

MEDIA COVERAGE OF THE COLECTIV NIGHTCLUB FIRE. A PRELIMINARY STUDY OF APPLICABLE MEDIA LAW

SÎNZIANA JURĂU¹

ABSTRACT. The Colectiv nightclub fire will probably remain in the collective memory of Romanians as one of the biggest recent tragedies. Media played an important role in informing and forming the opinion of the public in this regard. The following study reflects upon the applicable media legislation, aiming to pave the way for future empirical studies on how the Colectiv night fire has been reflected in the media. Provisions of the New Civil Code, Author's right law 8/1996 and Code for the regulation of the audiovisual content (Decision no. 220/2011) are analyzed in connection with the right to own public image of victims, deceased and their families.

Keywords: Colectiv nightclub fire, image of the deceased, image of the victim, right to privacy in grief

Introduction

To the date² 62 persons died and 184 were injured in the nightclub fire that occurred on the 30th of October 2015 in Bucharest, Romania. The grim count qualified the Colectiv nightclub fire as the worst incident of this sort in Romania's history. Pyrotechnics associated with the band's performance ignited the polyurethane acoustic foam of the supporting pillars and ceiling that eventually collapsed. The people (approximately 400 persons) rushed towards the only exit of the club, 80 cm wide. Most victims sustained internal injuries as well as severe burns, and were intoxicated with a mix of poisonous substances of the smoke of burning acoustic foam. An emergency intervention

¹ Ph.D. Lecturer, Faculty of Political, Administrative and Communication Sciences, Babeş-Bolyai University, member of the Romanian Bar Association, jurau@fspac.ro

² Date of last revision - 23rd of November

of firefighters, police and medical crews happened later that evening, with unconscious victims resuscitated in a sealed perimeter, at the light of trucks and sometimes televisions cameras. Media shared the name of the twelve hospitals where victims were taken for treatment, as well as hand-written, unverified lists of victims' names, ages and addresses. During the following days reports and updates were shared from each hospital that admitted injured persons. The victims were identified for the public, with their love stories, successful careers, heroic last stand, broken dreams pouring through the open wounds of families and friends into the media.

The tragedy bared similarities with other nightclub fires such as the Station nightclub fire in Rhode Island, República Cromanon nightclub fire in Buenos Aires, the Wuwang Club fire in Shenzhen, China, the Lam Horse fire in Perm, Russia, and the Kiss nightclub fire in Santa Maria, Brazil. The criminal investigation is ongoing but, as in some of the previously mentioned cases, mass protests regarding corruption led to resignation of the Prime Minister Victor Ponta, together with his government, as well as the resignation of the mayor of the 4th Sector of Bucharest, where the club was operating without all the licenses, Cristian Popescu Piedone. Club's owners Alin Anastasescu, Paul Gancea, and Costin Mincu were charged with negligent homicide and negligent bodily harm and taken into custody. Subsequent investigation also led to the arrest of Cristian Nita (director), his wife and an employee of the company that provided the pyrotechnic effects. The heads of the Inspectorate for Emergency Situations Bucharest-Ilfov were suspended from office after proof of knowledge of the existence of the club and negligence to inspect surfaced in the online media due to investigative journalism work.

Romanian legal provisions regarding the memory of the deceased

1. The New Civil Code

1.1 The Provisions

The New Civil Code, entered into force on October 1st, 2011, contains specific provisions regarding the "respect which should be given to a human being" (Article 58) which includes right to dignity, own image, and right to a private life alongside with the right to physical and psychological integrity. The Code stipulates that the "identification attributes" of a person are the name, domicile, residence and marital status.

The personality rights are non-patrimonial rights, as life, dignity, honor and right to private life don't have a monetized equivalent, and are not transmissible, belonging strictly to each respective human being, and to their lawful successors in rights, in case of death.

According to articles 78 and 79 of the Code the deceased person should be granted with respect regarding his or her memory, as well as regarding the body. The memory of the deceased is protected under the same conditions as the image and reputation of a living person. Therefore, an analysis of the rights to memory of the deceased can be done only by thoroughly investigating the right to image and reputation, as conceived by the legislator in order to protect any other human being.

The right to dignity is stipulated in article 72, as the second paragraph explicitly forbids any infringement to the honor and reputation of a person, without the person's consent, or without respecting the limits of freedom of expression, as stipulated in the international treaties and conventions ratified by Romania.

The right to own image is recognized by the 73rd article of the Code, that provides that in the exercise of the right to own image, any person can explicitly forbid or stop the reproduction, in any manner, of the physical appearance and voice, and the usage of such reproductions, unless the intrusion respects the limits of freedom of expression, as stipulated by the conventions and international treaties ratified by Romania.

In the context of exercise of rights to own image and dignity of the deceased by his or her heirs, the right to a private life, stipulated under articles 71 and 74 of the New Civil Code has to be included. According to article 71, no person can be subjected to interference in its intimate, personal or family life, domicile, residence and correspondence, without consent. The same protection extends to manuscripts and other personal documents, as well as information regarding the private life. Article 74 enlists explicitly nine types of situations that could be considered infringements of the private life of a person. Among these, the recording of the voice and image of a person situated in a private space, without consent, broadcasting images of the interiors of a private space, without the consent of the person lawfully occupying it, broadcasting news, debates, investigations of reportages regarding the intimate, family or personal life, without consent, broadcasting images of a person following a treatment, including diagnostic problems, prognosis, treatment and autopsy result, without the persons' consent or, in case of

death, the consent of his or her successors and publishing correspondence, manuscripts and other personal documents, including data regarding the domicile, residence, phone numbers of a person or family members, without consent.

A presumption of consent operates, according to article 76, in the case in which the person makes available the information or the material to an entity known as operating in the field of informing the public.

As previously mentioned, the right to dignity, as well as the right to own image are not violated if the infringement is allowed under the international treaties and conventions regarding human rights that Romania has ratified. The exercise in good-faith of constitutional rights and freedoms, with respect to the international treatise cannot amount to an infringement of the rights to dignity, own image or private life.

1.2 Discussion on the applicability of the provisions to the Colectiv nightclub fire case during the evening and night of the events

For a clear theoretical approach, the discussion has been divided taking into consideration the type of media that broadcasted journalistic materials, into 2 parts, regarding online media and television.

The tragedy at Colectiv nightclub was announced by at the emergency hotline 112 at 10:32PM. Television crews arrived at the scene in less than 10 minutes³, but the police isolated a perimeter for the intervention after another hour⁴. First news in online media regarding the tragedy were published around 23:25 PM. On site, media had one hour to self-regulate and decide how to interpret and apply the provisions of the New Civil Code, alongside with other provisions regulating broadcast journalism that will be discussed further on in this article.

Online media reported through live-text. Updates of public official's declarations were reproduced in the majority of the cases. However, most problematic for the online media were both the photographs chosen to illustrate the articles, as well as a number of unverified information shared from other

³ V.M. (2015, November 1st) Cameraman aflat la clubul Colectiv: Adrian Despot era ars... a inceput sa urle la mine sa car oameni, HotNews.ro retrieved from <http://www.hotnews.ro/stiri-esential-20547882-cameraman-aflat-clubul-colectiv-adrian-despot-era-ars-inceput-urle-mine-car-oameni.htm>, 21 nov 2015

⁴ Colectiv nightclub fire. (n.d.). in *Colectiv nightclub fire* retrieved on 22nd of nov 2015 from http://en.wikipedia.org/wiki/Colectiv_nightclub_fire

online sources. Photos of the intervention itself were published, and among them, mixed, also photos of carbonized bodies of the victims. Can images of bodies burned beyond recognition fall under the provisions of the New Civil Code? Arguably not, since the physical appearance and voice that article 73 enlist under the right to own image are identification attributed. Who could exercise the right to own image and dignity on behalf of the deceased? Virtually, the heirs, but practically, taking into account the lack of identification, no one. Online media citing "Facebook.com" as a source, chose to "share" information already available to some categories of the public. Worth taking into consideration are the provisions of article 75 regarding the exceptions to what can represent an infringement of the right to privacy and human dignity. According to Romanian Constitution, article 11, the international treaties ratified by Romania are part of the internal body of laws of Romania. This includes the European Convention on Human Rights and its jurisprudence regarding article 8 (Right to respect for private and family life) and article 10 (Freedom of expression), jurisprudence that upheld to right of the public to receive accurate information on events of public interest, and protects also expressions of opinions that "might shock, offend or disturb"⁵. A possible argument for sharing the shocking photos is the necessity to accurately inform the public. To conclude this section, arguably, from the New Civil Code standpoint, the online publications that decided to thoroughly inform their public, including photos of carbonized bodies, were acting at "a limit of legality". Upon request from the families of the victims however, the publications might be obligated to remove visual content that enhances the traumatic experience. A similar reasoning applies to the case of recognizable victims that survived the tragedy and were either unconscious, at the moment the photos were taken, or under treatment or shock, case in which their consent cannot be presumed. The right to own image can be exercised either by them personally, or, in the sad event of their death, by their successors.

Television crews, among the first to arrive at the scene, pose similar problems. An ongoing emergency intervention is clearly not the moment to presume consent can be expressed, even tacitly. The impossibility to blur during a live-broadcast burdened the cameramen, as well as the producers, with the important decision of what to show the audience. Certainly the mobilization of firemen, nurses and doctors is both impressive and relevant, however the right of the victims not to be shown during resuscitation or treatment ought to be respected as part of the right to own image.

⁵ Handyside v. United Kingdom, 24 Eur. Ct. H.R. (ser. A) at 23 (1976)

1.3 Discussion on the applicability of the provisions to the Colectiv nightclub fire case on the following days. Right to own image and dignity of victims and their families

The provisions of the New Civil Code protect the personal image and right to privacy and human dignity in conjunction with the right to have a family life. As seen in other collective tragedies, the following days are used by the media in order to explore in-depth the personal stories and lives of victims and their families, in order to give them "a face" and the public a relatable dimension of their humanity. The public was therefore made part of the collective mourning process of persons with successful careers that ended abruptly⁶, star-crossed couples that death separated⁷, couples that died together⁸, couples that reunited in death days apart from one another⁹ and heroes¹⁰. The majority of these stories included identification details of the victims, alongside with a compelling picture, in most cases of unknown origin. Some of the stories are told by aggrieved parents, therefore, though their awareness of their right to refuse to discuss or share their grief with a large audience is debatable, a presumption of consent from their part operates regarding the information broadcasted, as well as the accompanying

⁶(2015, November 3rd) Monica Tanasoiu, directoarea firmei de publicitate moarta in incendiu, e plansa de toata lumea: "O fata cu un zambet luminos, cu un ras cristalin, cu o inima mare cat sa incapa toti cei dragi in ea!" in *wowbiz.ro*, retrieved from http://www.wowbiz.ro/monica-tanasoiu--directoarea-firmei-de-publicitate-moarta-in-incendiu-din-colectiv--plansa-de-toata--lumea--e2809co-fata-cu-un-zambet-luminos--cu-un-r_166022.html at 21st Nov 2015

⁷ (2015, November 1st), Cuplurile pe care moartea le-a despartit in tragedia de la Colectiv. "A intrat dupa el in club si nu s-a mai intors", *protv.ro*, retrieved from <http://stirileprotv.ro/stiri/incendiu-in-colectiv/cuplurile-pe-care-moartea-le-a-despartit-in-tragedia-de-la-colectiv-a-intrat-dupa-el-in-club-si-nu-s-a-mai-intors.html> on 21st Nov 2015

⁸ (2015, November 2nd) Se pregateau de nunta, insa au murit imbratisati, in clubul Colectiv. "El a protejat-o cu trupul lui", *protv.ro*, retrieved from <http://stirileprotv.ro/stiri/incendiu-in-colectiv/se-pregateau-de-nunta-dar-au-murit-imbratisati-in-club-colectiv-el-a-incercat-s-o-protejeze-de-flacari.html> on 21st Nov 2015

⁹ (2015, November 7), S-au reîntâlnit în CER! Ionuț Popescu, iubitul Monicăi Tănăsioiu, a murit la Spitalul de Arși, *observator.tv*, retrieved from <http://observator.tv/social/sau-reintalnit-in-cer-ionut-popescu-iubitul-monica-tanasoiu-a-murit-la-spitalul-de-arsi-165897.html> on 21st of November.

¹⁰ (2015, November 2nd), Eroii de la Colectiv, Adrian Rugină și Claudiu Petre, decorați de Klaus Iohannis, *realitatea.net*, retrieved from http://www.realitatea.net/eroii-de-la-colectiv-adrian-rugina-i-claudiu-petre-decora-i-de-iohannis_1822515.html#ixzz3wMIQQKbk on 21st of November.

photographs or footage. It is not however the case when it comes to obituaries made public on social networks by work colleagues or friends, as family has the right to decide whether or not their loved ones will be identified in an everlasting (or until explicit opposition will revert it) portray made by external parties and shared by the media with their avid audiences.

Since the unknown origin of the personal photographs of the victim seems to be the norm, the following section of the paper will analyze the provisions of the law 8/1996 regarding author's rights, taking a particular interest in portray rights.

2. Portray rights are stipulated by the provisions of Law no. 8/1996

2.1 The legal provisions

Article 7, paragraph f) enlists among the works that can be the subjected to intellectual property regulations the photographic works. Unless otherwise stipulated, the photographic work of art belongs to its author. However, according to article 86 of law, the patrimonial rights that originate from the execution of works of photography of employees or on demand are presumed to belong to the employer for a period of 3 years or the person that commissioned the work, unless otherwise stipulated in the contract. The commissioned work can be used and reproduced by the person depicted in the portray, as well as by its heirs, without the consent of the author, but while respecting his moral right to be recognized as author, and therefore, if the original of the photo included the name of the photographer, the subsequent reproductions will have to preserve the name of the photographer as well.

According to the revised form of the law, under article 88, in order to use a work of art (photography or painting) that includes a portray, consent of the person depicted is necessary, in order to respect the provisions of the New Civil Code stipulated under articles 73, 74 and 79. Even after the death of the person depicted in the portray, the owner or the lawful possessor of the portray cannot use it or reproduce it without the consent of the heirs of the deceased, for twenty years following the death. Consent isn't required if, however, the person depicted is either a model, or was paid to model for the portray. According to article 90 of the law, the person represented in the portray can exercise the right to oppose any usage or modification of the portray that might infringe upon his or her honor and reputation.

2.2 *A discussion regarding the usage of photos of the victims of the Colectiv nightclub fire*

Upon examining the type of portraits of victims of the Colectiv nightclub fire publicized by the media, we identify them as being mainly facial shots and upper-body shots of individuals, comprising both candid portraits, as well as posed and formal portraits. The following discussion aims to theoretically “pave the way” to a research question regarding the usage of these portraits.

Firstly, we can assume that the formal portraits of employees or different band members were commissioned by their employer or by themselves, case in which the photographs belong to those that commissioned the work, respectively either the employers or the successors of the victims. Therefore, in order to use formal public portraits, the consent of the lawful owner of the photos is required.

Secondly, we assume that posed non-formal portraits were the work of family and friends of the persons, and were done with the depicted persons’ consent. According to the provisions of the law, the author and owner of work in these cases continues to be the photographer. Therefore a combination of consent of the original photographer and either person represented in the portrait or successor is needed in order to lawfully use the picture, as both moral and patrimonial rights continue to belong to the author of the photograph, with some moral rights retained by the “model” as well.

A valid question regards the situation in which these photographs have been extracted from social network sites. The mere fact that the portrait has been made public by the person represented in the portrait itself amounts or not to consent (even tacit) of re-use? The answer isn’t obvious, and, as usual for the majority of the questions regarding a legal issue, “it depends”. When it comes to Facebook, for instance, the possibilities of the account holder to modify the visibility and availability of the portrait to a variety of audiences, allow for the identification of the intent, if not the extent of the re-usage consent of the account holder. A portrait available only to friends, therefore a limited audience, is the equivalent of a private photo-album, and there is a reasonable expectancy of privacy related to it. A portrait used as a public-profile photo might be available to the general public, but is still subjected to terms of usage convened between the author of the photo and portrayed person.

As a result, subject to the exact conditions in which each portrait has been taken, the photos that were not made explicitly available to the media, by their lawful owners of moral or patrimonial rights, might be withdrawn from media at the request of interested parties. Compensation for moral or patrimonial damage incurred may be awarded in court (Halcu & Lisievici, 2015).

3. The Code for the regulation of the audiovisual content (Decision no. 220/2011)

3.1 The legal provisions

The provisions of the Code are aligned with the provisions of the Romanian Constitution, as well as with the provisions of the New Civil Code. Under the third title of the decision, article 30 explicitly stipulates the obligation of the broadcasting companies to respect the fundamental human rights and liberties, the right to a private life, honor and reputation, as well as the right to own image.

The same chapter defines, through article 31, the justifiable public interest as being related to “any problems, deeds of events that influence the society or a community”, “especially regarding the prevention or proof of a criminal act, the protection of public health or safety and signaling incompetence cases that affect the public”. However, according to the following article “not any interest of the public has to be satisfied”, though “the right to own image shouldn’t prevent finding out the truth regarding matters of justifiable public interest”. Interference in the private or family life is allowed only if there is a justifiable public interest and a direct link between the justifiable public interest and the private or family life. Article 34 regulates the right to own public image, stipulating the fact that any recordings of persons situated in a private space cannot be broadcasted unless a written consent is expressed in this regard, the only exception being a situation of justifiable public interest.

Alongside with this “basic” protection, article 41 addresses through specific provisions the situation in which a person is a victim or is deceased. Footage with victims cannot be broadcasted without their consent. Footage of deceased persons cannot be broadcasted without the consent of their families. Footage of trauma is strictly forbidden unless there is a humanitarian justification and an explicit consent of the family. The provisions are reiterated in article 44, regulating the situation in which the footage has official sources, with police or judiciary as main examples.

The same chapter regulates, under article 45, the right to respect or privacy in grief. A specific emphasis is given to the situation of accidents, natural disasters or acts of extreme violence, with a clear recommendation for respect for human dignity to be shown. Information and image of persons under treatment and their health condition is allowed only with their consent or the one of their families, with the exception, however of justifiable public interest.

3.2 *The applicability of the provisions to the Colectiv nightclub fire case*

As previously mentioned, television crews were among the first to arrive at the scene, together with firefighters and, in some cases, even prior to the ambulances and the police. The legal provisions stipulate clearly that footage of victims cannot be shown without their consent, and footage of deceased persons cannot be broadcasted without the consent of their families. Questions of whether a tacit consent can be presumed if victims are aware of the presence of cameras and do not explicitly express their refusal to be filmed should remain unanswered, or should be answered in courts.

There are, however, a series of clear answers provided by law to questions related to the right to image of the deceased and the right to privacy in grief of their loved ones. The days following the nightclub fire and its intensive media coverage, the Audiovisual Council received over 100 complaints related to the manner in which broadcast media chose to present the event. Only 3 television stations were sanctioned: DIGI24 with a fine for broadcasting in a distorted manner the testimony of a witness accusing the firefighters for being unprepared with enough oxygen and RomaniaTV and Kanal D for not respecting the right to intimacy of aggrieved families. The same council transmitted, at the special request of two aggrieved families, the recommendation not to broadcast the funerals of the victims. The recommendation was taken however lightly, as even the religious television station Trinitas TV broadcasted the funerals¹¹.

Conclusions

Although there are a series of clear legal provisions regarding the right to human dignity and own image, as well as regarding the right to dignity of victims and right to intimacy in grief of families, it is our assumption that few media institutions actually respected these rights. Future research should focus on the legality of the representation of the victims and their aggrieved families, with a particular emphasis on the respect shown to their right to public image and intimacy. The problem of explicit or tacit consent is of significance and it is our opinion that focus groups of semi-structured interviews

¹¹ Bunea (2015), Postul Patriarhiei - Trinitas, pe masa CNA după ce a difuzat imagini de la înmormântarea unor tineri de la Colectiv, *paginademedia.ro*, retrieved from <http://www.paginademedia.ro/2015/12/postul-trinitas-in-vizorul-cna-dupa-ce-a-difuzat-imagini-de-la-inmormantarea-unor-tineri-de-la-colectiv> November 22nd 2015

with journalists are the best research methods to be used in this study, although it might be jeopardized by the problem of biased, desirable answers. Another important problem to be tackled is that of representation of white collar crime related to the incident, as well as the respect shown to the provisions related to presumption of innocence.

In the light of previous incidents regarding the right to intimacy in grief in suicide cases, or of victims of other disasters, the analysis of the media representation approach in this particular case is an important test of media maturity as well as of public maturity, and its results could motivate both future legislation and future litigation.

References:

- Bozesan V., Calin D., Mihaita F., Militaru I, Pana D., (2014), *Limitele libertatii de exprimare. Politicieni, jurnalisti, magistrati.*, Bucuresti: Hamangiu,
- Bunea I (2015), Postul Patriarhiei - Trinitas, pe masa CNA după ce a difuzat imagini de la înmormântarea unor tineri de la Colectiv, *paginademedi.ro*, retrieved from www.paginademedi.ro
- Halcu B., Lisievici A., (2015), *Dreptul la imagine în contextul distribuirii fotografiilor pe rețelele de socializare*, retrieved from http://dataprivacyblog.tuca.ro/dreptul-la-imagine-in-contextul-distribuirii-fotografiilor-pe-retelele-de-socializare/#_ftn9
- Handyside v. United Kingdom, 24 Eur. Ct. H.R. (ser. A) at 23 (1976)
- Ionescu B. (2013), *Dreptul la propria imagine. O perspectiva practica*, Bucuresti: Universul Juridic.
- V.M. (2015, November 1st) Cameraman aflat la clubul Colectiv: Adrian Despot era ars... a inceput sa urle la mine sa car oameni, *HotNews.ro* retrieved from www.hotnews.ro
- Monica Tanasoiu, directoarea firmei de publicitate moarta in incendiu, e plansa de toata lumea: "O fata cu un zambet luminos, cu un ras cristalin, cu o inima mare cat sa incapa toti cei dragi in ea!" (2015, November 3rd) in *wowbiz.ro*, retrieved from www.wowbiz.ro
- Cuplurile pe care moartea le-a despartit in tragedia de la Colectiv. "A intrat dupa el in club si nu s-a mai intors" (2015, November 1st), *protv.ro*, retrieved from www.protv.ro.
- Se pregateau de nunta, insa au murit imbratisati, in clubul Colectiv. "El a protejat-o cu trupul lui" (2015, November 2nd), *protv.ro*, retrieved from www.protv.ro

SÎNZIANA JURĂU

S-au reîntâlnit în CER! Ionuț Popescu, iubitul Monicăi Tănăsioiu, a murit la Spitalul de Arși, (2015, November 7), *observer.tv*, retrieved from www.observator.tv
Eroii de la Colectiv, Adrian Rugină și Claudiu Petre, decorați de Klaus Iohannis (2015, November 2nd), *realitatea.net*, retrieved from www.realitatea.net