THE RIGHT TO REPLY FROM A MEASURE FOR RESTORING THE RIGHT TO DIGNITY TO A PERSONALITY RIGHT

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Abstract

The right to dignity is fundamentally linked to the human being. Any breach thereof must give the holder the opportunity to repair the prejudice caused. Most of the time the prejudice is primarily non-patrimonial, which makes it more difficult to remedy. The right of reply gives the interested party a non-patrimonial remedy of the dignity through the possibility of restoring his/her reputation by presenting his/her variant of truth. The purpose of this paper is to highlight the importance of granting the right of reply in the shortest possible time and through the fastest possible means, including through provisional measures. Its recognition at the legislative level only in the field of audio-visual communications is not sufficient, but may represent a starting point for its extension in the civil law. The lack of an express regulation in civil matter does not, however, impede its granting, but the observance of some conditions specific to the civil means of protection of the personality rights is required, and the time elapsed until its exercise is longer and the reply may become inconsiderable. Reparation by equivalent cannot fully restore the right to dignity, which is why the legislative recognition in civil law of the right of reply is required as a personality right in the interest of the individual's self-determination regarding the public presentation of his/her person.

Keywords: *right to reply, dignity, reputation, lege ferenda.*

JEL Classification: K15

1. Introductory aspects regarding the legal regulation of the right of reply

The idea of a right of reply at the disposal of persons who claim to have been victims of defamatory publications is not new; it was borrowed from the French law, the first form appearing in 1819. Any person specifically referred to within a publication has the right to request the introduction of a reply, which should respect a predetermined character and length of the text, within the same publication. This right of reply applies even to the author of a book or play that does not agree with the statements contained in a published criticism. Of course, there is no guarantee of truth through this procedure, but thus the public is able to establish the truthfulness and firmness of the conflicting opinions. These provisions are still in force under another law: Law on the Freedom of the Press of July 29th, 1881. As the right of reply is a much faster, less expensive and less difficult solution than usual actions for false accusation, the example of France has been followed in many countries. They adopted either the French form for the right of reply; either compulsory denial or withdrawal – the forced publishing in the same publication in which the defamatory article appeared in a revised version of the facts; or a combination of the two[2].

In Germany, the right of reply (*gegendarstellungsrecht*) is based on the Reich Press Law of 1874 and belongs to the press right and assumes that anyone affected by a factual statement spread in the mass media about his/her person or organization should be able to articulate or correct something in the same environment in a comparable place and in a comparable presentation.[3] It is a right to self-determination on the public representation of own person, especially in relation to the development of mass media.

In Switzerland, the right of reply is regulated by the Civil Code, but it is not really a general right; it applies only to periodic mass media. It is closely related to the protection of the personality right and can only be invoked if the personality is affected. This protection is, among other things, restricted, as it is only admitted in terms of presenting the facts excluding the personal opinion and the judgment of the value expressed towards a person.[4]

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[2] John B. Whitton, *An International Right of Reply*, „The American Journal of International Law", Vol. 44, No. 1, Washington, 1950, p. 142.

[3] The document is available online at the web address: https://de.wikipedia.org/wiki/Gegendarstellung, consulted on 1.10.2019.

[4] Andreas Bucher, *Personnes physiques et protection de la personnalité*, 5e édition, Helbing Lichtenhahn, Bâle, 2009, p.140.

There was also a movement for the establishment of an international right of reply when the problem of international propaganda became really serious. One of the first proposals was made in 1929, when the International Juridical Congress of Radio-Electricity made an oath that was in favour of extending the right of reply already existing in the case of broadcasting activities. In 1931, the International Federation of League of Nations Societies recommended the formulation of a new right of reply on behalf of any state that opposes the dissemination of news, in the press or on the radio, because the existing one was not precise or was considered to disrupt international relations. A similar proposal was also launched by the International Federation of Journalists at a conference held in Brussels in 1934. A project was also developed by the United Nations, the main purpose in respect of the international law for rectification was to offer to the states that have suffered from the publication of false or distorted news, which could have damaged the friendly relations with other states, the opportunity to guarantee their proper promotion within their own publications. It was intended to prevent the publication of such news or, at least, to mitigate their effects. In order to enforce the right, the following conditions had to be met: a news transmitted from one country to another by correspondents or news agencies; its publication abroad; a statement from the state that makes the request according to which the news is capable of damaging its relations with other states or affecting the national prestige or dignity; and a similar statement according to which the news is false and distorted.[5]

The solution was the adoption of the Convention on the International Right of Correction of August 24th, 1962[6] according to which the Contracting States agree that, in cases where a Contracting State asserts that a news release transmitted from one country to another by correspondents or news agencies of a contracting or non-contracting state and published or disseminated abroad is false or distorted and is capable of damaging its relations with other states or its national prestige or dignity, it may send its version of the facts (called "release") to the contracting states on whose territories this remittance was published or disseminated. The release can be issued only in respect of communicated news and must be without comments or opinions. It must not be longer than necessary to correct the alleged inaccuracy or distortion and must be accompanied by a published or disseminated verbal text of the remittance and by the evidence that the remittance was transmitted from abroad through a correspondent or an information agency.

The recipient Contracting State, regardless of its opinion on the facts in question, must communicate the release to correspondents and information agencies operating on its territory through the channels commonly used for the dissemination of news relating to international business for publications and to transmit the release to the headquarters of the information agency whose correspondent was responsible for the remittance in question, if this headquarters is on its territory. In the event of non-compliance, the State whose rights have not been respected may, on the basis of reciprocity, grant a treatment similar to a release which was subsequently transmitted by the State implicitly. If any of the Contracting States to which a release has been sent does not meet, within the prescribed period, the obligations stipulated, the Contracting State exercising the right of correction may submit the mentioned release, together with a published or disseminated verbal text of the remittance, to the Secretary-General of the United Nations and, at the same time, may notify the claimed State that it would do so.

Unlike its counterpart at the national level, the international right of reply does not benefit from any support in terms of judicial control. In addition, its implementation is almost completely optional; the only penalties provided for if it is not observed are extremely weak. In fact, its optional character was praised by some of its main supporters as one of its best features, even though some of the United Nations delegates criticized the plan for being too cautious and too modest.[7]

In our legal system, the right of reply has already found its place in the Press Law of the

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[5] John B. Whitton, *An International Right of Reply*, „The American Journal of International Law", Vol. 44, No. 1, Washington, 1950, p. 141-145

[6] The document is available online at the web address: http://hrlibrary.umn.edu/instree/u1circ.htm, consulted on 1.10.2019.

[7] John B. Whitton, *An International Right of Reply*, „The American Journal of International Law", Vol. 44, No. 1, Washington, 1950, p. 141-145.

Romanian Socialist Republic no. 3/1974[8] (repealed by Law 95/2012), which allowed that any natural or legal person who was harmed by untrue statements by the press could request the publication or dissemination of an answer, free of charge, under the sanction of publishing this answer following a decisions of the court, with the express mention that the mass media was forced by court. We note that the solution was incomplete by the fact that the only sanction was to force the press to publish a statement which it was determined to publish according to the law, without granting material or moral damages, or at least applying a penalty. Although the Press Law of 1974[9] provided for the right of reply in article 72 when untrue statements were made in the press, at present it is no longer useful as it was repealed once the entire law was repealed by Law 95/2012. One of the reasons why it has not been legislated in the media is the conflict between the freedom of expression of journalists and the right of reply, but this does not have to justify the lack of regulation.

Currently, the right of reply enjoys recognition only in the legislation regulating the audio-visual communications: the Audiovisual Law 504/2002 and the Decision no. 220 of February 24th, 2011 regarding the Regulatory Code of Content. These rules apply only to the prejudice brought by audio-visual communication.[10] Therefore, the rules will not apply in the case of press releases, for example, or in the case of electronic publications.

The new Civil Code, which came into force in 2011, brought a series of news regarding the personality rights recognized expressly, offering legal protection to the right to dignity through the article 72. Furthermore, in addition to the recognition of these rights by Articles 252-257, it established a series of means to protect these rights and to repair the damages suffered as a result of the prejudices. As we will notice in the following, the legislator has outlined both defensive and reparative means, but has not paid sufficient attention to the in kind repair of the right to dignity through the right of reply. Thus, unlike other laws that recognize the right of reply as a personality right, the Romanian Civil Code has limited to granting the judge the possibility to take any necessary measures to end the tort or to repair the damage. This possibility is not sufficient as it subjects the right of reply to the conditions of proving the tort and the prejudice brought to the right, as opposed to the Swiss law, for example, which gives the possibility to offer the right of reply even in the absence of a tort, but only in the presence of some statements concerning the targeted person.

The civil code does not expressly regulate the right of reply, but by article 2642, paragraph 3 it establishes that in the case of prejudice of the personality rights within legal relations with a cross-border implication, the right of reply will be subject to the law of the state in which the publication appeared or from where the show was broadcast. It indirectly recognizes the existence of a right of reply in the event of prejudices brought to personality rights.

Considering the legislative vacuum regarding the recognition of a civil subjective right of reply, possible to be exercised without *a priori* intervention of the courts, but also regarding the fact that the current Code is inspired by the foreign laws, an analysis of them, but also of the domestic legislation in the field of audio-visual communications will help to outline a right of reply that is required to be adopted in our civil code as well.

2. The recognition of the right of reply as a measure in kind of the right to dignity

a) Protection of personality rights. The personality rights are protected by three categories of actions: the defensive actions by means of which it is pursued, according to the moment when the action is exercised and the solution is pronounced, either the prevention of the act, or its cessation for the future, or the ascertainment of the unlawful nature of the act; reparative actions whereby the prejudice brought to the non-patrimonial right is repaired by an equivalent, that is, by granting moral

[8] The document is available online at the web address: https://lege5.ro/Gratuit/he2donru/legea-presei-din-republica-socialista-romania-nr-3-1974, consulted on 1.10.2019.
[9] Ibid.
[10] „Making available to the public, in general, or to certain categories of public, by means of electronic communication, of signs, signals, texts, sounds, information or messages of any kind, which do not have the character of a private correspondence" article 1 letter b) from the Audiovisual Law no. 504/2002.

and/or material damages and the provisional actions by which the interested party asks the court to take some measures until the settlement of the substantive action when the prejudice caused would be difficult to repair.

Prior to the recognition of the right to dignity, in French practice, when inaccurate or false information about a person appeared in the media, information that could affect the personality, he/she could require the cessation of the fact or the patrimonial and non-patrimonial reparation of the damage that was brought to private life regulated by article 9 of the French Civil Code. This motivation to defend the person against defamation was criticized as it is not sufficient because these statements may concern issues related to privacy, but also issues related to the public life of the person concerned, in which case they must also have protection, and this will be offered on the basis of the right to respect the personality of the individual. Moreover, this protection must also be offered against inaccurate presentations, not just against the defamatory ones. The author suggested at that time the need for legislative intervention in order to create a new personality right to which the legal obligation of not bringing prejudice, not affecting the personality of the individual corresponds.[11]

Actions to defend the right to dignity[12] are regulated by art. 253 of the civil code paragraph 1 and there are appropriate measures designed to prevent or put an end to the infringement of personality rights. We notice the diversity of these measures, but the decision of the judge must be guided by taking into account their proportionality and the stage in which the action is at the time of the decision.

From paragraph 1 of the article 253[13] we can extract the following rules:

- The right of the holder to bring an action under this rule is not conditioned by a certain moment in relation to the date of the act, he can request "any time" one of these measures, the action is imprescriptible;
- The acts that affect dignity must be sanctioned whether they remove the honour or reputation of the individual or just shake these feelings. Moreover, the fact should be sanctioned even if the dignity was not shaken, but it was likely to achieve this result;[14]
- Defensive actions protect the holder in three cases: if the prejudice did not take place - the remedy is the action in prevention/prohibition; if it lasts it can be called for the cessation action and the action of ascertainment whether the prejudice has ceased.

When the right holder finds that there has been a violation of his/her personality, he/she may request the court "to force the author of the fact to perform any measures deemed necessary by the court to reach the reestablishment of the claimed right", according to paragraph 3 of article 253, and the legislator specifies measures that the court, considering them appropriate to restore the claimed right, can take: to determine the author to publish the decision at his/her expense and any other measures necessary to end the tort or to repair the damage caused. We thus observe that the legislator leaves the measures that could repair the damage caused and restore the infringed right at the discretion of the court. Moreover, taking into account the principle of availability that governs the civil process, the plaintiff, the right holder, is the first to consider the possibility of a certain measure to restore the dignity damaged by the defendant's act.

Referring to "any other measures necessary to stop the tort or to repair the damage caused", article 253 is not exhaustive. From the observation of the jurisprudence, the great variety of these measures appears which can be established by the judge vested with the settlement of the trial. However, at the time of implementation, a primordial inclination was observed for the type of measures exemplified by the legislator. The judge will be able to take one of the measures outlined in the code or any other measures necessary to stop the tort or to repair the damage caused, the plaintiff

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[11] J. Mestre, *La protection indépendante du droit de réponse, des personnes physiques et des personnes morales contre l'altération de leur personnalité aux yeux du public*, „Juris Classeur Periodique", 1974, I2623.

[12] Ovidiu Ungureanu, Cornelia Munteanu, *Protecția drepturilor nepatrimoniale cu privire specială asupra drepturilor personalității în concepția Codului civil*, „Romanian Review of Private Law" no. 3/2016, p. 13.

[13] „The natural person whose non-patrimonial rights have been violated or threatened can at any time request the court for: a) the prohibition of committing the tort, if it is imminent; b) the cessation of the infringement and the prohibition for the future, if it still lasts; c) the ascertainment of the unlawful nature of the fact committed, if the disorder that it produced subsists."

[14] Corneliu Turianu, *Insulta si calomnia prin presa*, All Beck Pulbishing House, 2000, p. 42.

having the obligation to indicate which measures should be taken to repair the prejudice brought to the dignity. By referring to the reparation of the prejudice caused, the Code refers to any patrimonial or non-patrimonial measures capable of restoring the infringed right. The non-patrimonial ones should be preferred because they are capable of causing the disturbance to cease in the future and are faster. At the same time, they are more useful in restoring honour and reputation than simply granting material or moral damages.

This legal provision refers to the repair of the prejudice suffered, but in paragraph 3 it is talking about restoring the right, therefore, the term "prejudice" used in letter b must be interpreted in the sense of non-patrimonial attainment of dignity, and the one used by paragraph 4 refers to the material and moral damage.

Among the measures applied by the courts there is also the obligation to publicly apologize, through the virtual space, as the tort was committed, by posting a message on the Facebook page of the defendant to the page of the commune C, considering that the reparation in kind of the non-patrimonial damage is the most appropriate, to which is also added the payment of 400 Euro as moral damages[15]; the obligation to publish the operative part of the judgement on the defendant's Facebook page, where the tort occurred and in two daily newspapers of wide circulation plus 5000 Euro as moral damages[16]; the obligation to publish on the Facebook page of the defendant a message by which he/she publicly expresses his/her apologies to the plaintiff for the prejudice of honour and reputation, a message that must remain public for a period of 20 days, "in this way the effects of the defendant's post will be at least publicly deleted, as the Facebook subjects who became aware of his/her post regarding the plaintiff will also be aware of the defendant's public message by means of which he/she expresses his/her apologies to the plaintiff"[17]; the obligation to delete the denigrating material from the defendant's Facebook page, the blog "C", as well as the publication of the decision on these sources and in a county newspaper[18].

By these measures, the purpose is to repair the damage in kind when it is susceptible of reparation in kind, on the assumption that as long as a person has been denigrated by certain means and third parties have become aware of these aspects by the respective means, they should also know that a decision has been published stating the violation of dignity and the denigrating character of the text. In addition, it is imperative to remove the material that is the subject of the tort.

Considering the exemplary character of paragraph 3 of article 253 of the Civil Code, in practice, to these measures can also be added the right of reply as long as the plaintiff considers that it is likely to restore the right to dignity, which seeks the reparation in kind, the non-patrimonial one of the right.

If the article 253 paragraph 3 allows the judge to compel the defendant to grant the plaintiff the right of reply, the article 255 regarding the provisional measures also contains explanatory dispositions regarding the provisional measures that the judge can take, conclusion which can be deduced by grammatical interpretation from the expression "in particular". The legislator wanted to present the main measures that can be taken to stop, at least temporarily, the harmful fact and / or to ensure the preservation of the evidence, but he leaves the judge with the possibility to take other measures such as to compel the defendant to grant the right of reply.

The exercise of the right of reply following a decision pronounced by the court pursuant to article 253 paragraph 3 or 255 of the Civil Code is difficult because of the obligation to prove the unlawful character of the fact in both types of actions and of the time interval in which the application

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[15] The civil decision no. 593 from June 07th, 2016, Târnăveni Law Court. The document is available online at the web address: https://www.legal-land.ro/dreptul-la-protejarea-reputatiei-vs-libertatea-de-exprimare-analiza-caracterului-ilicit-al-comentariilor-de-pe-facebook/, consulted on 1.10.2019.

[16] *The Decision no. 1550/2015, Bucharest Tribunal, III-a Civil division*. The document is available online at the web address: https://www.legal-land.ro/5000-de-euro-daune-morale-pentru-un-mesaj-defaimator-pe-facebook/, consulted on 1.10.2019.

[17] The civil decision no. 207 from March 3rd, 2017, Reghin Law Court. The document is available online at the web address: https://www.legal-land.ro/scuze-pe-facebook-timp-de-20-de-zile-pentru-afirmatii-defaimatoare-la-adresa-unei-persoane/, consulted on 1.10.2019.

[18] *The civil decision no. 454/ April 21st, 2016, Pâtârlagele Law Court.* The document is available online at the web address: https://www.legal-land.ro/30-000-lei-daune-morale-pentru-afirmatii-defaimatoare-la-adresa-unei-persoane/, consulted on 1.10.2019.

is judged, the means of appeal and then the judgment is executed, especially in the case of the substantive action based on article 253. In this period of time, the plaintiff may no longer have the interest to publish a reply as he would merely bring back in the public opinion statements that may have already been forgotten. For a large number of citizens, the necessity of a judge's intervention would not facilitate the protection of personal interests. Of course, the judge can intervene quickly through interim measures and order, for example, the publication of a reply. But this is only possible under the conditions of a procedure in which, in particular, it must be demonstrated a true prejudice against the personality, but also its unlawful character. Therefore, it is desirable the regulation of a right of reply in the Civil Code according to the model in the field of audio-visual communications with some improvements inspired by European civil laws.

The main argument against these regulations is the conflict between the right of reply and the freedom of expression, but this could be solved by maintaining conditions such as those provided by article 253 paragraph 2 when in case of violation of non-patrimonial rights by exercising the right to free expression the court will not be able to prohibit the act, but may require the publication of the reply together with the article 255 paragraph 3 which establishes three cumulative conditions for the application of the provisional measures when the damages were caused by the written or audio-visual press: the damages caused are serious, they are not justified according to article 75 and the measure is proportional. Thus, stricter requirements are established to prevent the judge's intervention from becoming a judicial censorship. These conditions are criticized[19] and are shown to have been justified only if a right of reply in civil law was regulated. The right of reply would exclude the intervention of the judge and could be directly exercised by the holder and inserted under the same conditions in which the contested statements were formulated, but without impeding or attacking the freedom of expression, but only presenting a point of view.

The freedom of expression is guaranteed by article 30 of the Constitution, but it must not undermine dignity, which is why the right of reply is only a way to repair a harmful exercise of freedom of expression. Dignity is indirectly protected by the limits of freedom of expression.[20] The right of reply does not affect the freedom of expression as it is protected by article 10 of the European Court of Human Rights and Article 30 of the Constitution. It only ensures the protection or restoration of the reputation, limits that the freedom of expression has even from the constitutional, respectively European text. On the other hand, the limits of freedom of expression must be interpreted restrictively so as not to inexcusably affect it.[21] However, in order to protect freedom of expression, it is not enough to resort to such measures only in cases of serious human rights violations and lack of compensation for damages through payment of damages; it is necessary that, from these measures, it should be adopted that measure which, by its proportionality, being in accordance with the legitimate purpose of protecting the rights of a person, will not unduly restrict the freedom of expression. This requirement of proportionality to which judges voluntarily appeal today provides clear evidence of the influence of the European Convention on Human Rights and of the way of interpretation of these freedoms by the European Court of Human Rights. Bearing in mind that the right to respect the privacy and freedom of expression, in accordance with Articles 8 and 10 of the European Convention for the Protection of Human Rights and with the provisions of the Civil Code, takes the form of an identical normative value, the court seized is forced to establish a balance and, where appropriate, to favour the solution that best protects the legitimate interest. The right of reply does not violate these requirements, since it is only a presentation of the situation as seen by the one in question, without representing an attack on the initial statements and excluding the intervention of the judge.

There are two perspectives for analysing the right of reply: moral and judicial. When a private or public person considers that one of his/her personality right has been violated by publishing

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[19] Ovidiu Ungureanu, Cornelia Munteanu, *Protecția drepturilor nepatrimoniale cu privire specială asupra drepturilor personalității, în concepția Noului Cod civil*, „Romanian Review of Private Law no. 1", Universul Juridic Publishing House, Bucharest, 2012, p.261.
[20] Maria Irina Budică-Iacob, *Human dignity in the European and international legislations*, „International Journal of Arts & Sciences", CD-ROM. ISSN: 1944-6934: 08(08):233–238 (2015).
[21] Maria Irina Iacob, *Demnitatea ființei umane. Libertatea de exprimare. Limitele libertății de exprimare. Sistem democratic. Jurisprudență CEDO. Tratament degradant*, "Supliment Acta Universitatis Lucian Blaga", Universul Juridic Publishing House, 2015, p. 79.

information that is incorrect, partial or unreliable, he/she may resort to exercising the right of reply. Analysed from a moral perspective, the right of reply results from the principle of equidistance, unobserved in the cases in which the information gathered, interpreted and disseminated by a publication has not been confronted from the beginning with people to whom it refers directly or indirectly. The right of reply, together with the right to rectification are part of the content of the right to information. Therefore, their exercise ensures the simultaneous fulfilment of two purposes: it ensures the correct information of the public and the version of the targeted person allowing the formation of his/her opinion and, at the same time, it may constitute a non-patrimonial repair of the right to reputation.

The right of reply should provide the person concerned with a means to defend against certain violations of his/her individual sphere. The person whose personal issue is being debated in public may, by virtue of this right, request to speak in the same place, with equal publicity and in front of the same forum. Once the counter-defence has been made, the attacked person can defend himself/herself immediately, thus being extremely effective. On the other hand, for example, existing civil protection tools can often be used only at a subsequent date, when the incriminated case has already been forgotten by the public.

b) The right of reply - a personality right. The right of reply is analysed as a right whose exercise allows the person to express his/her own point of view, in short to restore his/her social image if he/she considers that he/she has been harmed. Thus, the right of reply allows the person concerned to react at any time when he/she considers that his or her personality has been affected. The right of reply existed in the project of the Civil Code and is extended in French law and to any communication service made available to the public through phonograms or videograms that appear regularly.[22]

The right of reply is the procedure that allows the targeted person to present explanations or to protest under the same conditions in which the statements about him/her were presented, by publishing an answer. This is a right of communication exercised outside any reference to freedom of expression and aims to restore balance in a communication space.[23]

In French law, the right of reply recognized in the press is considered a personality right. It is seen as a right whose exercise allows the person to express his/her point of view in order to restore his/her social image when he/she feels that it has been affected or is in danger. It allows the person to react to what he/she feels as a change in his/her personality. Traditionally, the doctrine perceives the right of reply as a personality right, even a fundamental personality right.[24]

The right of reply is considered an absolute and general right, and at the same time a discretionary one. It is an absolute right that belongs to any person, including when the article invoked does not affect the dignity, but the person concerned wants to present the facts also from his/her point of view, in the same way and conditions in which the article was published. It is also a personality right because it protects the personality; it belongs to the person and can only be exercised by its owner. Its role is to protect or restore dignity. Also, the right of reply ensures that the right to information is respected.[25]

c) The conditions of the civil subjective right of reply

- Conditions regarding the generating act. In order to create the right of reply, there must exist a generating act, meaning some statements or maybe even drawings, pictures, caricatures, and so on which may affect the personality of the targeted person. It is obvious that when there are statements addressed to the targeted person in a direct discussion he/she will be able to reply directly and spontaneously, setting out his/her point of view. The problem arises when he/she is not present or, although present, he/she is not able to express himself/herself because of the context (for example in

[22] Ovidiu Ungureanu, Cornelia Munteanu, *Drept civil. Persoanele în reglementarea noului Cod civil*, 3rd edition, Hamangiu Publishing House, Bucharest, 2015, p. 126.
[23] Yves Mayaud, *L'abus de droit en matière de droit de réponse, Libertė de la presse et Droits de la personne*, Dalloz, 1997, p. 5.
[24] Agathe Lepage, *Droits de la personnalité*, "Répertoire de droit civil", Dalloz, Paris, 2009, p. 9 and p. 39.
[25] The document is available online at the web address: https://www.cairn.info/revue-legicom-2002-3-page-25.html#re18no74, consulted on 1.10.2019.

public debates, he/she is in the room but he/she has no right to speak). Usually, the generating fact appears in the audio-visual or written media, but also in the electronic environment such as social networks.

The person whose personality is questioned in the press, radio or television, is in a position of inferiority to the media in order to be able to argue his/her legitimate interests. This is the inequality that the right of reply wants to remedy, in particular by ensuring the person whose personality is affected, the possibility to oppose the information released in the media, his/her own version of the facts, through a direct access, independent of all the procedures before a judge. From this perspective, the right holder has to some extent equality in respect of the public. This system also presents advantages for mass media, because it only has to disseminate the answer of the interested party, without having any evidence, and especially, without being asked by a court for a certain behaviour.

This right is provided by articles 49-63 of Decision no. 220 of February 24th, 2011 regarding the Code regarding audio-visual content that confers the right of reply to any natural or legal person whose legitimate rights or interests have been violated by presenting with audio-visual means some untrue facts. From here we can deduce that the generating fact consists in presenting some untrue facts, without the condition of the unlawful character of this presentation. The condition imposed is that of existing a violation of certain rights or legitimate interests. The presentation can be done in different forms: a written or oral text, a photograph, a film or a drawing. The perception of the facts can be indirect, without directly highlighting the presentation (a photo, a caricature), either for the observer or for the vast majority of readers.

The fact can be past or current. The events reported in the future are not proper facts, and the assumptions that they have no connection with the perceptible reality are not convincing. Of course, a hypothesis, formulated in the conditional form, may refer to the past or the present, but in this case, it is a factual situation which, on an abstract plane, is capable of being objectively perceptible and whose absence in reality will be challenged through the right of reply.[26]

At the same time, the first insufficiency of this law text is highlighted: the scope of application is restricted to the level of audio-visual communications. This is why such a regulation would be appropriate in the Civil Code as it would have a general purpose. Moreover, it should not limit the place of production of the generating fact by a limitative enumeration, but rather by an exemplary one that should contain: the means of audio-visual communication, the written and electronic press, the social networks and so on.

The development of the Internet and the media has determined the evolution of the scope of the right of reply, and other states, through legal or jurisprudential rules, have succeeded in extending the scope of the right of reply. In France it was created as a specific right of the press (regulated in the Press Law), but over time, given the evolution of the communication techniques, it was extended also for the audio-visual communications, and later for the public communications.[27] There it applies in any media communication, meaning the written press, the audio-visual and online communications, provided that there is a periodicity of appearances, a relational continuity between the media and its addressee. The legal character of the personality justifies its applicability in online communications, where the condition of continuity is met by the permanent online existence of the site. In 2002, when the right of reply was recognized only by the press law, a French court created a practice in order to extend the applicability of the rules in the field of the press and in the audio-visual profession, but not under the press law, but the French Code of Procedure which allowed it to take any measures necessary to cease to affect a right. This procedure is similar to the one used in our practice regarding the current code, except that the temporal difference of almost two decades is easily observed, which only forces the Romanian legislator to a legislative evolution.

No question is asked about the origin of the presentation or the place where it is situated in the newspaper or in a radio or television program. The right of reply is of particular interest to the

[26] Andreas Bucher, *Personnes physiques et protection de la personnalitė,* 5e édition, Helbing Lichtenhahn, Bâle, 2009, p. 145-146.

[27] Arnaud Lucien. *Le droit de communication dans un espace communicationnel determine: le droit de reponse,* "Actes du Forum International sur la Liberté d'Expression" 2003 – 2004 – 2005., Jun 2006, Toulon, France. ffsic_00078230f. The document is available online at the web address: https://archivesic.ccsd.cnrs.fr/sic_00078230/document, consulted on 1.10.2019.

editorial side, but it applies equally in the field of advertising. The advertising may be of a third party, a news agency, the author of a press release or of a letter from a reader, the author of an announcement or finally persons demanding the broadcast of the answer that harmed the personality of a third party and compels him/her to respond. The unrestricted enlargement of the advertising field, even if it is an advert, a purely commercial advertisement, may be likely to circumvent comparative advertising. [28]

According to the article 50 of the Code regarding the audio-visual content, the right of reply cannot be exercised when:

1. Valuable opinions and judgments were expressed or issued. There is made delimitation between facts and opinions, and opinions will not give rise to a right of reply. This is explained by the problem of preserving the freedom of opinion of the media and journalists. Also, if an opinion expressed in the media brings an unlawful prejudice to the personality, the freedom of the press should not be given in front of the protection of the personality: excluding the right of reply, the law deprives the individual of an effective means of protecting the rights related to his/her personality. The right of reply is therefore only granted if the answer reacts to a presentation of the facts and insofar as it focuses on the facts reported to the contested statement.

However, it may be difficult to find the boundary between fact and opinion. The "act" is something of a perceptible nature that can be objectively determined. Opinion, on the other hand, reveals the individual's thoughts or feelings; it has no perceptible existence that can be objectively determined in reality. Qualifications based on abstract values, whether social, political, scientific, artistic, and so on., they represent opinions (such as someone being an anarchist, a platonic evil, an unscrupulous businessman and so on.). The assertion, according to which an institution of public law is governed by the principles of the management of a company, presupposes a value judgment. The fact often has a material existence (persons, animals, corporeal things), it is always perceptible (time, temperature), and its existence can be measured according to the general known criteria. The affirmation of a fact may result in a metaphor. The acts are said to reveal everything that can be proven.[29]

This delimitation can also be made with the help of the ECHR jurisprudence that differentiates between factual statements and value judgments. The expression of opinions means to make valuable judgments about a certain social act, which should not be confused with the reporting of human activities or circumstances or events that happen in everyday life. [30] Specifically, the European court classifies a person's assertions into: value judgments and factual statements. The first category includes the expression of a person's opinion on the professional, moral and personal qualities of another, and the factual statements consist of accusations of having committed certain facts. The importance of this delimitation is given by the fact that in the case of value judgments, unlike the factual statements, the proof of the truth is not necessary. However, the Court finds that value judgments are not absolute, they must have a sufficient factual basis and not be insulting, and factual statements must be made in good faith and based on actual facts to protect freedom of expression.[31]

The problem of the delimitation between fact and opinion arises especially in the conditions in which an opinion constitutes the extension of an analysis on the facts. It may then happen that the value judgment should bear upon a particular situation which contains not only a statement regarding facts as those on which it is based. As long as there is a close connection between the analysis of the facts and the conclusion that was based on the opinion form, the right of reply cannot be fully exercised against presenting the facts unless the answer can also challenge this conclusion. In that case, however, the answer must contain a reaction to the presentation of the facts that were the basis of the criticized opinion; it cannot be pronounced only on this.[32]

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[28] Andreas Bucher, *Personnes physiques et protection de la personnalitė,* 5e édition, Helbing Lichtenhahn, Bâle, 2009, p.146
[29] Idem, 2009, p.145-146.
[30] Corneliu Bîrsan, *Convenția Europeană a Drepturilor omului. Comentariu pe articole. Vol. I Drepturi și libertăți,* All Beck Publishing House, Bucharest, 2005, p. 740.
[31] Radu Chiriță, *Curtea Europeană a Drepturilor Omului. Culegere de hotărâri 2003,* C.H. Beck Publishing House, Bucharest, 2007, p. 163-164.
[32] Andreas Bucher, *op. cit.*, 2009, p. 145-146.

2. The principle audiatur et altera pars (the other party should be audited as well[33]) must be respected, which, according to article 40 paragraph 2 of the same normative act implies the observance of non-discriminatory conditions of expression until the end of the program in which the accusations were made. The refusal of a person to present a point of view should be expressly mentioned. Basically, before producing the generating fact, it was tried the attainment of the point of view of the targeted person;

1. The reply to reply is requested. The right of reply is offered as a reaction to some untrue publications. A reply to reply would generate a vicious circle from which it would be hard to come out;

2. The radio broadcaster responds to a person's accusations if the legitimate rights or interests of another person are not affected. In the manner in which this condition is formulated, however, the right of reply could not be exercised because legitimate rights or interests were not affected.

In order to be granted the right of reply, the source of the generating fact must either exist or appear with a certain recurrence over time. The right of reply must allow the version supported by the targeted person to be in opposition to a press release, such as newspaper, radio or television. The answer must therefore reach the public who knows the contested statement by the same way. This is possible whenever it is a cyclic media, disseminated at more or less regular intervals. The right of reply cannot be exercised against other media, other than those who have published the statements. This right does not apply to all persons who have made public a statement; an obligation to create a means of communication or to take advantage of such means to ensure the dissemination of an answer (for example, forcing it to distribute a pamphlet or to publish a new edition of a newspaper whose publication has just ceased permanently) is not possible; such a person must regularly have his/her own means of communication to the public.

The criterion of periodicity is per se the means of dissemination and not the framework in which the criticized statement appeared in the newspaper. The removal of a particular topic or program is not a reason to deny a right of reply with respect to them. The media may be periodic even if it is disseminated at irregular intervals; however, the broadcast must have certain continuity.

The concept of media implies a means of dissemination accessible to all those interested. The article 28 item (1) of the Swiss Civil Code uses the notion of media with a general meaning. It mentions the press, radio and television only to highlight the most important means of broadcasting. The right of reply can therefore target all these means of communication that are addressed to the public: it may already exist today (such as a news agency or a telephone, as they broadcast information) or it may be created gradually and to the extent of the evolution of communication techniques. Some sites are equally targeted, especially with regard to electronic newspapers.[34]

- Conditions regarding the holder of the right of reply. Even if it is a personality right of any natural or legal person, the right of reply is created when the generating fact occurred, meaning the presentation of some untrue statements. The right of reply can also be requested by the heirs when the memory of their author is affected according to article 34 of the French Law from July 29th, 1881. This extension of the possibility of exercising the right of reply also by the heirs is used as an argument for introducing the right of reply in the sphere of personality rights.[35] Our Code also allows the exercise of the personality rights by the surviving spouse, by any of the relatives of the deceased person in a straight line, as well as by any of his collateral relatives up to the fourth degree inclusive.

In the event that several persons would have been harmed in the same manner by the same presentation of the facts, it is sufficient to publish a common text which mentions the names of all the persons who responded; it would be abusive to request the distribution of several individual answers whose content resembles.[36]

The right of reply is also recognized by legal entities. The right of reply responds to an obvious

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[33] Lucian Săuleanu, Sebastian Rădulețu, *Dicționar de termeni și expresii juridice latine*, 2nd edition, C.H.Beck Publishing House, Bucharest, 2011, p. 46.
[34] Andreas Bucher, *op. cit*., 2009, p. 142.
[35] Yves Mayaud, *L'abus de droit en matière de droit de réponse, Libertė de la presse et Droits de la personne*, Dalloz, 1997, p.5.
[36] Andreas Bucher, *op. cit*., 2009, p. 151.

coherence: it is about allowing the person, both natural and legal, to protect himself/herself from an altered or defamatory presentation.[37] The admission of legal persons for the benefit of these provisions is justified by the fact that they also have a social image to defend as the natural persons. Moreover, the law also provides for this possibility through the article 257 of the Civil Code. [38]

In order to be granted the right of reply, there must be an infringement of "legitimate rights or interests" (Article 49 of the Audiovisual Code). Taking into consideration the news of the civil code regarding the recognition of personality rights as a whole, in civil law we could talk about a "prejudice of personality" and would be in correlation with article 253 of the Civil Code paragraph 3, applicable to those who suffered a violation of one or more personality rights. This expression, "the violation of such rights", avoids, on the one hand, all claims about the concept of unlawful act: it amplifies the domain of the personality protected by law, because this can be affected even if the targeted person is not harmed by the prejudice (legal or unlawful) of the personality. The person targeted by a presentation of the facts can exercise his/her right to answer without being required to prove neither the unlawful character of the contested statement, nor the existence of a genuine personality prejudice. The person exercising the right of reply tends to correct an inaccuracy or to bring an indispensable addition to the correct understanding of a fact presented by the media. The right of reply should also be recognized when untrue information is provided even if it is positive for the targeted person (for example, mentioning that he/she has won a major prize, when the real winner is actually someone else, he/she will be able to claim the right of reply in order to show who the winner actually is).

The targeted person must be identified or identifiable within the contested presentation. A mere reference to a circle of people (for example, tenants, environmentalists, business owners, and so on) does not represent a direct identification of all the people who are supposed to be part of that circle. It must, however, be admitted that persons close to those who are harmed may equally exercise the right of reply insofar as they are themselves harmed in their personality.

- Conditions regarding the exercise of the right of reply. According to the Audiovisual Code, the targeted person will be able to request, within a maximum of 15 days from the broadcast date, the radio broadcaster to rehear or revise the material, and this has the obligation to allow direct access to the headquarters or indirectly by delivering a copy within a maximum of 24 hours upon written request. The child under 14 years old will be represented and the one between 14 and 18 years old will be assisted by parents or guardians to formulate the application and to review or rehear the material. The applicant's request will have to contain: his/her data of identification and fast and efficient contact, the name of the show and its date, the untrue facts or the erroneous information envisaged, the motivation of the request and the text of the reply which will focus only on the untrue facts. The radio broadcaster will have to receive and record the application showing the time at which it was submitted, and in case of refusal, the applicant will be able to address the National Audiovisual Council no later than 30 days from the date of dissemination of the material.

In order to rule on the appropriateness or content of an answer, the person must first be aware of the presentation in this case. He/she may ask the media company to send him/her a copy of the article he/she is talking about or to watch a show. The obligation of the person responsible for the untrue assertions to allow the targeted person to receive the disputed material is welcome, but the 15-day deadline is relatively short and a double term could be extended and provided for: 20 days from knowing the broadcast, but not later than 3 months after publication, like the Swiss model (article 28i[1]B).[39] A justification for extending the limitation period would be the non-patrimonial nature of the rights protected by the right of reply.

The person wishing to exercise his/her right of reply must make a request, addressing the text of his/her answer to the one who published it. A mere manifestation of intent or an oral communication is not sufficient. The answer must be presented in the form required. It is not

[37] Maria Irina Budică-Iacob, *Persoana juridică titulară a dreptului la demnitate*, The Biennial International Conferenc**e**, Craiova, 2019 – being published.
[38] Agathe Lepage, *op. cit*., 2009, p. 39.
[39] The document is available online at the web address: https://www.admin.ch/opc/fr/classified-compilation/19070042/index.html, consulted on 1.10.2019.

mandatory to refer to the legal provisions, and the mention of the word "answer" is not indispensable, but the content must allow the addressee to understand that the author of the text invokes his/her right of reply. Otherwise, it may not be required to publish the text or may publish it, for example, as a "letter from a reader".[40]

After receiving the request, the addressee must make a decision without delay. To speed up the exercise of this right, a maximum period of 48 hours would be sufficient to answer the request, and the publication will be made according to the cyclicality of the publication. If he/she accepts the publication of the answer, he/she must inform the author about the time of publication (even if this has already happened). If she refuses the answer, she must not only communicate her decision to the person concerned, but also state the reasons for that decision.

In the field of audio-visual communications, the radio broadcaster may refuse the right of reply when:

1. The application does not comply with the substantive conditions and the term provided by law;

2. The radio broadcaster proves the truthfulness of the facts presented or one of the regulated situations for which the right cannot be claimed is liable;

3. The text of the reply is longer than necessary for the right of reply and the applicant does not accept the shortening.

The situations regulated in points 1 and 3 should not lead from the beginning to the rejection of the request for granting the right of reply, but should oblige the defendant to issue a notice to the targeted person asking him/her to complete his/her application or to adapt the answer to the imposed requirements. Within two days of receiving the request, the radio broadcaster must inform the applicant of the date and time at which the right of reply or the reasoned refusal will be broadcast.

- The content and publication of the right of reply. In case of admission of the application, the right of reply will be broadcast free of charge without comments of the radio broadcaster, under the same conditions in which the injury occurred, the same broadcast and the same time interval, within the same duration and specifying the broadcast during which the injury occurred, within 3 days from the date of acceptance of the request. If the next edition of the show is scheduled at an interval greater than 7 days from the date of approval of the request, the right of reply will be broadcast in maximum 3 days, in the same time interval, but in another show, specifying the show in which the injury occurred (article 57 of Decision 220-2011). We notice that if the interval does not exceed 7 days, the next issue will be expected even if it exceeds the 3 days initially stipulated. The applicant can agree that the right of reply is presented in written format. It is deduced the obligation to publish the right of reply on the first occasion, that is the first appearance of the source in which the generating fact was present.

The person who understands to exercise the right of reply must prepare a concise answer in the form of a text which he/she will insert in the request for granting the right of reply. The answer should not exceed the length of the text criticized. The author must summarize the essentials, but the solution depends largely on the circumstances of each case. In general, the answer contains a brief exposition of the author's own version of the facts, which corrects or completes the criticized presentation. The answer may briefly recall the object and content of the contested statement, in order to allow readers to understand the extent of the controversy. The answer must not be dated or signed. It is sufficient to understand that it is made in the name of the injured person in his personality. The answer must be formulated in writing and typewritten in such a way that it can be published without modification. It must be intelligible to the public who is aware of the contested presentation and must not contain language errors, the correction of which not being obvious, would cause the change in the substance of the text. The answer must reach the media in the same language as the one in which the contested statement was published.

The answers sent in a form other than the written one are not taken into account. It was not intended to allow the injured persons to read the answer on radio or television themselves or to present

[40] Andreas Bucher, *op. cit*., 2009, p .148.

their own photos or a film about the event in question. However, there are situations when the reproduction of a drawing or image is the only way that allows the interested party to inform the public correctly, using the equality of arms. If we rely on the purpose of the right of reply rather than the legal provisions, we must admit, for example, that a person must be able to answer by a sketch in respect of an accident or a sketch/drawing that corresponds to his/her own version of the facts or that a politician whose old photo was published by a newspaper, a photo taken while he was seriously ill, might require the publication of a recent photo, which presents him/her in very good health condition. There are some difficulties in practice that could significantly aggravate the situation of a company within the press or television, which is responsible for broadcasting such an answer.[41]

The content of an answer must be limited to the object of the contested presentation. The facts presented in the answer must have a connection with those allegations in the media; the answer must not be by itself contrary to the law. This means, first of all, that abusive answers can be denied. The right of reply is susceptible to abusive exercise, which is why it has been said that it attracts an expropriation for a cause of private utility regarding the headings of the journal where it is published.[42]

For example, it would be abusive to request the publication of an answer related to a radio or television debate in which the interested party has already taken advantage or could have taken the opportunity to publicly respond to the allegations concerned. The media company must, however, be able to immediately determine the inaccuracy of the answer and in an irrefutable manner.

The right of reply does not allow the criticism of the journalist or his/her manner of gathering information. The answer will normally try to restore the truth to the public, by presenting the facts in a version that is interesting and beneficial for him/her. The answer may, however, consist in a simple statement that the facts presented by the media do not conform to reality. This is a summary appeal that bears on the facts of this statement and denies their truthful character. This manner of response may be of interest to the person harmed by the indiscreet advertising, referring to his/her person by false statements, but who wants to keep secret the facts in line with reality. The answer does not necessarily have to challenge the existence of the facts presented by the journalist. These facts may be accurate, but their presentation may be incomplete in such a way as to cause a false idea about a person. The author of the answer cannot take advantage of this opportunity to disseminate other information unrelated to the incriminated text or to advertise.

The addressee of the request may refuse the answers which have a minor accuracy of the facts or which have a purely advertising purpose. The person who agreed to broadcast an interview cannot invoke the right of reply in order to correct its content or to return to the facts that he/she had the opportunity to challenge during the interview. In the alternative, all answers can be refused if they are contrary to the law or the good morals, particularly when their content implies a criminal offense or infringes the personality right of someone, the media company is responsible for all the statements that it broadcasts; it will therefore be liable for the consequences of publishing an answer with unlawful content, as it may have used its right to refuse publication. However, the fact that one answer harms another's personality does not entitle the media to refuse publication if such an answer could expose the other to an injury for no legitimate reason.

The publication director will have to analyse the answer, which must be published in its entirety, without changes. If it contains defamatory or insulting statements it will not be published. The publication director assumes responsibility for publishing the reply or refusal to publish it; he substitutes for a judge in an attempt to assess a factual situation and censorship or authorization of the content.

The answer must be published in the same frame as the criticized allegation, meaning, whether it is a newspaper, in the same section or on the same page that generally arouses the interest of the same readers, and whether it is radio or television, in the same type of program. The answer should

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[41] Ibid.

[42] Arnaud Lucien, *Le droit de communication dans un espace communicationnel determine: le droit de reponse,* „Actes du Forum International sur la Liberté d'Expression" 2003 – 2004 – 2005., Jun 2006, Toulon, France. ffsic_00078230f. The document is available online at the web address: https://archivesic.ccsd.cnrs.fr/sic_00078230/document, consulted on 1.10.2019.

not be published in a context that compromises its scale. The answer does not have to necessarily appear in the same place where it was broadcast as part of a program dedicated to a particular theme; it does not have to be printed in the same frames where it was read by the same presenter. Because the only goal is to reach the same audience. It is composed differently, such as, for example, an economic heading or a serial in a newspaper, a sports program or a political debate on television. To the extent that it is impossible to make such distinctions according to a certain type of heading or issue, the media company has the freedom to determine how to publish from this point of view. The assessment of this question must necessarily be of a fairly general nature. If, for example, one should analyse and compare the ratings of certain programs or take into account the variations in the circulation of a newspaper, the right of reply paralyzes.[43]

The answer should be broadcast as quickly as possible. This means in principle that from the day of receipt of the answer, the publication must take place in the next issue of the newspaper or in the next show that allows it to reach the public who knows the disputed presentation. The time factor is not the only determinant. If it is about a show addressed to a particular audience, it is necessary to wait for the time of the next broadcast of the same genre. In all cases, the company must act diligently. This condition is appreciated from an objective angle and does not depend on the good will of the one compelled to grant the right of reply. A person may, when appropriate, have the opportunity to become aware of a program that concerns him/her before the broadcast. He/she may exercise his/her right of reply at that time and request that her answer to be communicated on the same show. According to article 28k paragraph 2 of the Swiss Civil Code, the answer must be named as such. This clarification is not always sufficient to prevent an answer from passing unobserved by the public aware of the incriminated presentation.

The answer must be broadcasted without changes. However, spelling and language errors can be corrected if the essence of the text is not changed. The broadcast of the answer must be free of charge.

- Challenging the refusal to publish the right of reply. In case of refusal, the communication made by the applicant will also include the possibility to address the National Audiovisual Council within 30 days from the date of dissemination of the material that is harmful. He/she will register the request and will have to resolve it within 7 days from the recording, and if it is admitted, the radio broadcaster will have to respond to the request within 3 days from the date of communication of the decision of the National Audiovisual Council. The unfavourable solution of the National Audiovisual Council can be challenged in court under the Administrative Litigation Act.

If the right of reply of a person concerned by a media report would be denied, this person would be degraded in the simple object of public discussion. The procedural form of the answer request must also be based on the standards of the constitutionally protected general personality rights.[44]

Preventing the exercise of the right, refusing to disseminate or not properly enforcing the right of reply regulated in the Civil Code would give the right to a separate civil action against the author of the publications, which would aim to compel the author of the presentations to publish under the same conditions the right of reply but also his pecuniary sanction for failure to fulfil this obligation following the request of the targeted person. The action would be conditioned by the prior procedure consisting of the request for the right of reply under the conditions analysed above. Failure to comply with the preliminary procedure will cause the application to be rejected as inadmissible by the court but will not prevent the right holder from exercising the action under the article 253 of the Civil Code. Moreover, the approval of the right of reply or rectification under the Decision no. 220 of February 24th, 2011 on the Code regarding audio-visual content does not prevent the formulation of requests based on the provisions of the Civil Code as long as its conditions are fulfilled.

[43] Andreas Bucher, *op. cit*., 2009, p.150

[44] The document is available online at the web address: http://www.rechtslexikon.net/d/gegendarstellungsrecht/gegendarstellungsrecht.htm, consulted on 1.10.2019.

3. Conclusions

It is possible that the information given about a person, for example by the media, does not correspond to reality or at least they do not correspond to the idea of the targeted person about himself/herself. If these comments are likely to endanger the person's honour, the victim may apply for the civil action under Article 253 of the Civil Code or for the application of provisional measures. But, more than that, the offended person should have a right of answer in the case of violations committed by publishing some incorrect information. This reply should be correlated with the offending article and made during the time the offending article is in the public interest. Independently of any legal action and without the need for the statements to constitute unlawful facts, the right of reply must be possible and this will allow the targeted person to speak, respond to what he/she considers to be false, incomplete, and so on. The exercise of this right of reply cannot exclude the possible legal action if the words affect the dignity.

Even if the right of reply exercised through provisional actions would be relatively quick, the Code should give the holder the right to directly request the right and the court to intervene only when the defendant has not granted the right of reply. Also the provisional actions, even if they are judged urgently according to the procedure of the presidential ordinance, suppose the passage of a time delay from the moment of the application's introduction until its definitive solution.

According to the law, the express regulation of a right of reply is required to ensure the non-patrimonial repair of the right to dignity, which must be the priority of the patrimonial one. The right must be configured in such a way that it can be exercised quickly, at the simple request of the person concerned and without the a priori intervention of the court.

The right of reply gives the targeted person the opportunity to answer. The purpose of this right is to protect the personality rights and at the same time to restore a balance comparable to the one guaranteed by the principle of contradictory nature of the procedural matter. Thus, both formally and fundamentally, the right of reply must restore balance in the communications space and must be lawful, in conjunction and directly proportional to the statements criticized. These conditions can be met by clear and strict conditions, even if they could be criticized for their complexity.

The right of reply remains an excellent non-jurisdictional means of redressing some of detriments of personalities that cause damages that are difficult to repair. That is why the possibility of responding to a publication and presenting the personal version of the truth regarding the reported facts, in the short term and without the intervention and imposition of the judge must be recognized and guaranteed as a civil subject.

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