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The online school – a barrier of the right to privacy?

Introduction

Closed schools and factories, locked restaurants and hotels, rigid-schedule for grocery stores, hospitals full to the brim of sick people, all these and several such situations have occurred since SAR-CoV-2 virus escaped and spread all over the world. But since the economy and the progress of other important areas of life could not remain paralyzed, certain measures have been taken across all countries and globally to limit the spread of the virus. Technology and the Internet were two pieces that could make the puzzle of every human activity continue, even if at a timid and uncertain pace. However, not infrequently, issues regarding the efficiency and legality of the measures have been raised.

Now, almost a year after the declaration of the coronavirus pandemic, when people have started to adapt to the new reality sprinkled with not very few restrictions, but meant to reduce infection with the Sars-CoV-2 virus throughout the world, it can be seen that technology and the Internet, with all the components they involve, have gained more and more ground and are omnipresent in all human activities. Thus, in these not very happy circumstances, which have created the premises for new human rights issues, this study opens a small window to the realm of the right to privacy in the context of the digitalization of the education system in Romania and beyond.

This study will therefore attempt to penetrate the essence of a possible answer to the question of whether or not the online school constitutes an interference with the private lives of the participants in the educational act. But until

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this “essence” is achieved, all “substances” that could form it should be analyzed. In this way, the right to privacy and the right to education will be, in turn, the subject of the first two chapters, in which the two concepts will be developed from the point of view of the Romanian national regulations and the regulations of the European Convention on Human Rights, putting emphasis on: the two notions, along with the components which derive from them; the legal nature and content of each right; as well as the notion of “interference” and the conditions which it must fulfill in the case of the right to privacy. Finally, in the third chapter, the focus will be on the notion of “online school” (referring to all levels of learning, both schools and universities), where an attempt will be made to reach the answer of the question that governs the whole study.

The ideal of the school, including the online school, is the “free, complete and harmonious development of human individuality”. But like any new technology, e-learning through digital platforms also involves not only benefits, but also risks. We can imagine a series of harms to pupils through the improper processing of their data, which may affect not only their private lives, but also other fundamental rights and freedoms. If “the free development of human personality and human dignity, values proclaimed by Article 1 of the Constitution of Romania, cannot be conceived without respect for and protection of intimate, family and private life”, in the ECHR jurisprudence “the right to privacy has an intimate, personal dimension, but also a social dimension”. The ECHR¹ also ruled that there is private life in the University amphitheatres, stating that “*private life* is a broad term not susceptible to exhaustive definition and that it would be too restrictive to limit the notion of *private life* to an *inner circle* in which the individual may live his own personal life as he chooses [...] Article 8 thus guarantees a right to *private life* in the broad sense, including the right to lead a *private social life*, that is, the possibility for the individual to develop his or her social identity. In that respect, the right in question enshrines the possibility of approaching others in order to establish and develop relationships with them.”²

Right to privacy

1. Legal nature and content

The right to privacy is a fundamental right, which falls within the category of first generation rights and freedoms, directly targeting the human being in his relations with society, by affirming individual freedom. At the same time, this right also belongs to the category of civil and political rights, respectively those rights which protect individual freedom from an unjustified infringement by

¹ Case of Antović and Mirković c. Montenegro (2017).

² R. Sava, *Și copiii au o opțiune. Despre școala online și protecția datelor*, 17.09.2020, <https://legalup.ro/si-copiii-au-o-optiune-despre-scoala-online-si-protectia-datelor> [accessed: 3.04.2021].

the state and/or private organizations. Moreover, civil and political rights can be considered first generation rights, as the first documents of constitutional value to have enshrined such fundamental rights and freedoms were civil and political in nature, and are such as to limit the absolute power of states in the exercise of human rights. Also, depending on the content criterion of this right, the right to privacy is embedded in the group of inviolability, which represents those types of fundamental rights and freedoms which, by their content, ensure life, the possibility of free movement, the physical and mental security, as well as the safety of the person's domicile.

At the level of the Romanian Constitution, the right to privacy is enshrined in Article 26, with the marginal title: "Personal and family privacy".

The right to respect and protection of intimate, family and private life is part of the catalogue of fundamental rights and freedoms, having a complex content. Belonging to the category of fundamental rights clarifies the legal nature of the right in question, but its definition is not as clear. On this point, the constitutional doctrine stated the following: "The Constitution uses three notions – intimate life, family life, private life – which it does not define, but obliges public authorities to respect them and to protect against any attacks on the part of any subject of law"³.

This complex content of the right to privacy can therefore be summarized in the following three aspects: 1. everyone has this right guaranteed and respected; 2. the three concepts which build up this right as a whole are interdependent, but different from a legal point of view, and 3. there are special laws that strengthen the guarantee of compliance with this right by introducing specific protective measures and sanctions for those who infringe this right.

Unlike the Romanian constitutional regulations of the right to privacy, the European Convention on Human Rights provides, in its Article 8 "Right to respect for private and family life", a more extensive content. Thus, in addition to guaranteeing respect for the right to private and family life, this European provision also includes respect for the person's home and correspondence, while in the Romanian Constitution, these latter two components are each laid down in two separate articles, namely Article 27 "Inviolability of domicile" and Article 28 "Secrecy of correspondence". Within the same Article 8, the European legislator also chose to provide for exceptional situations in which this right may be restricted, by interfering with a public authority in the exercise of this right, whereas the Romanian legislator preferred to introduce a separate article, situated at the end of the presentation of the fundamental rights and freedoms, namely Article 53 "Restriction on the exercise of certain rights or freedoms".

³ I. Muraru, E. S. Tănăsescu, *Constituția României. Comentariu pe articole*, C. H. Beck Publishing House, Bucharest 2008, pp. 246–247.

The Romanian Civil Code grants the right to privacy a new legal nature, in addition to that of a fundamental right, namely that of the personality right, Article 58 with the marginal title “Rights of personality”, listing it as an example, as a statement.

Also referred to as the primordial human rights, personality rights are inherent to the human being. When they are intended to limit the powers of the state, they are known as human and citizen rights. Their legal nature is that of non-patrimonial rights, which entails that the personality rights cannot be considered as goods and determine their legal characteristics. Personality rights are inalienable, non-transferable, and unenforceable, cannot be exercised by a representative, they are imprescriptible and opposable *erga omnes*.⁴

With regard to the classification of the personality rights, according to the criterion of when they protect inseparable values relating to the humanity of the natural person, the right to privacy is a right exercised during the life of the person, and according to the criterion of content, the right to privacy is a right that protects moral values.

The right to privacy has its place in the regulation of the Romanian Civil Code within Section 3 “Respect for the privacy and dignity of the human person” of Chapter II “Respect due to the human being and its inherent rights”, Title II “Natural person” of Book I “About persons”. A more precise location of this right is Article 71 and Article 74 of the Romanian Civil Code, but taking into account its complex nature, which is also revealed by the inclusion in its content of other rights closely related to it (such as the right to one’s own image, the right to the protection of personal data), the right to privacy enjoys an extended consecration, and the reference to this right should be achieved by analyzing the entire section 3, referred to above.

The content of the concept of private life includes intimate, personal and family life, residence, correspondence, manuscripts, other personal documents, as well as information from a person’s private life. A person’s private life is therefore different from his or her public life and from the public aspect of his or her professional life. [...] Because it protects such intimate values relating to the person and his or her lifestyle, the extent of the right to privacy is not necessarily the same for all people. It was thus decided that the scope of the right to respect for private life is smaller, insofar as the individual brings his or her private life into contact with public life, as is the case of politicians.⁵

⁴ E. Chelaru, *Drept civil. Persoanele în reglementarea NCC*, 3rd edition, C. H. Beck Publishing House, Bucharest 2012, pp. 18–19.

⁵ *Idem*, pp. 35-36.

2. *The concept of privacy and its components*

The concept of “private life” referred to in Article 8 of the Convention cannot be precisely defined. As has been said, this is a concept whose content varies according to the age to which it relates, the society in which the individual lives, and the social group to which he belongs. [...] As the European Court has ruled, the notion of “private life” is ample, and is not suitable for an exhaustive definition. [...] The concept of “private life”, within the meaning of Article 8 of the Convention, as interpreted by the European Court, includes the person’s right to intimate, personal life, his right to social life and the right to a healthy environment.⁶

Jean Rivero emphasizes the essence of the notion of private life, stating that: “Privacy is the place of everyone’s existence, where no one can interfere without being invited. Freedom of privacy is the recognition for each person of an area of its own activity and which he is master to prohibit others.”⁷

Consequently, the concept of “private life” cannot be given a concrete definition that could be generally accepted at the level of any society and in any period of time. Given the fact that the society we live in is constantly changing, appearing, or as the case may be, disappearing certain elements that can build this definition, it can be reached the situation where, for example, a precise definition given in these times may not have the same expected effects, and, therefore, may no longer be able to protect this fundamental right, at the desired level. In view of this, the European Court has very well stressed the idea that an exhaustive definition of this concept cannot be satisfactory in the long term, which is why tracing certain generally valid elements is the most appropriate solution in shaping this notion.

Typically, the phrase “private life” refers to an area of privacy, of confidentiality that every person understands to keep around them. This area includes aspects related to emotional life, sexual activity, identity and preferences, the health of the person. But private life also involves elements at the confluence of personal and social space, such as the identification attributes of the person (name, domicile and marital status), his professional activity, etc. [...] The exercise of the right to respect and protection of privacy is, for the time being, a timid presence in our [Romanian] judicial practice. From this perspective, the relevant ECHR case law is an extremely useful model. As it has already been shown, the European practice in the field of human rights enshrines a broad vision of privacy. In this vision, the right to privacy implies an intimate, personal dimension, but also a social dimension.⁸

⁶ C. Bârsan, *Convenția Europeană a Drepturilor Omului. Comentariu pe articole. Volumul I Drepturi și libertăți*, C. H. Beck Publishing House, Bucharest 2005, pp. 598–600.

⁷ M. Andreescu, A. N. Puran, *Drept constituțional. Teoria generală și instituții constituționale*, C.H. Beck Publishing House, Bucharest 2016, p. 322.

⁸ I. Muraru, E.S. Tănăsescu, *op. cit.*, pp. 253–254.

As a first generation fundamental right, the right to privacy follows the same scheme presented by the jurisprudence of the European Court of Human Rights, regarding a definition of the concept at the level of the Romanian law. In this way, the building blocks of the concept of “private life” are presented in the form of three interdependent dimensions, with the case law of the European Court as a point of reference. Consequently, the specialized literature has widely presented what each dimension of the right to privacy implies.

As far as the right to personal privacy is concerned, an important component is the right to one’s own image. [...] The personal dimension of the right to privacy, in line with European jurisprudence, includes other components such as: the right to a name as an attribute for identifying the person and highlighting a specific family relationship; respect for the confidentiality of information relating to the health of the person; some aspects of sexual freedom and evidence of new sexual identity in transgender cases; problems related to ownership and communication of personal data contained in computer files. With regard to the social dimension, it should first be said that although the wording may seem contradictory, European jurisprudence and doctrine in the field of human rights generally acknowledge that there is a social private life that complements the classical notion of personal private life. One can talk about a social private life because private life also implies the right of the individual to establish and develop relationships with his or her fellow human beings.⁹

The Resolution of the Parliamentary Assembly of the Council of Europe of 1970 regulates in section C measures to protect the individual against interference with his right to privacy in the following manner: it establishes the *lex posterior* character of the right to freedom of expression and freedom of information in comparison to Article 8 ECHR; it extends the concept of the right to privacy by defining it in the following way: “The right to privacy consists essentially in the right to live one’s own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honor and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorized publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially.”; it draws attention to the problems that arise with the development of technology and how the law can no longer cover various facts that are in fact legal abuses; it draws attention to the fact that not only the state can affect people’s right to privacy, but also private persons can do so as individuals. [...] However, this quasi-uncertain regulation is not necessarily a negative aspect. Technology is growing faster and faster, and the ways in which privacy can be interfered is changing from year to year. Legislative regulation in this regard is impossible, given that a new way of abusing may emerge a few days after its approval.¹⁰

⁹ *Ibidem*, pp. 254–255.

¹⁰ L.M. Mărinean, *Dreptul la viață privată*, “Revista de Drept Public” 2017, no 1, pp. 163–164.

Thus, the notion of “private life” has been the object of analysis since its appearance in the legal field, being always supplemented by certain elements that could not be foreseen initially, which is why the definition of this concept has been left “open” in order to complement it with new components, which may arise as a result of the progress and development of the society. This “open definition” is intended to protect and guarantee the right to privacy against abuse and interference by both state authorities and individuals, which could arise in cases where a rigid, exhaustive definition would have been chosen, without the possibility of extending its components.

3. Limitations on the right to privacy

The right to respect for private and family life is included in the category of conditional rights, in the sense that the interference of a public authority of the state is allowed, as it results from both the provisions of Article 8 Paragraph 2 of the European Convention on Human Rights and the provisions of Article 53 of the Romanian Constitution, both legal provisions synthesizing the same conditions to be observed in order to allow interference of state authorities: the interference of the state should be provided by law, correspond to a legitimate aim, be necessary in a democratic society and should be proportionality between the restrictive measures imposed and the legitimate aim pursued. These may also include the conditions expressly laid down by the Romanian constitutional provisions, namely: the measure should be applied in a non-discriminatory manner and should not affect the substance of the right, having only been able to be applied to its exercise.

Although the notion of interference is not defined by Article 8, it consists in the infringement of a guaranteed right, the right to respect for private life of every citizen. It is therefore a constraint on the holder of this right. Three features characterize interference. First of all, it is done by a positive act. [...] Then, the interference must be imputable to the state. [...] Finally, the interference involves a victim, the citizen.¹¹

The first condition imposed by Article 8 Paragraph 2 of the European Convention is that any interference must be in accordance with the law. This interference must have a legal basis, without being of interest the position of the legal norm in the internal hierarchy of laws.

Since the term “law” is not defined by Article 8, the European Court has made an important indication in the sense that the law is conceived in a material and not formal sense. [...] In addition, the law must present features of accessibility and predictability.

¹¹ A. Șerban, *Dreptul la viață privată, la secretul corespondenței și la libertatea de exprimare în contextul reglementărilor Big Brother*, “Studii și Cercetări Juridice” 2017, no 2, p. 226.

The law must first be accessible in the sense that the citizen should have sufficient data on the applicable rule to the particular case, which requires publication. The law must then be foreseeable, that is to say it is a rule to be set out with sufficient precision to allow the citizen to adjust his or her conduct on the basis of clear advice.¹²

The second condition is that the interference has a legitimate aim, Article 8 Paragraph 2 of the European Convention listing the aims for which the breach of the right to privacy is legitimate, namely: national security, public security, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others. In practice, these legitimate aims take the form of factual circumstances subject to the assessment of the bodies of the Convention, relating to the circumstances of each case under examination.

The third condition requires that the interference be necessary in a democratic society, in the sense that it must be harmonized with an overriding social requirement to apply restrictive measures, which must be proportionate to the legitimate aim pursued.

The margin of appreciation granted to States Parties concerning the application of restrictive measures is an important procedural element for assessing the existence of the proportionality between the means ordered and the legitimate aim pursued. According to the Court's consistent case law, Member States enjoy a certain "margin of appreciation" to decide on the need for interference, but this is accompanied by European control. "The exceptions in Paragraph 2 of Article 8 require a strict interpretation, and their necessity in a given case must be established convincingly". The margin of appreciation is differently interpreted, in particular, according to the aims pursued to limit a right.¹³

The fourth condition, which provides that the interference is proportionate to the aim pursued, is not found in Article 8 Paragraph 2 of the European Convention. This condition appears as a creation of the jurisprudence of the bodies of the Convention.

Proportionality is assessed by the ECHR in concrete terms, the main criteria being: the fact situation, the nature of the law, the existence of adequate and sufficient safeguards against abuse, the legitimate aim pursued, the nature and intensity of the restrictive measures ordered and, obviously, the margin of appreciation granted to the Contracting States, as well as the need for the measure in a democratic society. [...] Although the Strasbourg Court does not make explicit reference to proportionality, it is obvious that this is a criterion for limiting discretionary powers and, moreover, it is a requirement for the protection that the law must confer on the rights enshrined in Article 8, in cases where limitation is permitted. In the same vein,

¹² *Ibidem.*

¹³ M. Andreescu, A.N. Puran, *op. cit.*, p. 323.

the ECHR stressed that: “the existence of procedural guarantees is essential in the analysis of the proportionality of interference” concerning the respect for private life, family life and home.¹⁴

Right to education – legal nature, notion and content

The right to education, as regulated in Article 32 of the Romanian Constitution, is a fundamental right, which is part of the category of rights and freedoms of the second generation, a category related to socio-economic and cultural rights. This legal framework is based on the impact that the right to education has on society, as well as on the implications of the state in the realization of this right, ensuring, through its content, the social and material conditions of human existence. The right to education

[...] has a mixed legal content, which combines the freedom to train, with the obligation of some forms of education. It implies equal chances for all citizens to follow any form of education provided by law, including higher education, and the selection in this regard is made by using with priority the criterion of competence. The purpose of the right to education is the full development of the human personality, by acquiring the fundamental values of culture and, then, actively integrating them into society.¹⁵

Regarding the legal content of the right to education, Article 32 Paragraph 1 of the Romanian Constitution establishes the principle of guarantee the right to education and lists the main forms of education: general-compulsory education, high school and vocational education, higher education, as well as other forms of instruction and improvement. The mention “other forms of instruction and improvement” emphasizes the fact that the Romanian legislator did not make an exhaustive enumeration of the forms of education, providing the possibility, with the evolution of society, to create other alternative or cumulative forms with those already existing, but in compliance with the other constitutional provisions. In the rest of the paragraphs of Article 32 of the Romanian Constitution are pointed out the constitutional principles that underlie the realization of the right to education: the conduct of education in the official language, respectively the Romanian language; ensuring the right of persons belonging to national minorities to learn or be trained in their mother tongue; free education; support for the socially disadvantaged groups; university autonomy; and the freedom of religious education, within the limits of the law.

The right to learn is considered part of the right to education. The latter includes a diversity of rights and freedoms of parents and children, to whom a number of

¹⁴ *Ibidem*, pp. 323–324.

¹⁵ *Ibidem*, p. 275.

state obligations correspond. The purpose of guaranteeing this right is complex: on the one hand, it ensures the education of the person in order to be able to fit, according to his performances and skills, in the social structures. On the other hand, the right to education imposes a series of obligations to the person, in the relations between parents and children, but also at the end of the educational process. Thus, we can explain the compulsory nature of some forms of education, up to a certain level (general-compulsory education, high school education). It was noted that the obligations of the state regarding the observance of the right to education “may be in the paradoxical position of being both the main provider of education [...] and of having the obligation not to use its privileged position in order to impose a set of opinions or perspectives with the total exclusion of others: he must educate, but not indoctrinate” (David J. Harris).¹⁶

The right to education is enshrined in Article 2 of Protocol No 1 of the European Convention on Human Rights, being proclaimed in the negative form: “no person shall be denied the right to education”. The Strasbourg Court has established the rights recognized by this article, namely: the right of access to existing educational institutions, the right to an effective education and the right to official recognition of completed studies.

In the system of the European Convention, the right to education therefore consists of a variety of rights and freedoms of parents and children, to which a number of state obligations correspond. The right to education is considered both an economic, social and cultural right and a civil and political right. The state has the duty to ensure pluralism in education, but it may impose some obligations on educational institutions or even individuals. [...] None of these rights is absolute. It is the state that establishes the rules for exercising them, taking into account the needs and resources of the community and individuals.¹⁷

The conditions and restrictions imposed by the national authorities must respect the principle of proportionality, that is to say, they must be appropriate to the need to guarantee the right to education in situations where it is possible to limit it. Therefore, the principle of proportionality has a particular form in the case of limitation of the right to education, because it no longer represents an adequate relationship between restrictive measures and legitimate aims pursued, as in other situations concerning rights protected by the Convention, but it expresses the necessary adequacy of guarantees provided by the state in situations where this right could be conditioned or restricted. Also, the jurisprudence of the ECHR in this matter applies the principle of proportionality when analyzing the observance of the provisions of Article 2 of Protocol No 1 in correlation with the provisions of Article 14 of the Convention, which prohibit discrimination.¹⁸

¹⁶ I. Muraru, E.S. Tănăsescu, *op. cit.*, p. 306.

¹⁷ *Ibidem*, pp. 310–311.

¹⁸ M. Andreescu, A.N. Puran, *op. cit.*, p. 339.

Online school

1. Concept and brief general aspects

With the declaration of the coronavirus pandemic, universities and schools around the world have been forced to move from traditional face-to-face teaching, sustained in a formal atmosphere generated by the sobriety of classrooms, to the online environment, led by technology and the internet, which takes place in an informal setting, determined by the comfort of home, thus reaching, in a forced way, the digitization of the educational system. However, this digitization did not have an easy transition, as many educational institutions were not at all prepared for such a major change, did not have the necessary resources and sufficient training, “[...] because no one was prepared for a full online learning. Teachers were challenged to adapt quickly and send an important message to students [with regard to all levels of education]: learning continues beyond school and with online tools accessible to all and a lot of determination; progress can be made; students can be encouraged to learn and work independently.”¹⁹

The online school has had and still has a fairly significant impact on the mental, emotional and academic condition of the main actors of the educational act, especially on the part of students who face social isolation, stress, depression and anxiety. Also, from an academic point of view, there is not and could not be equality in terms of access to technology and the competence to use it, which is usually present between people from rural areas and those who come from urban areas, the technological infrastructure in rural areas being often poorly developed. Moreover, another situation that is of interest to the academic status is the one generated by the lack of work space in their own homes or even by the insufficient number of devices, which could enable education to be carried out online. However, even if there is a concern about both the pandemic, with all the consequences arising from it, and the quality of the educational act, little by little, the adaptation has taken place, in order to ensure, however, continuity and stability in the educational process.

According to Article 2 letter a) of the Framework Methodology for conducting teaching activities through technology and the Internet, as well as for processing personal data²⁰, “teaching activity through technology and the Internet is a form of organizing the teaching process that involves the replacement of teaching-learning-assessment hours, implying the physical presence

¹⁹ C. Langa, L.S. Tudor, M.M. Stan, I. Bulgaru, *Educația față cu provocările unei situații excepționale*, 28.04.2020, University of Pitești, <https://www.upit.ro/ro/upit-pentru-comunitate/educatia-fata-cu-provocarile-unei-situatii-exceptionale> [accessed: 3.04.2021].

²⁰ Approved by Order No 5545/2020, published in the Official Gazette of Romania, Part I, No 837 of 11 September 2020.

of preschoolers/students in the classroom, with individual study activities and online teaching activities. The activity is organized by teachers, who ensure the continuity of the teaching process through technology and the Internet”, and letter b) defines the virtual educational environment as “a set of digital educational and communication means that ensure the development of the educational process through specific activities organized through technology and the Internet”. “Organizing the online learning process requires special training, not only from the perspective of adapting and managing content, providing the necessary means for the training process, flexibility of teaching methodology, but especially from the perspective of preparing the human resource (teachers and students, as well) for such a teaching experience.”²¹

Regarding the aspect related to privacy in the context of online school, we can point out that the components of this right that fall within the scope of teaching activities are: personal data, the right to one’s own image and domicile, teachers and students having to enjoy privacy both at school and in the virtual environment.

The pursuit of distance learning through digital and communication means inevitably involves the processing of personal data of preschoolers, students, teachers, and parents, in some cases. In the context of online school, if personal data goes beyond the security sphere, is processed or transferred illegally to unauthorized entities or is processed without respecting the key principles of the Regulation²², not only personal data is affected – but also the individual and his/her fundamental rights and freedoms are directly affected.²³

The process of collecting this data gathered from people transforms the person himself into goods and a vulnerable target, as the person has become dependent on mobile devices, such as phone, computer, internet connection etc. His personal data turns him into a commodity. [...] Intervention in private life, massive collection of citizens’ data by government systems and ongoing monitoring is a reality. It is everywhere and in everything, like a dust impregnated in the air, “evil dust”, as it was called by Julian Assange. We can no longer avoid it in modern society. [...] Today, privacy is a conventional, subjective notion and certainly a circumstantial matter. Honestly, we can no longer have nor can realistically demand the intimacy, in the classical sense and perception of the term, of the right to be left alone.²⁴

²¹ C. Langa, L.S. Tudor, M.M. Stan, I. Bulgaru, *op. cit.*

²² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), known as the GDPR.

²³ R. Sava, *Și copiii au o opțiune..., op. cit.*

²⁴ O. Dumitrache-Chironda, *O perspectivă și analiză critică a GDPR. Protecția intimității, drept sau iluzie. Apel la conștientizarea riscurilor mediului digital asupra dreptului la intimitate și viață privată*, “Revista Română de Drept al Afacerilor” 2019, no 2, pp. 67, 75–76.

“The importance of private life is gaining today new value, especially from the perspective of new technologies used in the context of online education. We can imagine a number of risks to the rights and freedoms of students and teachers, including loss of control over confidential information, identity theft, and electronic fraud.”²⁵ Thus, incorrect data processing can affect privacy, but also confidence in online education, which can also result in decreased performance in school activities.

The European Union Agency for Fundamental Rights (FRA) has published in a report the responses of some individuals who have been victims of personal data and confidentiality breaches. According to the FRA, when asked about the damage caused to them by the breach of data protection rules, people described the harm in psychological or social terms. They described the harm as emotional or social (the opinion of others or the impact on relationships with others), mentioning different degrees of suffering, panic and insecurity (including the feeling of being followed or under surveillance), helplessness, reputational damage or powerlessness regarding an abuse of power.²⁶

2. Online school from the perspective of students

Ever since the madness generated by the coronavirus pandemic began and the teaching activity has been transferred to the virtual environment, students (with reference to all educational levels, both schools and universities) have faced the problems arising from this sudden transition, being unsure of the whole situation created and their future careers. At the beginning, they were all clumsy in conducting online classes, and in some of them the anxiety was much more visible. If some students, who are more timid and more confined in themselves, were reluctant to participate actively in the traditional school, the greater this reluctance was reinforced within the online school, most likely by the fact that their private life, their comfort environment was now forcibly exposed.

According to a study conducted by the Non-Governmental Organization Save the Children on the impact of the Covid-19 pandemic on online education and the period spent by them isolated from the outside world²⁷, to the question “While you were on the internet, in which situations did you have the biggest problems?”, most of the respondents (42.4%) claimed that they had problems “simply in browsing (e.g. you have encountered problems such as

²⁵ R. Sava, *Înregistrarea audio-video a cursurilor online și conformitatea cu RGPD*, 17.09.2020, <https://legalup.ro/inregistrarea-audio-video-a-cursurilor-online-si-conformitatea-cu-rgpd/> [accessed: 3.04.2021].

²⁶ *Idem, Și copiii au o opțiune..., op. cit.*

²⁷ Save the children, *Opinia elevilor cu privire la educația on-line și efectele perioadei de izolare*, Bucharest, 2020, <https://www.salvaticopiii.ro/sci-ro/files/d3/d376f652-4ed3-43cc-8947-347265fe6e7e.pdf> [accessed: 4.04.2021].

negative content, unwanted messages, advertisements or viruses)”, and another fairly large part (32.4%) stated that they encountered such problems “within the family (e.g. there were misunderstandings with parents related to internet activity or time spent online)”. To another question: “What do you think are the most common online risks that you and other children your age have been exposed during this period?”, the first four options chosen were: excessive use (internet addiction) – 54.1%, false information – 39.5%, cyber bullying (harassment, threats, insults sent online) – 25.8% and theft of personal data and damage to online reputation – 22.6%. Therefore, it turns out that pupils reveal some restraints regarding their private life.

3. Online school from the perspective of teachers

But all this situation caused by the coronavirus pandemic has not only affected students, but it has also had consequences among teachers, whose insecurity and uncertainty has mainly targeted their concern to pass on education to students, teachers also experiencing the same feelings of anxiety and depression, but perhaps not to the same degree as in the case of students. This has been more easily borne by teachers, as they have a high degree of maturity and experience which helped them to overcome the problems encountered during the digitization of the educational system. But this does not mean that teachers have not developed any restraints regarding their privacy, with all the components that it involves.

This attitude of teachers and the feelings generated by online school can be seen as a parallel to the attitude and feelings of students, because, after all, we are all human, regardless of the title we take over throughout our lives, and we all experience the same feelings, but with different degrees of intensity. Thus, through the methods of observation and comparison, it was possible to draw a summary “perspective” of teachers on the digitalized educational act, where it was feasible to realize the resemblance to the “perspective” of students, in both cases the feelings felt were predominantly negative.

Conclusions

During this period, everything revolves around a single problem, with all its effects, namely the coronavirus pandemic. This study could not stand aside, without analyzing a small part of the repercussions of this pandemic, namely the combination of digital education with the right to privacy. As SAR-CoV-2 virus sent most social and economic domains into the virtual environment, people being somehow forced to work from home, from their personal space,

threats related to the right to privacy also emerged, mainly due to the risks of data processing as a result of replacing traditional education with online education. Thus, this personal space could no longer be so protected from other people, home working involving, at least in the case of the educational act, an exposure of one's own image and voice, of home, of personal data, but also of family life, as not only the participants in the online school are at home, but they share this space with other family members who must also carry out their own activities, whether they are of professional or personal interest.

Therefore, it has got to the point where, after the analysis of the right to privacy, the right to education and online school, an answer should be given to the question that guarded the entire study: "Is online school a barrier of the right to privacy?". The answer tends to be affirmative, given that the home space, which is the main space where private life takes place, is forced to be exposed, as people no longer have the opportunity to keep secret their place where they spend the most time. However, even if the online school represents interference in private life, this interference is justified by the existence of the pandemic and the need to ensure education. Thus, taking each of the four conditions under which privacy may be restricted, namely the legal provision, the existence of a legitimate aim, the need in a democratic society and the proportionality between the measures ordered and the legitimate aim, it can be concluded that education passed in the online environment represents, in the context of the pandemic, a limitation of the right to private life of pupils/students and teachers.

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Abstract

The online school – a barrier of the right to privacy?

Following the current situation caused by the coronavirus pandemic, this study brings to light the way in which the traditional school (the notion “school” was used in this paper with reference to all levels of learning, both schools and universities) was replaced, in a somewhat forced way, with online school in a society pursuing the tradition of face-to-face education. Given this aspect of e-learning and a possible higher exposure of their private life, for both students and teachers, the study will seek to answer the question: “Does online school represent a limitation of the right to private life?” through a series of legal arguments. However, before an answer is found, the right to private life and the right to education, as seen through Romanian legal regulations, as well as through the perspective of the European Convention on Human Rights, will be studied in detail. Last but not least, the concept of online school will be subject to analysis, from the perspective of both main parties involved in the education act, closely following the concept of private life.

Key words: online school; right to privacy; right to education; European Convention on Human Rights; coronavirus pandemic