

## **MEDIA REPRESENTATION OF ARRESTED POLITICIANS. INTERPRETING THE LEGAL PROVISIONS, FROM THE- ORY TO PRACTICE**

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**ABSTRACT.** Former presidential candidate, former Minister of Tourism, a female politician with a presence and an impeccable style, Elena Udrea had a clear, well defined public image prior to her arrest on February 10th 2015. However, her public appearances and her public image shifted dramatically after her arrest. As stated in our previous article<sup>3</sup>, the current research intends to reflect upon one of the most well-known and ethically and legally challenging for the media case in Romanian politics: Elena Udrea's arrest. After verifying firstly the ethical dimension, in order to confirm or infirm the main research hypothesis that the monitored Romanian media outlets violated the ethical right to privacy of politicians, as well as their right to dignity and public image, we shift our focus on the second hypothesis regarding observance of the legal norms, and verify whether the legal provisions regarding the right to privacy and private life, as well as the right to dignity, honor, reputation and disposing of one's public image have been respected by the journalists.

**Keywords:** arrested politician, privacy, dignity, Romanian Civil Code

### **1. Legal standards applicable to the Romanian online media regarding the representation of arrested public figures**

The relevant provisions regarding the right to privacy, private life and protecting the right to a public image of a person can be found in the Constitution (as fundamental rights) and, relevant for

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the current researched case, in a dedicated section of the Civil Code. Both Constitution and Civil Code refer to international treaties Romania signed, aimed at ensuring the protection of fundamental rights. This is why we have introduced a third dimension of our research, verifying if the relevant provisions and the jurisprudence of the ECHR have been respected.

The following paragraphs are dedicated to the presentation of the legal theoretical framework and its main concepts.

### 1.1 The relevant Constitutional provisions

Article 26<sup>4</sup>, dedicated to personal and family privacy as a fundamental right, stipulates that:

“(1) The public authorities shall respect and protect the intimate, family and private life.

(2) Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals.”

We can observe that the right to the protection of intimate, family and private life refers only to some of the aspects regarding the obligation to respect the dignity and personality of man, as stipulated by the 1<sup>st</sup> article of the Constitution. The right is one of complex character, and the usage of three broad concepts - intimate life, family life, private life - challenges the authorities operating with them to specifically determine the content of each, as shaped by various contexts and cases. The right of the person to his / her own image also enters the dimensions of intimate, family and private life. The right to their image and respect for privacy are inseparable. No one can

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<sup>4</sup> Constitution of Romania available at [http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=2#t2c2s0sba26](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0sba26) (retrieved 6.11.2017)

interfere in the intimate, family or private life of the person without his or her consent, which, of course, must be explicit and freely expressed. Public authorities must take all possible and reasonable measures to protect the intimate, family and private life of the person, and an example of these measures, provided for by commentators<sup>5</sup> of the Constitution, is that of the judges that have the obligation to declare a secret hearing in proceedings where mediatizing them would affect these values without bringing any service to law or justice.

We've found of equal relevance and importance for the research the provisions of article 30 of Romania's Constitution, regarding freedom of expression. These state the following:

“(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.

(2) Any censorship shall be prohibited.

[...]

(6) Freedom of expression shall not be prejudicial to the dignity, honor, privacy of a person, and to the right to one's own image.

[...]

(8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.”<sup>6</sup>

As another complex fundamental right, freedom of expression encompasses citizen's right to express thoughts, opinions, religious beliefs and spiritual creations of any kind in writing, images, sounds or other means of public communication. It enables citizens to fully

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<sup>5</sup> Muraru I., Tanasescu E., *Constitutia Romaniei. Comentariu pe articole.*, Editura CH Beck, Bucuresti, 2008, p245-257.

<sup>6</sup> Constitution of Romania available at [http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=2#t2c2s0sba26](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0sba26) (retrieved 6.11.2017).

participate in the political, social and cultural life, whilst respecting, however, the limits provided by the Constitution in order to prevent the abusive exercise of the right to freedom of expression and to protect similarly important values. Among these values deemed equally important are those regarding human dignity, honor, privacy and self and public image.

Restrictions from freely exercising fundamental rights have to fulfill the conditions stipulated by article 53<sup>7</sup> of the Constitution, namely to be expressly prescribed by law, necessary for the protection of political, economic, social, human values, and proportionate to the situation that caused the measure, applied without discrimination, and without infringing on the existence of the right or freedom. Paragraph 8 of article 30 of the Constitution introduces two forms of liability, namely civil liability and criminal liability. Although after a lengthy legal debate that involved decriminalization, there currently is no general offence stipulated in the Penal Code for calumny, slander or libel, the protection of dignity, honor, privacy and self-image and public image is afforded by a dedicated chapter of the Civil Code. We will briefly present the provisions that we consider relevant for our researched case in the following paragraphs.

## 1.2 The relevant articles of the Civil Code

The third section of the chapter titled „Respect for human beings and their inherent rights” is dedicated to articles aimed at ensuring „Respect for the privacy and dignity of the individual” .

Article 70 (1) of the Civil Code states that “everyone has the right to freedom of expression” and in paragraph 2 reference is made to the limits of this right as presented by the provisions of article 75. Article 75 stipulates that “the exercise of the Constitutional rights and freedoms in good faith and in compliance with the international

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<sup>7</sup> *Ibidem.*

covenants and conventions to which Romania is a party shall not constitute a violation of the rights provided for in this section”. Specialists noted early on the fact that the notion of “good faith” is not defined in the legislation, however „in the legal literature, it is regarded as a group of elements, namely the right intention, diligence, lyceum and abstention from causing prejudice to others, elements that are a consequence of the transfer a group of psychological facts that make up honesty (loyalty, prudence, order and temperance) in the sphere of law”<sup>8</sup>.

Taking into consideration the suggested synonyms and dimensions of the notion of good-faith, we believe that it’s worthwhile to ponder, hypothetically, on the case of journalists overwhelmed by a high „publication quota per day”, that is, in all honesty, publishing the information obtained from one source of information, without having the time to prudently invest into further investigation of the information obtained. The good-faith, honesty and prudence of the journalists face daily inherent challenges, however the burden of proof for the absence of good-faith when it comes to the journalistic endeavours, lies with the plaintiff. A recommended standard would be verifying if the published material is of public interest, or simply aims at feeding the public’s curiosity on a topic.

Upon careful analysis of articles 70 and 75 of the Civil Code, we can conclude that “the restrictions that may be imposed on the fundamental right to freedom of expression have a dual role: protecting the personality rights and protecting society’s public interest.”<sup>9</sup>.

Article 71 of the Civil Code stipulates the right to privacy. Specifically, it emphasizes that “every person has the right to respect of her private life”, but also that “no one may be subjected to any interference in the intimate, personal or family life” (paragraph 2). Paragraph 3 of the same article specifies that “it is forbidden to use (...)

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<sup>8</sup> D. Gherasim, *Buna-credință în raporturile juridice civile*, Ed. Academiei, București, 1981, p. 34-35/

<sup>9</sup> Almășan A. *et al.* (2014). *Noul Cod civil: comentariu pe articole*. București: Editura C.H. Beck, p. 75-86.

information regarding a person's private life without his consent or without complying with the limits set out in Art. 75", which we briefly introduced earlier. Potential interferences, hence, include the use of information regarding a person's private life and the use in any way of correspondence, manuscripts or other personal documents. Exceptions, that are not considered interferences, are the case of explicit consent, when the journalist introduced himself as such, or in the cases which intrusions into a person's privacy are permitted by law or by international treaties, due to the relevance and importance of the information obtained, that serves the public interest.

When defining private life, authors commenting on the provisions of the Civil Code suggested that the notion „is determined by opposition to public life and the public side of professional life. It includes family and marital life, home life, home alone, health, intimate and loving or sentimental life, friendship, leisure, the private aspect of work, the way and the place of funeral.”<sup>10</sup> Some authors conclude that “the right to privacy allows the person to be the master of a secret, intimate „territory”, sheltered from indiscretion”.

However, as it is aimed to protect values that are inherently influenced by a persons' lifestyle, the right to privacy varies significantly from one person to another. The limits of privacy for politicians, for example, are defined by a different standard, as it was stated that it should be limited by either their personal choice, or by the existence of a public interest regarding their private life. A relevant standard was given in the decision *Brugemann et Schueten c. Allemagne* by the idea that if the individual himself puts into contact his private life with the his public life, he should expect reasonable intrusions and limitations of his free exercise of the right to privacy and private life<sup>11</sup>.

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<sup>10</sup> *Idem*, p. 77.

<sup>11</sup> *Comis. EDH*, 12 iulie 1977, nr. 6959/1975, *Brugemann et Schueten c. Allemagne*, apud de C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*, Editura CH BECK, Bucuresti, 2010, p. 604.

Article 72 states that “every person has the right to respect for his dignity” (paragraph 1) and that “any harm to the honor and reputation of a person is forbidden without respecting the limits set out in art. 75 “. We underline here the terms “honor” and “reputation” because any person who intends to publish information needs to ensure that that information does not affect honor and / or reputation in any way. Since the notion of „dignity” is not defined by law, we refer to its two components, namely the notions of “honor” and “reputation” as defined and clarified with the aid of the general dictionary. Thus, “honor” has the meaning of respect for the individual and “reputation” has the significance of the respect / appreciation of the community towards that person”<sup>12</sup>. Similarly to the case of justifiable intrusions into a persons’ private life, the free exercise of the right to dignity can justifiably be limited in practice in two situations: if the person who’s right is limited or violated agrees, or if the limit or the violating is in conformity to the provisions of the international treaties or with international jurisprudence. These include, in the case of the ECHR, details that can be considered shocking or offensive, even for the general public, as long as they are provided in good faith in order to serve the public interest.

### **1.3 The interaction between article 8 and article 10 of the European Convention on Human Rights**

We have decided to introduce this third level of our analysis, and to refer to the international legislation because both the Constitutional provisions and the Civil Code provisions refer to the international treaties that Romania has signed. On one hand, the Constitution introduces them, and subsequently their jurisprudence, as being part of the internal law, and in situations in which they provide for a

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<sup>12</sup> Almășan A. *et al.* (2014). *Noul Cod civil: comentariu pe articole*. București: Editura C.H. Beck, p. 75-86.

better enjoyment of a fundamental right, directly complementing the Constitutional provision. On the other hand, Article 75 of the Civil Code introduces, as potential limitations of the enjoyment of the right provided for under the section dedicated to Respect for the privacy and dignity of the individual, limitations that might arise from the exercise, in good faith, of the rights provided by the international conventions and treaties Romania has signed. The effect of these provisions is introducing to Romania's legislation various international treaties, and, in particular for the case that we intend to study, the provisions of the European Convention on Human Rights and its subsequent jurisprudence. We will therefore take a brief look into articles 8 and 10 of the Convention, and their interaction.

Freedom of expression is stipulated as a fundamental human right, under article 10 of the European Convention on Human Rights. Article 10 states that

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The right to respect for private and family life is stipulated by the provisions of art. 8 of the European Convention on Human Rights, that state that

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.”

Exemptions and limitations of the exercise of this right are identical to the ones provided in the second paragraph of art 10. This text is inspired by the Universal Declaration of Human Rights<sup>13</sup>, specifically article 12 of the Declaration that states that “No one shall be subjected to arbitrary interference in his personal life, in his family, at his home or in his correspondence, or at the touched upon honor and reputation. Everyone has the right to law protection against such interference or touch. “.

In order to properly understand the notions that are defining the object of protection of the article we have to analyze them separately, but, in short, it has been stated by authors that article 8 of the ECHR “generally guarantees the right to be left alone in all respects”<sup>14</sup>. It should also be noted that article 8 “offers protection only to private life, to the exclusion of public life”<sup>15</sup>. Personal privacy does not have an exact definition, but it can include the “right of a person to physical integrity” in situations in which it does not amount to the minimal degree of harm necessary for it to be protected by other articles of the Convention. Article 8 is applicable also in the case of the persons under surveillance. The physical aspect of a person is also matter of private life, as authors have pointed “while the appearance of a person is an aspect of his personality, the publication of photographs representing him constitutes a violation of his right to private life.”<sup>16</sup>.

Taking a closer look into the more recent jurisprudence of the ECHR, whilst keeping in mind the landmark decisions in the two cases *Von Hannover vs Germany* and *Sciacca vs. Italy*, we note that

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<sup>13</sup> Chiriță, R. (2008). *Convenția europeană a drepturilor omului. Comentarii și explicații ediția 2*. București: Editura C.H. Beck, p. 255.

<sup>14</sup> *Idem*, p. 257.

<sup>15</sup> *Ibidem*.

<sup>16</sup> Chiriță, R. (2008). *Convenția europeană a drepturilor omului Comentarii și explicații ediția 2*. București: Editura C.H. Beck, p. 259.

probably the closest situation similar to the researched case is the case of *Popovi vs. Bulgaria*. In this case the arrest of a former secretary general of the Ministry of Finance's that was filmed and released to the press resulted in multiple violations of the European Convention on Human Rights, including, most importantly for this study, article 8. "The Court found that the arrest had been filmed and the recording released without Mr Popov's agreement and that this had amounted to an interference with the latter's right to his own image, which was an integral part of the concept of private life"<sup>17</sup>.

### ***Researched case: Elena Udrea's arrest***

#### *Research method*

As stated in our previous article<sup>18</sup>, the current research intends to reflect upon one of the most well-known and ethically and legally challenging for the media case in Romanian politics: Elena Udrea's arrest. After verifying firstly the ethical dimension, in order to confirm or infirm the main research hypothesis that the monitored Romanian media outlets violated the ethical right to privacy of politicians, as well as their right to dignity and public image, we shift our focus on the second hypothesis regarding observance of the legal norms.

We have structured the analysis based on the chosen form of expression and analyzed written articles as well as accompanying photographs or attached photo-galleries, in order to verify if, through their editorial decisions, the monitored media outlets disregarded the legal provisions regarding intrusion into privacy and the legal norms protecting a person's right to dignity, honor and reputation.

The investigated hypotheses are the following:

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<sup>17</sup> *Popovi vs Bulgaria*, application no. 39651/11, available at

<http://hudoc.echr.coe.int/eng?i=001-163441>, retrieved november 2017.

<sup>18</sup> Ștefanel A., Jurau S., *Unethically reporting the case of arrested public officials. A case-study*, Studia UBB Ephemerides, LXI, 2, 2016 (p. 109-122).

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1. Monitored media published photos and articles that could amount to a violation of the fundamental rights
2. Monitored media published photos and articles that could amount to a violation of the provisions of the Civil Code
3. Monitored media published photos and articles that could amount to a violation of the provisions of the articles 8 and 10 of ECHR

*Research design*

The chosen research method that was used was the content analysis, performed on three online publications *libertatea.ro*, *gsp.ro* and *mediafax.ro*, representative for three types of online media: tabloid, niche and mainstream. The monitoring period starts on 25<sup>th</sup> February 2015, the date of Elena Udrea's arrest and ends on the 7<sup>th</sup> of May 2015, the date when she was released from custody. During this period, the politician was investigated in three separate cases.

The research will focus strictly on the written and photographic content regarding Elena Udrea's situation that was published by the three monitored publications in the same days, within the above-mentioned monitored period.

After an initial assessment of the three online publications, we've reached the conclusion that the number of articles published surpasses several hundreds, with some media outlets choosing to publish as many as 20 articles per day. Observing repetitive content, we chose the selection criteria of concomitance as a logical one, assuming either all publications reported the same event, or at least covered a similar situation, in a competitive online environment.

The final sample-size, determined based on the criteria previously explained, comprised 78 articles and their accompanying photo-galleries. We've decided that the research methods that served best our research goals were a mix of quantitative and qualitative research methods, namely content-analysis and observation.

*Results of the research*

We've included in our sample-size a total of 73 published texts: 12 by the website *gsp.ro*, 41 by the website *libertatea.ro* and 20 by *mediafax.ro*. The 78 initial articles included 136 photographs, some of them grouped in photo-galleries. 101 photographs were published by the website *libertatea.ro*, 12 by *gsp.ro* and 23 by *mediafax.ro*.

The explanation for the disproportionately high number of photos published by *libertatea.ro* is that the online yellow paper usually includes a picture-gallery with every article, gallery that includes as many as 15 photographs. In this particular case, the gallery that was published repeatedly was that of Elena Udrea's release from arrest. We've chosen to count the pictures, in our quantitative analysis, or as many times as they were published, even if they were repetitive. The reasoning behind was that, for non-visual or less-visual persons, it is the repetition of the visual information that will form the lasting memory, amounting thus, to the infringement of private life, privacy and dignity, and ultimately damaging the politician's public figure.

Regarding the articles published, we have noticed, as initially thought given the publications we chose to monitor, major differences. *Mediafax.ro* has published in principle very long, very explicit articles containing many updates. *Libertatea.ro* wrote several short texts, and *gsp.ro* varies, depending on the subject matter.

Due to the fact that we chose to analyze articles that appeared on the same day in all three publications and to see how each one reported on the events of the day regarding Elena Udrea, we have found that all three have emphasized the facts and these have been clearly and correctly reported. However, *libertatea.ro* was the only one of the three who also published articles that did not respond to the criteria of providing with public interest information, but, on the contrary, presented elements of Elena Udrea's private life.

The analysis of the photographs and texts, based on the above-mentioned indicators, as included in their respective legal texts, revealed the following:

***1: Regarding the respect afforded to the constitutional provisions:***

In the first part of the article we've presented the constitutional provisions regarding the right to the protection of intimate, family and private life (article 26), as well as the fact that freedom of expression shall not be prejudicial to the dignity, honor, privacy of a person, and to the right to one's own image (article 30, ph. 6). Public authorities are held to a standard of caution regarding any potential violation of the individual's right to privacy and private life, as well as right to a public image. A similar standard should be adopted by media outlets that seek to respect the provisions of art. 30 regarding freedom of speech, as these institutions ought to use the golden standard of responding, with the information they provide with, to public's interest, rather than public's curiosity.

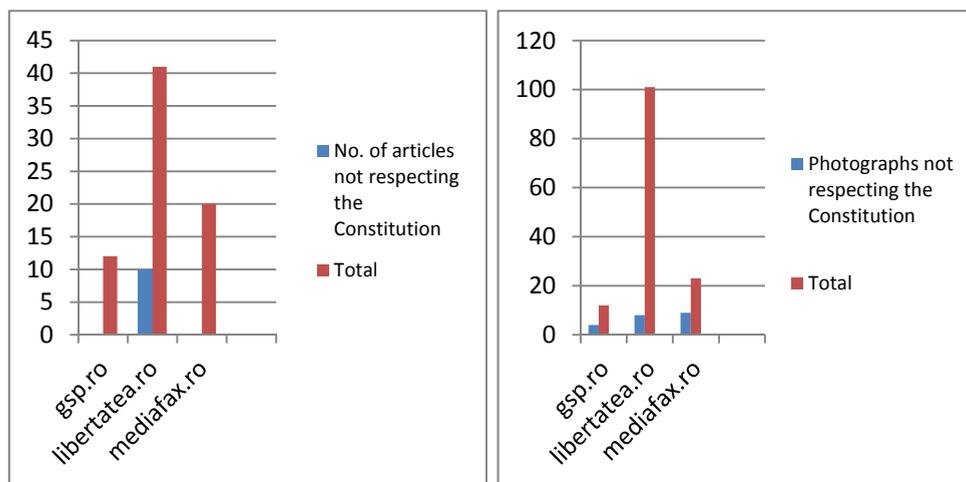
In our monitored case, the maximum caution that could have been shown by the public institutions would have translated into efforts to diminish the hype created in the media by the politician's arrest and court-hearings in various trials. The press, however, flooded all areas accessible to the public, in almost every relevant (and irrelevant) moment. The authorities, therefore, left it to the press to find what they considered to be balanced reporting in what was one of Romania's most important corruption trials to date. In a situation in which the educational role of justice, as well as, unfortunately, society's need for retribution, cannot be properly served without the aid of the mass-media, properly fulfilling its functions of providing with accurate and relevant information of public interest, it was important to see the two actors balancing each other. Thus, pictures that portray, for example, the politician wearing handcuffs, or pictures aimed at deconstructing her previous polished image, amount to an unnecessary violation of the politician's right to a public image and dignity.

Although the politician never took an official public stand, among the monitored articles we have found an answer regarding her opinion on her public image after being released from custody. “Asked by Ion Cristoiu if she agrees with the picture taken on the screen, an older image, Elena Udrea reacted: “Any picture is better than what was seen at the exit from Târgșor. The arrest of any kind, the lack of minimal conditions, changes you very much, including physically.”<sup>19</sup>

The table below offers the surprising outcome of the analysis of the published photographs, in a situation in which mediafax.ro leads in our analysis with the greatest number of published images that were not respecting legal provisions of the art 30 of the Constitution, out of the total of images published.

**Table 1:** Published articles and photographs that do not respect the right to a public image as a limit to freedom of expression, as stipulated by art. 30 (6) of the Constitution

| Publication   | No. of articles | No. of photographs |
|---------------|-----------------|--------------------|
| gsp.ro        | -               | 4                  |
| libertatea.ro | 10              | 8                  |
| mediafax.ro   | -               | 9                  |



<sup>19</sup> Quote retrieved on 12th april 2016 from gsp.ro: <http://www.libertatea.ro/stiri/elena-udrea-reactie-neasteptata-dupa-ce-a-fost-criticata-pentru-imaginea-ravasita-de-la-iesirea-din-inchisoare-1146405>

The analysis of the articles published by Libertatea revealed that 10 out of the total of 41 texts published violated article 30 of the Romanian Constitution, having a significant potential to damaged the dignity, honor, the private life of the person and to violated the right to public image. These texts mainly focused on Elena Udrea's hairstyle when she was leaving the penitentiary, the "untidy" skin according to libertatea.ro, or the intimate objects she used or not. For example, in such a text the public was provided with information regarding the toilet in Elena Udrea's cell. Article 30 of the Romanian Constitution makes it very clear that "freedom of speech can not prejudice the dignity, honor, private life of a person, or the right to one's own image.". Publishing texts focusing on the analysis of clothing, skin, hair, or physical appearance is violating several fundamental rights, including the right to a public image and to dignity and privacy. Even if she was a notorious public figure in Romanian politic, there are limits to freedom of expression in this respect as well.

With a completely different approach, gsp.ro and mediafax.ro did not publish texts that would amount to a violation of article 30. The articles published by these two online publications refer strictly to events of public interest, such as the official accusations, the nature and content of the offenses Elena Udrea was accused of committing, the potential sentence and various similar topics.

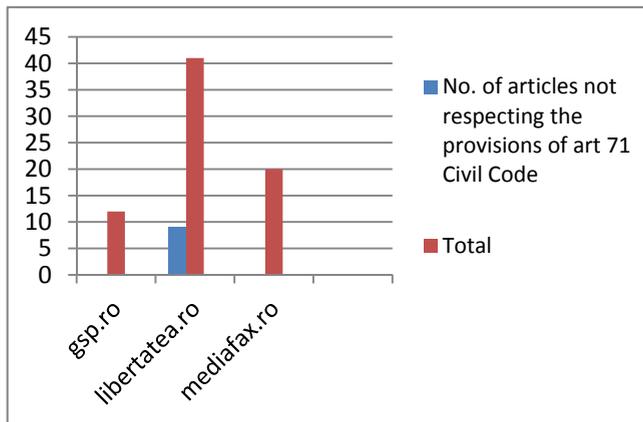
## ***2: Regarding the respect afforded to the provisions of the Civil Code:***

Upon an initial verification, we have decided to conduct only a text analysis regarding the respect afforded to article 71 of the Civil Code, and to compliment it with a full analysis (both text and images attached) regarding the respect afforded to article 72. The reason for this choice was that it is difficult to argue that, when in public, or when permitted to photograph, the photographers could be accused of committing an intrusion into privacy. We have considered however the text analysis an appropriate and needed one, due to journalists' choice of topics.

Thus, we have found that Libertatea.ro violated the provisions of article 71 of the Civil Code through their choice to publish certain texts including references to Elena Udrea's intimate life aspects . Of the total of 41 texts, we found 9 that did not comply with the provisions of article 71 and interfered with Elena Udrea's private life. Even though private life does not have the same limits for a politician as for a regular citizen who does not hold a public office, we believe that there was no justification or public interest to dedicate texts to the subject matter of physical appearance, clothes, hairstyle, skin and skin-care routines, tampons, bras, speculations of potential mental state and mental health issues that were not brought up on trial, showers and toilet facilities, speculations regarding insomnia due to the lighting conditions in the penitentiary, lists of goods received from home and about her other personal belongings and other aspects that were strictly related to the person Elena Udrea, rather than the accused politician or public figure.

**Table 2:** Published articles that do not respect the provisions of art 71 Civil Code

| Publication   | No. of articles |
|---------------|-----------------|
| gsp.ro        | -               |
| libertatea.ro | 9               |
| mediafax.ro   | -               |



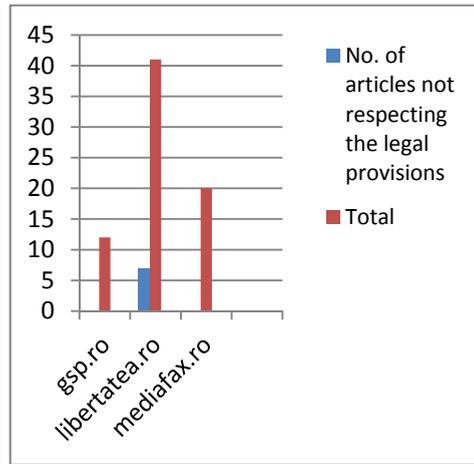
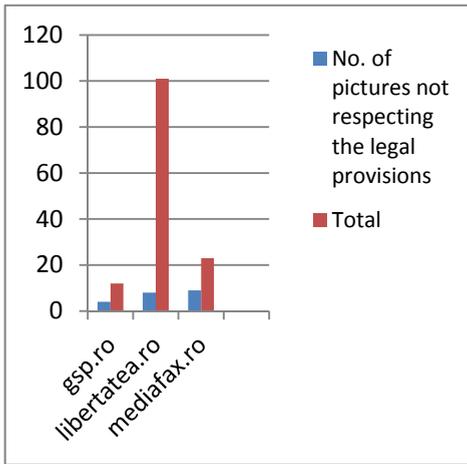
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Article 72 of the Civil Code states that “every individual has the right to respect for his dignity” (paragraph 1) and that „prejudice or harm to the honor and reputation of a person is forbidden, without respecting the limits provided by art. 75 “. The journalists must exercise good faith while reporting on aspects that have the potential to harm a person’s dignity and reputation. The extent of the requirement to exercise good faith is disputable, taking into consideration the fact that, in theory, the moments when Elena Udrea came out of prison or was transported for statements in front of court were public, considered a matter of public interest, and the journalists could argue that she should have expected to be photographed or filmed. Although fully aware of the journalistic standard, and the journalists’ duty to report reality as it is presented, we have marked in our analysis as photos that do not respect the provisions of art. 72 the images that present Elena Udrea with handcuffs, her eyes closed and her hair hurled at the exit from the penitentiary. We have also included in this category the pictures that are aimed at showing her resembling with various film characters or others alike. The reason for which we have decided to do so is that framing a picture to include or to exclude the handcuffs or to have a person with eyes closed, to aim at picturing a person „from the wrong angle” represent choices a photo-journalist makes, if not completely aware at the moment when the picture is taken, while being included in a mass of other journalists battling for the same image, back in the newsroom, when he chooses the pictures to present to the editor. Responsibility is shared, but there is undeniably a responsibility and subsequently an exercise of good, or bad faith, that can be objectively observed.

In the table below we note that again mediafax.ro has the most photographs that have damaged the honor and the reputation of Elena Udrea according to article 72 of the New Civil Code when reported to the total of photographs published, followed closely by libertatea.ro.

**Table 3:** Published articles and photographs that do not respect the provisions of art 72 Civil Code

| Publication   | No. of photographs that do not respect the provisions of art. 72 Civil Code | No. of articles that do not respect the provisions of art. 72 Civil Code |
|---------------|---|--|
| gsp.ro        | 4   | -  |
| libertatea.ro | 8   | 7  |
| mediafax.ro   | 9   | -  |



We have proceeded to analyze the texts published, in order to assess if any of them had the potential to harm the honor and the reputation of Elena Udrea, hence having the potential to violate article 72 of the New Civil Code.

For a better understanding of how this article was violated, we recall that honor refers to a person’s respect for himself and reputation is the respect that other people have towards the respective person. Thus, when a woman who has always been impeccable throughout her public appearances, is the subject of articles that criticize in detail the way she looks, it is clear that her reputation was harmed. Considering her statements that hinted that she was ashamed of her physical aspect when existing Targșor jail, it is clear that the comments, along with the excessive focus on her physical

appearance harmed her sense of honor and self-respect on that matter. The information made public by Libertatea in the 7 articles that we considered to violate article 72 of the Civil Code are information that do not serve a public interest and are of no value for the general public. They merely serve to degrade a carefully constructed public image. The exception of providing with information that has the potential to shock or offend is applicable only to the cases in which such a shock or offense contributes to a debate that would be of public interest, or actually provides with information of public interest, which wasn't the case of the observed 7 articles.

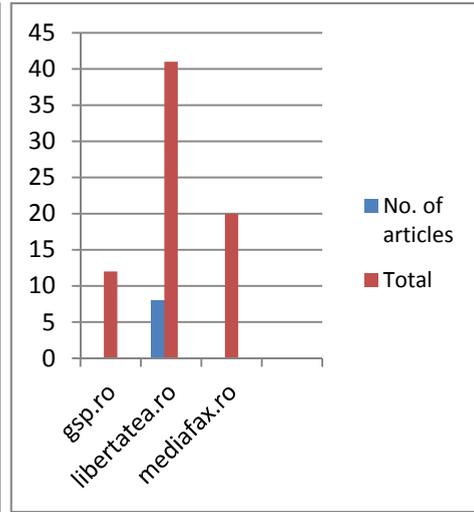
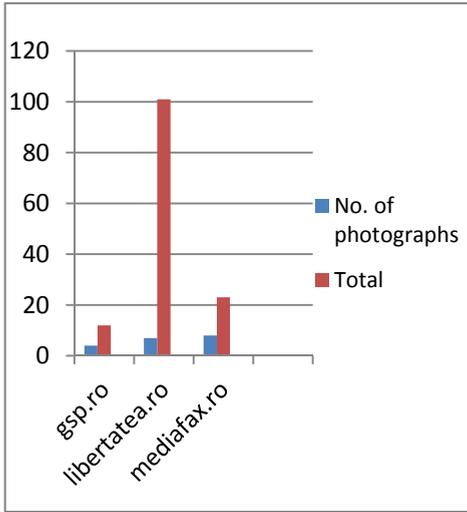
### *3: Regarding the respect afforded to the provisions of article 8 ECHR*

In the table below, we counted the number of photos in each publication that violated the right to privacy as outlined in Article 8 of the European Convention on Human Rights. We recall the most relevant aspects of article 8, namely that “every person has the right to respect for his private and family life”, and that when the appearance of a person is an aspect of his personality, the publication of photographs representing her constitutes a violation of his right to private life. Thus, after analyzing all the photos in the three publications, we found that the 19 photos marked in the table violated this right.

Although the high number of times in which mediafax.ro published photographs that had a potentially harming effect, and would arguably breach article 8 surprised us, the result obtained when analysing the published articles did not. Libertatea.ro is leading by publishing information regarding the content of the packages Elena Udrea received from her mother during her arrest, and also running articles on details about “what happens to Elena Udrea’s tampons in jail” alongside with details and comments regarding other intimate issues. We enlist, below, the publications and the results, for a comparative perspective.

**Table 4:** Published articles and photographs that do not respect the provisions of art 8 ECHR

| Publication   | No. of photographs | No. of articles |
|---------------|--------------------|-----------------|
| gsp.ro        | 4                  | -               |
| libertatea.ro | 7                  | 8               |
| mediafax.ro   | 8                  | -               |



### Conclusions and limits of the current study

As initially stated the current research intended to reflect upon the legally challenging case of Elena Udrea’s arrest, from the standpoint of mass-medias’ duty to observe the relevant legal norms. We have used a combination of quantitative and qualitative methods to study articles and photographs of 3 online publications, in order to confirm or infirm the following hypothesis:

1. Monitored media published photos and articles that could amount to a violation of the fundamental rights
2. Monitored media published photos and articles that could amount to a violation of the provisions of the Civil Code

3. Monitored media published photos and articles that could amount to a violation of the provisions of the articles 8 and 10 of ECHR

All hypotheses were confirmed, in various degrees that we've considered significant enough for a validation. However, while performing especially the qualitative research, we realized that, probably more valuable than the validation or the invalidation in absolute terms of our initial hypotheses are our doubts regarding the correct qualification of one article or imagine, in one of the two categories (respecting or not the legal provisions). We, the authors, are a team of a journalist and a lawyer, and we could easily see and argue, in relative terms, as well as in absolute terms. With a situation in which almost all legal texts lack definitions and use broad terms, along with providing with potential exemptions from application, one of our best guidelines, especially when discussing good faith reporting, turned out to be not the legal text itself, but the answer to the questions

“Does it serve the public interest?” and

“Is the potential harming impact of this information mitigated by serving correctly the public interest?”

Two important questions to be considered in future similar cases, as vectors of decision, but also to be considered in any potential lawsuits.

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