therefore, the defended judicial value is sufficiently important for the legal representative to consider necessary to presuppose that the holder is interested in manifesting that right. Finally, the specific particularities of this prerogative have to make it necessary that its concrete exercise to be left at the free manifestation of will of the potential holder, or to be generated by the principle of “availability” [5].

Resulting from here is the fact that the rights of personality in which the right to a private life, image, honor, dignity and prestige, the un-pecuniary right of authorship, the right to move freely, the right to be educated, informed and to have an opinion – all belong to the category of subjective rights without material expression since honor, dignity, prestige, private life and others are not values that can be evaluated in money. Due to this reason, the rights of personality will have common characteristics with those of the category of civil subjective without material expression known as *attributes of the person* and in which the right to a name(nomination), residence (home) and certain social status are included. Both the former and the latter are, undoubtedly, absolute rights, inalienable, exempt from seizure and strictly personal.

Nonetheless, the rights of personality cannot be considered a prolongation of the attributes of the person, the latter being attributed by definition, while the rights of personality are assumed, by excellence. Generally, a person can choose a name or another, a residence or another, a certain social status or another, but throughout his/her life as a person, he/she has to hold a name, a residence and a social status, no matter which they are. Thus, it results that the attributes of the person are dual: they are not only rights to the holder, but also obligations. As a result, the distribution of these elements is beyond the individual interest and is relative to the juridical society's interest. Judicially, this status is similar with presuming by the law representative of both the interest and the volition of the prerogative holder. From this perspective, the situation of rights of personality differs from the situation of the attributes of the person because, in their case, the law presumes only the interest but not the volition, which is left at the potential holder's will.

In the view of the Romanian legislation, a feature of rights, which can be categorized as being of personality, is that they are legal, in the sense that they should essentially have legislative recognition, involving regulation, either express and detailed, or only at the level of principles. In this way, they cease to be simple civil liberties, becoming civil subjective rights. Seen as control rights, personality rights allow the person to exercise control over various aspects of his personality. This dominion may embrace several forms of expression, for example in an passivity, in a disclosure or in a clarification or rectification.

Although mentioned in bills and international agreements, in general formulations, the rights of personality do not apply *ad literam, omni eo soli* in the same manner, because they come to life through the mediation of various national legislations. Concepts such as 'juridical body', 'juridical value', 'subjective rights' without material expression, or 'availability' – are abstract notions which, in fact, can be rendered definitions, yet the main difficulty with regard to the contents of these Bills and International Agreements is that the practices meant to adjust them differ from one society to another.

### **3. LIMITATIONS OF THE RIGHT TO INFORMATION**

The notion of information has a very wide meaning and represents, according to art.15 of the Law no. 182 from 2002, on the protection of classified information, "any documents, data, objects or activities, regardless of their type, form, mode of expression or manner of circulation. Government Decision no. 353 of 2002 approving the NATO Standard on the Protection of Classified Information defines information as "that notion that can be communicated in any form".

The limitations of access to classified information can be found even in Law no. 544 of 2001, regarding free access to public information.

Although it is prior to the emergence of other laws classifying some documents, in the legal environment it is considered a framework law because it distinguishes information as follows:

- Public or private information - if their source is a public or private person;
- Publicly and non-publicly available information - that is, information is or not intended to be made available to the public (in the category of non-publicly available personal data);
- Information of public or private interest - if the information is intended for the service or good administration of either public affairs or personal interests.

Transparency means meaningful and transparent governance for everyone. The need to provide control over the actions of public authorities, to streamline the decision-making process by increasing public confidence in it and to ensure the active participation of citizens in decision-making has led to the legal regulation of the concept of transparency.

When information dissemination would jeopardize the public interest, authorities may restrict access to certain information. Recommendation Rec (2002) of the Committee of Ministers of the European Union to the Member States with regard to the access to public documents is the normative act governing decisional transparency, allowing the Union citizens to access documents of the European institutions.

The UN organization has reached one of its major objectives, which had been aimed at when two juridical international agreements came into effect for the signing states: defending and promoting the fundamental human rights and liberties. These agreements, together with the Universal Declaration of the Human Rights and the facultative Protocol, offering the solving mechanism for individual complaints about breaking the rights, constitute the main source of training, at international level, of the civil and subjective rights, without material expression of personality.

In accordance with Resolution 59 (I) of the General Meeting of UN, in 1945, *“The liberty to be informed is a fundamental human right and the landmark of all liberties for which defense the United Nations are devoted (...). The liberty to be informed urges that all beneficiaries of these privileges have the will and strength not to take advantage of them. The moral obligation to look for facts without prejudices and to spread the information without malevolent intentions constitutes one of features of the essential liberty to be informed”*.

In the International Agreement of Civil and Political Rights of 1969, Art. 19 stipulates that any individual has the right to the liberty to speak freely, and this rights consists of *“the liberty to search, receive and share information and ideas of any type, disregarding national borders, orally, written, printed or artistically or by any other means at his choice”*. At the same time, the agreement mentions that exercising this liberty involves certain duties and responsibilities and it can be subdued to some limitations, which need to be established by Law and which are necessary for respecting the rights and reputation of others, for defending the national security, the public order, health or public morality. Simultaneously, similar contents is mentioned within the European Convention for defending human rights and fundamental liberties, in 1950, where there is reference to the liberty to receive or to communicate information or ideas, without being impeded by public authorities and without considering national borders.

At the national level, the right to be informed is stipulated both in the Constitution, where in Art. 31 it is mentioned that “*the right of the person to have access to public information cannot be limited*” and that the right to be informed does not have to harm “*the steps taken for protecting the youth or the national security*”, as well as it is mentioned in other various laws. Such is Law no. 554/2001, regarding the free access to public information, where Art. 12 says that information pertaining to the national defense, security and public order is exempted from free access, if it is included in the classified category. According to Law 182/2002, with regard to classified information, the access to this type of information is granted only in such legal cases, conditions and provisions, without interpreting these provisions as limitations of access to information, or ignoring the Constitution, The Universal Declaration of the Human Rights, agreements and other treaties to which Romania adheres.

Adopting, after the WWII, the international instruments for the human rights, highlights that every human being rejoices certain inalienable rights, without any discrimination with regard to his profession or juridical status, which means that they apply to the members of the armed forces, as well [4]. It is true that these rights may know some limitations, necessary for the benefit of the entire society, but such limitations can only be imposed, according to the Constitution, by Law and only if they strictly necessary to the democratic society.

The liberties to hold an opinion, to speak freely and to be informed are now universally recognized as being part of the fundamental human rights, representing an essential factor of the individual human existence and of the strengthening of peace and international understanding, in a world that is more and more globalized, where the material support of these liberties is provided by the global proliferation of technical possibilities of presenting the information through mass media. However, the very expression of the liberty to speak freely and to be informed may be the object for some juridical limitations, necessary for respecting the rights and reputation of others, for defending the national security, the public order, health or public morality.

We live in an information-based society where production and consumption of information are two of the most important activities. Information is recognized as an essential resource. The level of protection of information is determined by the degree of its usefulness. There may be situations when the uncontrolled dissemination of information will damage the security interests of the state, an organization or a physical person.

One of the areas in which the liberty to speak freely and to be informed has always been restricted is that of the national defense. In this case, on the one hand, there cannot be a total right of the public to be informed, because the efficiency of military actions would be endangered, and, on the other hand, because there are reasons that involve orders and military discipline and they limit the military personnel right to speak freely, the only modality for them to speak publicly being an authorized permission. In turn, citizens must understand that they cannot access data belonging to the ministry of defense unlimitedly, since part of this information, according to the law, belongs to the category of classified information.

The liberty to speak freely and to receive or communicate data or ideas without the involvement of public authorities and without considering the national borders has, as far as military personnel are regarded special connotations relative to the military press. Usually, it is a departmental press, still, it is also a press appeared due to private initiative of the military personnel, and it is equally controlled and authorized by hierarchically superior military structures, to ensure the correct information of the public opinion.

Since the rights of personality do not belong to the “core” of the human rights, the right to be informed is susceptible to be denied in case of war or in case of a different public danger, which may threaten the life of the nation. In Romania, the regime of the siege status and the regime of emergency, in accordance with the Government’s emergency decision no. 1/ 1999, prescribe, for the civil and military authorities, certain duties and responsibilities, among which there are restrictions regarding the right to be informed by protecting the data with military character that are destined to be communicated via mass media. In this case, the information concerning the exceptional status (excepting that referring to disasters) is made public only with the approval of military authorities, and the mass media (no matter their nature and form of ownership) are obliged to transmit the messages to the military authorities at their request. Equally, the temporary suspension in issuing or broadcasting certain programs of radio stations or television channels is possible.

All of these steps may be taken by the Romanian authorities, respecting Art. no. 53 of the Constitution, in which it is mentioned that diminishing the exercise of certain rights or liberties may be done, only if there is proportionality with the situation that cause it, on condition of its application in an indiscriminating manner and without harming the right or liberty.

## CONCLUSIONS

The rights of personality are therefore based on the protection of the individual in what constitutes his individuality and which distinguishes him from any other person. This person presented here does not appear in an abstract manner, but in his uniqueness. In essence, by rights of personality are meant those civil subjective rights, recognized by law, constituting powers with a determined content, having as intrinsic values inherent to the human being, taking into account its physical, mental, moral and social dimension exercised by a autonomous will and protected by legal action.

The right to be informed correlates with the right to hold an opinion from the perspective that only under the conditions of an enlarged possibility of obtaining the data correctly and unchanged may the individual hold an opinion; only under the conditions of a great amount of information can he select, weight and decide with full responsibility.

Both from the international and national documents result that there is evident concern for the affirming and defending the right of personality for its access to information, under the obligation to respect the rights and reputation of others, to defend the national security, the public order, health or public morality.

The right to be informed also correlates with the right of personality as an author to publish his work, to make it known to the collectivity he lives in. A literary, scientific or artistic work [6] represent the development of certain topics, the proposal of some solutions from a personal perspective, both profound and vast, and the absence of information or the lack of information or possession of unilateral, distorted data leads to creating dissatisfactory works.

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