

The Personal Duties of the Spouses Under Romanian Law

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ABSTRACT: After the marriage is concluded, the man and the woman acquire the status of spouses, which confers on each of the two family members, among other things, a series of personal rights and duties. The study presents and analyzes the main duties (obligations) of the spouses, namely: duty of respect; duty of fidelity; duty of moral support; duty to live together; joint decision making (co-decision) by the spouses; and the names of the spouses during marriage. Also, as will result from this study, according to the legal provisions, each spouse must enjoy full independence as regards his or her personal life. In this respect, each of the spouses will decide on their health, their professional training and the establishment of friendship relations with other persons.

KEY WORDS: spouses, personal duties, duty of respect, duty of fidelity, duty of mutual moral support, duty of living together

Introductory concepts

According to the provisions of Article 259(2) of the Romanian Civil Code (Law No 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, no. 511 of 24 July 2009), “man and woman have the right to marry in order to establish a family”. It follows from the analysis of this text that the primary effect of marriage is the establishment of a family.

Once married, the spouses are entitled to a series of rights and duties of a personal nature and of an economic nature throughout the marriage. The personal rights and duties of the spouses are regulated in Title II (Marriage),

Chapter V, Article 307-311 Civ.C. and the patrimonial rights and duties are regulated in Chapter VI, Article 312-372 Civ.C.. In other chapters, the Civil Code also enshrines a series of rights and obligations of the spouses, such as: the protection of children under age (Article 483-506 Civ.C. or the obligation to maintain (articles 516 to 534 Civ.C.). We must bear in mind that, as was also shown in the literature (Florian 2018, 90), “the common denominator of the effects of marriage, in both components - personal and patrimonial- is the equality of the spouses’ rights” [Article 258 (1) Civ.C.]. According to art. 48(1) of the Constitution of Romania, the spouses have equal rights and obligations in relations between them, as well as regarding the raising, education and training of children (the Constitution was adopted during the meeting of the Constituent Assembly of 21 November 1991, it was published with the Official Gazette of Romania, Part I no. 233 of 21 November 1991 and it came into force following its approval by the national referendum of 8 December 1991. It was reviewed and republished in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003).

The mutual rights and duties of the spouses

After the marriage has been concluded, the man and the woman acquire the status of spouses, which confers on each of the two family members, among other things, a series of *rights and duties of a personal nature*. For the same purpose, the Romanian courts have indicated that “*as a legal act, marriage generates legal relationships between spouses, i.e. rights and obligations, both of a personal-non-patrimonial nature and of a patrimonial nature. Thus, the spouses must bear the agreed name during the marriage; the relations between the spouses must be based on respect, love and friendship*” [Cluj District Court, Civil matters Section, Civil Decision No. 932A of 29 July 2020].

Therefore, once married, the spouses have a number of duties, such as: duty of respect [Article 309 (1), sentence I Civ.C.]; duty of fidelity [article 309 (1), second sentence, Civ.C.]; duty of moral support [article 309 (1), third sentence Civ.C.]; duty to live together [Article 309(2) Civ.C.]; decision-making by mutual agreement (co-decision) by the spouses (Article 308 Civ.C.); duty to respect the personal independence of the other spouse (Article 310 Civ.C.); name of the spouses during marriage (Article 311

Civ.C.). With a pronounced moral emphasis, these obligations of the spouses were named by the French attorney and professor, Jean Carbonnier, as the “*code of conjugal moral*” (Bénabent 2012, 116).

1. *Duty of respect*

The duty of respect is regulated in Article 309 (1), sentence I Civ.C. and requires each of the two spouses to manifest esteem and to have a good behavior with regard to the other spouse, to respect and protect the physical and mental integrity of his or her life partner. The spouses must show an appropriate affection for each other.

In this regard, in a particular case concerning the dissolution of marriage, the court held that “*for a marriage to be harmonious and stable, both parties must be involved in everything that involves family life, creating an appropriate family climate, each of the spouses having both rights and obligations for this purpose. Mutual respect due to each other’s spouses is essential for the proper functioning of the family, and when there are misunderstandings, they must be resolved in good faith*” [Dragomiresti Law Court, Civil sentence No. 564 of 29 December 2020).

In another case concerning the dissolution of the marriage, the court found that “*both parties made no efforts to remove the tension and maintain marriage relationships and good communication in order to avoid family decay. The behavior of both parties has diminished the affection between the spouses, respect between them and the spiritual community, as the plaintiff claims in the writ of summons, the parties having come to quarrel for any reason in breach of the obligation of mutual respect, fidelity and moral support, given that under the provisions of Article 309(1) Civ.C., the spouses owe each other respect, fidelity and moral support, they have the duty to live together*” (Iasi Law Court, Civil sentence No 482 of 18 May 2017).

As also shown in the specialized literature (Avram 2016, 74), the content of the duty of mutual respect includes a “*conduct based on sincerity, loyalty, discretion and tolerance*” toward each other. We must bear in mind that “*personal options or dependencies accumulated*” throughout his/her life by one of the spouses should not be hidden from his/her life partner, even if they are considered to be likely to lead to lively discussions between the two spouses. During the marriage, we must, in our view, constantly think of

the words of the French writer André Malraux who said: “A good marriage is an infinite conversation” (Nicolescu 2020, 101).

We also stress that domestic violence through verbal violence, psychological violence, physical violence, sexual violence, economic violence, social violence or spiritual violence constitute serious violations of the mutual obligation of respect between spouses.

For example, in a case, the court found that “because of the defendant’s excessive alcohol consumption, her spouse, the plaintiff is subjected by him, in the presence of the two minors, to a series of verbal violence using insults, threats, degrading or humiliating words or expressions. Also, during their relationship, she was subjected to physical violence, through repeated acts of hitting which caused her to fissures of the spine and haematomas, as well as psychological violence, by imposing his will and personal control, and by not allowing the plaintiff to leave the courtyard and constantly controlling her. (...) Following the production of the evidence, the court granted the petition made by the Prosecutor’s Office attached to Oltenita Law court to issue the protection order against the defendant. He will be obliged to keep a distance of 500 meters from the plaintiff, from the two minors, from the plaintiff’s mother, as well as from the plaintiff’s home and the school of the minors” [Calarasi District Court, Civil Section, Civil Decision No 553 of 29 September 2020].

Within the meaning of Article 3(1) of Law No 217/2003, *domestic violence* is defined as “any intentional act or inaction, except for acts of self-defense or defense, whether physical or verbal, committed by a member of the family against another member of the same family, which causes or may cause physical, mental, sexual, emotional or psychological harm or suffering, including the threat of such acts, coercion or arbitrary deprivation of liberty”.

According to Article 4(1) of Law No 217/2003 on the prevention and control of domestic violence, republished (Official Gazette of Romania, Part I, no. 948 of 15 October 2020), domestic violence occurs in the following forms:

- a) “*verbal violence* - addressing with offensive, brutal language such as the use of insults, threats, degrading or humiliating words and expressions;
- b) “*psychological violence* - imposition of will or personal control, causing distress and mental suffering in any way and by any means, verbal or other means, blackmail, demonstrative violence against objects and animals, hostile arms display, neglect, control of personal life, acts of jealousy, constraints of

any kind, the surveillance without right, the supervision of the home, the place of work or other places frequented by the victim, making telephone calls or other communication by means of distance transmission which, by the frequency, content or time of issue, create fears, as well as other actions having similar effect;

c) *physical violence* - physical injury or health by hitting, shoving, slamming, hair pulling, stinging, cutting, burning, strangling, biting, in any form and at any intensity, including masked as the result of accidents, by poisoning, intoxication and other actions having a similar effect, subjecting to exhausting physical efforts or activities with a high degree of risk to life or health and body integrity, other than those referred to in letter e);

d) *sexual violence* - sexual assault, imposing degrading acts, harassing, intimidating, manipulation, brutality for the maintenance of forced sexual relations, conjugal rape;

e) *economic violence* - prohibition of professional activity, deprivation of economic resources, including lack of primary means of existence such as food, medicines, basic necessities, intentional absconding of the person's property, prohibition of the right to possess, use and dispose of common property, unfair control of common goods and resources, refusal to support the family, imposition of hard and harmful work to the detriment of health, including a minor family member, and other actions having similar effect;

f) *social violence* - imposing the isolation of a person from the family, from the community and from friends, prohibition of attendance of an educational establishment or place of employment, prohibition/limitation of work, imposition of isolation, including in the common dwelling, deprivation of access to housing, dispossession of identity documents, intentional deprivation of access to information and other actions having similar effect;

g) *spiritual violence* - underestimating or diminishing the importance of meeting the morale-spiritual needs by prohibiting, limiting, ridiculing, penalizing the aspirations of family members, of the access to cultural, ethnic, linguistic or religious values, prohibiting the right to speak in their mother tongue and to teach children to speak in their mother tongue, requiring adherence to unacceptable faith and religious beliefs and practices, as well as other actions having similar or similar repercussions;

h) *cyber violence* - online harassment, online hate messages based on gender, online stalking, online threats, non-consensual publication of information and intimate graphical content, illegal access to interception of private communications and data and any other form of misuse of information and computer communications technology, smart mobile phones or other similar devices that use telecommunications or can connect to the Internet and send and use social or e-mail media in order to shame, humble, frighten, threaten, silence the victim”.

For example, in the *Bălșan v. Romania*, in which the plaintiff “*claimed that she had been subject to violence by her husband and the state authorities did not do much to stop these acts of violence being repeated*”, by Decision of 23 May 2017, ECHR found that “*the continued acts of violence committed by the husband caused him physical and mental trauma which can be considered inhuman and degrading treatment on the grounds of Article 3 of the ECHR*” [see ECHR, Decision of 23 May 2017, given in *Balsan v Romania* case].

Failure to respect each other is a reason for divorce, and family relationships are thus seriously affected, and if they take serious forms, they may be a contravention or a criminal offense, as appropriate. For example, *the offense of family abandonment* provided for and punished by Article 378 (1) of the Penal Code (Law No 286/2009 on the Penal Code, published in the Official Gazette of Romania, Part I, No 510 of 24 July 2009, with subsequent amendments and supplements) which states that “*the committing, by the person having the legal obligation of maintenance, in relation to the person entitled to the maintenance, of one of the following deeds: a) leaving, putting away or leaving without aid, exposing him/her to physical or moral suffering; b) failure, in bad faith, to the maintenance obligation laid down by law; c) failure to pay a court-determined maintenance pension in bad faith shall be punishable by 6 months to 3 years in prison or a fine*”.

2. *Duty of fidelity*

The duty of fidelity is registered in Article 309(1), second sentence, Civ.C. and is related to the “*intimate sphere of conjugal life*” (Florian 2018, 91). In other words, the duty of fidelity mainly consists in not having amorous/sexual relations outside marriage.

For example, in a case involving the dissolution of marriage, the court held that *"the duty of fidelity presupposes both an active side, which requires the spouses to maintain intimate relations together, and a passive side, which prohibits them from intimate relations outside their marriage"* [Neamt District Court, Civil Decision No 385/2015]. In another case, the court held that *"although the defendant is an unsuccessful party, he cannot be obliged to bear the sums advanced by the plaintiff in order to settle the case as long as, according to the parties' claims, the minor is the result of an extra-conjugal relationship of the plaintiff, which thus violated the duty of fidelity laid down in Article 309 Civ. C"* [Galați Law Court, Civil sentence no 7183 of 28 November 2019].

In an interesting case, the plaintiff has requested in contradiction with the defendant, her former husband, that in the decision which is to be delivered, she be ordered: *"the obligation of the defendant to pay moral damages in her favor of EUR 100,000 for the moral damage suffered as a result of the fact that during the last three years of their marriage she was deprived of conjugal sexual relations on the part of her former husband, was cheated and emotionally abused, all these causing an emotional trauma, for which she is still making therapy. (...) The court held that the former spouses divorced at the notary, so there were no debates on their guilt in the dissolution of the marriage, and the plaintiff claims compensations for the actions/inactions of the former spouse during the marriage. In fact, the plaintiff invoked the lack of sexual relations, the fact that she was cheated and considered her mental integrity to be impaired and her dignity was violated. It is to be noted that, according to the plaintiff's claims, it was the former husband who wanted to divorce, so although the claimant invoked certain dissatisfactions during the marriage, she did not have the initiative of the marriage being broken, this denoting an attitude of the plaintiff in contradiction with the accounts in the case that would have caused her the described suffering. (...) Following the production of evidence, the court held that there was no unlawful act"* [Bihor District Court, Section I Civil matters, Civil sentence No 147/C of 25 June 2021].

Finally, in a case concerning the dissolution of the marriage, *"the court held that the plaintiff had infringed his obligation of loyalty by maintaining extra-conjugal relations with various women during the marriage, and the fact that he did not spare the defendant so that because of the physical effort she gave birth to a child who later died and the other pregnancies were not carried to the end"* [Suceava Court of Appeal, Civil Decision no. 2245 of 23 October 2012].

In a not too distant regulation, the deed of the married person having sexual relations outside marriage was *the offense of adultery* and was sanctioned by prison from one month to six months or by a fine (the offense of adultery was repealed by Law no. 278/2006 for amending and supplementing the Penal Code, as well as for amending and supplementing other laws, published in the Romanian Official Gazette, Part I, No. 601 of July 12, 2006). At present, the breach of duty of fidelity is a valid reason for divorce from the sole fault of the unfaithful spouse.

3. *Duty of mutual moral support*

According to the provisions of Article 309(1), third sentence, Civ.C., *the spouses owe each other moral support*. In other words, support must be mutual.

Moral assistance between spouses is also regulated in Article 1(1) of Law No 217/2003 to prevent and fight against domestic violence, republished, where *solidarity between spouses and other family members* is enshrined (according to Article 1(1) of Law No 217/2003, republished, “Family protection and support, the development and strengthening of family solidarity, based on friendship, moral and material affection and assistance of family members, is an objective of national interest”).

As underlined in the specialized literature (Bodoasca 2015, 93), the support being moral in nature, “*it is translated into attitudes of encouragement, support, acceptance or tolerance of one spouse toward the other*”.

In one case, the court considered that “*the mutual duty of moral support is to grant the other spouse affection, devotion and assistance at all times of the common life, but especially in the difficult ones*” (Neamt District Court, Civil Decision No 385/2015, cit.work). Thus, for example, in a case where it has been found that art. 309(1) of the Civil Code is also incident *inter alia*, the court noticed that “*the parties have been married as of 16.07.1969, and that currently, even though they share the same residence, they are financially separated, an aspect confirmed by both parties. Following the production of evidence, the application of the provisions of Articles 309 Civil C. and Art. 516, 524 and 527 Civ.C. shall be established in the case. Under these legal provisions, the spouses owe each other, moral support inclusively, and there is also a legal obligation to maintain one another, which is governed by Article 516(1) Civ.C.*” [Focșani law court, Civil sentence no. 5737 of 8 November 2012].

Failure to provide mutual moral support is a strong reason the dissolution of marriage, pronounced against the guilty spouse.

4. *Duty to live together*

According to Article 309 (2), sentence I Civ.C., the spouses have the duty to live together (to cohabit). For *grounded reasons*, the spouses may decide to reside separately [Article 309 (2), second sentence, Civ.C.].

From the interpretation of the provisions of Article 309 (2) Civ. C., we can say that they impose on spouses the duty to live together as a result of marriage, of particular importance being the “*family home*”, because it allows cohabitation and the best possible conduct of family life. We appreciate that by regulating the institution of family housing and its legal regime, the legislator wanted to protect a number of principles, such as: the principle of the protection of marriage and the family, the principle of the best interests of the child, and at the same time ensure a balance in terms of the powers of the two spouses, censor and even prevent the abusive acts of one of the two partners, so that all contribute to the achievement of family comfort.

In a particular case, the duty to live together during the marriage “*refers to the fact that the common dwelling is only one aspect of the common life which marriage involves, which implicates many other aspects, such as joint management, sharing of living together, raising children, etc. Without this common life, family relations have no purpose and the purpose of the marriage is not achieved*” (Neamt District Court, Civil Decision No 385/2015, *cit. work*).

In another case, the court ruled that “*given that the parties had divorced, between them the duty to live together ceased and thus the defendant’s right to reside in the apartment building the exclusive property of the plaintiff ceased. In such circumstances, considering that the defendant does not currently hold any title under which he may reside in the apartment in question, the court granting the action will order his removal from apartment no 6 situated in the municipality of Brasov*” [Brasov Law Court, Civil Section, Civil Decision No 8878 of 24 November 2020).

As it follows from Article 309 (2), second sentence Civ.C., in certain objective circumstances, with the agreement of both spouses, they *may not reside together*. For example, one of the spouses must practice their profession in a different locality than the one in which the other spouse lives, study by

one of the spouses in another locality, stay in a medical unit for a longer period of time, lack of space for cohabitating, etc. (Avram 2016, 744-746).

In a case concerning the dissolution of marriage, "the court found that the relations between the spouses were not characterized by the specific characteristics of a family relationship given that, after marriage, the defendant continued to live with his co-nationals in a refugee center and the plaintiff lived together with her family in a rented apartment, the spouses meeting sporadically, more in the workplace" [Târgu Bujor Law Court, Civil sentence no. 597 of 17 October 2017].

In case of disagreement, the spouses may use the services of a mediator under the terms of Law No 192/2006 on mediation and the organization of the profession of mediator (published in the Romanian Official Gazette, Part I, no. 441 of 22 May 2006), normative document containing a series of special provisions on mediation of family conflicts. Failure to respect the duty to live together, although this duty is not of the essence of marriage, may constitute a *grounded reason* for the marriage dissolution. Furthermore, Article 373 c) Civ. C. provides that the *de facto* separation of spouses for a period of more than two years constitutes a reason for divorce.

We consider it to be an exception, of a temporary nature, from the duty to live together the establishment of a protective order against one of the spouses, an order which can be established under the terms of Law No 217/2003 to prevent and combat domestic violence, republished (Republished in Off. G. No 948 of 15 October 2020). Thus, by Law no. 217/2003, republished, the legislator regulated the protection and support of the family, development and consolidation of family solidarity, based on friendship, affection and moral and material assistance of the family members, as an objective of national interest. It should also be noted that the law establishes two categories of protective orders:

a) *one ordered by police officers*, named also a provisional one, which shall, in accordance with article 28 of the law, be issued when it is established that there is an imminent risk that a person's life, physical integrity or liberty may be endangered by an act of domestic violence, with the aim of mitigating that risk. The duration of this protective order shall be five days, during which the policeman may provide one or more protective measures capable of contributing to the mitigation of the imminent risk found, of the following obligations or prohibitions, respectively:

- the temporary evacuation of the aggressor from the common dwelling, whether he or she holds the ownership right;

- reintegration of the victim and, where appropriate, of children into the common dwelling;

- obliging the aggressor to maintain a specified minimum distance from the victim, from the members of his/her family or from the residence, place of work or educational establishment of the protected person;

- obliging the aggressor to wear an electronic surveillance system at all times;

- obliging the aggressor to hand over the weapons held to the police.

b) *another one ordered by court* notified by a person whose life, physical or mental integrity or freedom is endangered by an act of violence on the part of a family member. Such a protective order may be established for a period not exceeding six months. In other words, the order can be ordered both on days (e.g. 15 days, 30 days) and on months (e.g. one month, two months). If the decision does not state the duration of the measures ordered, they shall take effect for a period of six months from the date of issue of the order. One or more of the following measures may be ordered for the duration of the protective order - obligations or prohibitions:

- the temporary eviction of the aggressor from the family home, whether he or she holds the ownership right;

- reintegration of the victim and, where appropriate, of children, into the family home;

- limitation of the right to use of the aggressor only to a part of the common dwelling where it can be shared so that the aggressor does not come into contact with the victim;

- housing/placement of the victim with the consent of the victim and, where appropriate, of children, in a welfare center;

- obliging the aggressor to maintain a specified minimum distance from the victim, from the members of his/her family or from the residence, place of work or educational establishment of the protected person;

- prohibition of the aggressor from traveling to certain localities or specific areas which the protected person regularly visits;

- obliging the aggressor to wear an electronic surveillance system at all times;

- prohibition of any contact, including telephone, by mail or any other means, with the victim;
- obliging the aggressor to hand over the weapons held to the police;
- custody of minor children or establishment of their residence.

For example, in a case in which the plaintiff applied for a protective order against her husband, “*the court found that on 23.05.2021 the defendant physically assaulted the plaintiff, causing her excoriations and cut wounds, as follows from the statement given as injured party in conjunction with the photographic plates. (...). At the same time, the court found that the defendant was causing conflicts with his wife, accusing her of infidelity and showing a compulsive-obsessive behavior, reaching to controlling her phone, to seize her personal property, all these actions culminating in acts of physical violence. According to the documents in the file, the plaintiff filed a criminal complaint against the offense of domestic violence, file which is under investigation. On the basis of the evidence produced, the court issued a protective order for a duration of 6 months, consisting of the obligation on the defendant to evacuate the dwelling and to keep a minimum distance of 200 meters from the plaintiff*” (LawCourt 5 Bucharest, 2nd Civil Division, Civil sentence No 4673 of 26 May 2021).

5. Conjugal duty

This duty of the spouses, not expressly covered by either the Civil Code or the Family Code currently repealed (the Family Code was in force until 30 September 2011, the date from which it was repealed by Law No 71/2011 for the implementation of Law No 287/2009 on the Civil Code), covers *intimate relations between the spouses*. The conjugal duty of the spouses exists regardless of whether they live together or not.

The performance of conjugal duty is also called *the consumption of marriage*. The groundless refusal of one of the spouses to perform their conjugal duties or, in other words, the final alteration of their intimate, spiritual connection may constitute *a grounded reason* for divorce.

We must bear in mind that if one of the spouses fails to perform the conjugal duty, the other spouse has no right to force him/her by compulsion to sexual relations, because he//she would commit the offense of rape provided for and punished by Article 218 (1) Penal Code. In other words, in a

marriage, like all other intimate aspects, *sexual relations must also be consensual* [Conjugal rape has been recognized in many European countries. Thus, for example, England has regulated it since 1991, Germany since 1997, Austria since 1989 or Sweden since 1965 (Chirita 2002, 154-159, *apud* Moloman and Ureche 2016, 172).

In our opinion, sexual relations in a marriage represent a way in which the two spouses love each other and express their love and care for each other, their children, their family. But it is good to know that *neither the wives belong to the husbands nor the husbands belong to the wives* [for development, see an interesting material made by Cristina Cucos on 14 September 2019, as part of the “Media for Youth inclusion” project, supported by the representative of IM Swedish Development Partner].

6. *Duty to comply with the co-decision rule*

According to Article 308 Civ.C. with the exception of the “*Making of decisions by the spouses*”, the spouses decide by common agreement on marriage-related things. The law gives details on this duty exclusively to marriage, to family relations, to family life. This co-decision rule should not be regarded as restricting the independence of spouses with regard to their personal, social or professional life.

In a case, the court ruled that “*the spouses must understand each other as regards the establishment or change of their house, the conclusion or modification of a matrimonial property agreement, the bearing of the costs of the marriage, the choice of the common name of the spouses and children, the upbringing and education of the children, the liquidation of the matrimonial property regime, etc.*” (Neamt District Court, Civil Decision No 385/2015, *cited work*).

This *co-decision rule* is a consequence of the principle of equal rights of the spouses governed by Article 258(1) Civ.C. and enshrined in Article 48(1) of the Romanian Constitution, according to which the family is based on the equality of the spouses.

We appreciate that compromise also plays an important role in compliance with the co-decision rule, given that the views of spouses may differ as regards family life. However, this compromise must be constructive, strengthen the family, the arguments put forward by the spouses to be strong, convincing, pertinent and decisive in order to convince the other spouse that

his/her point of view is the most beneficial to the family, so at the end of the argument, the decision to be taken by the spouses to be common.

7. Duty to respect the personal independence of the other spouse

The duty to respect the personal independence of the other spouse is enshrined in Article 310 Civ.C. according to which a spouse has no right to *ensor correspondence, social relations or the choice of the profession* of the other spouse.

In a case concerning illegal access to a computer system, the court found that *“between September 2011 and January 2016, defendant C.R.C., knowing the unique access password configured by his wife for two email accounts, but also for the social network Facebook account with user name (...), he has accessed several times, without right, the e-mail accounts of the injured person C.I.E. (his wife), and between 24.12.2014 and 08.02.2015 he accessed the account of the injured person (his wife) owned on the www domain(...).ro served by the internet banking application, account corresponding to the bank card xxx, issued by the bank on the name of the injured person (his wife). At the same time, the court established that the deeds of the defendant C.R.C. to access the electronic mail accounts of the injured person (his wife) meet the constituent elements of the offense of illegal access to a computer system, stipulated in the art. 360 paragraph (1) and (2) Criminal Code and the fact of opening and reading, by repeated material acts, 24 electronic mail messages received and sent from the e-mail account (...) of the same injured person (his wife), meets the constituent elements of the infringement of the secrecy of correspondence provided for in article 302 (1) Criminal Code, with the enforcement of the Article 35 (1) Criminal Code”* [Iași District court, Criminal section, Criminal sentence no.168 of 2 February 2017].

In another case, the court held that *“the deed of the defendant C.A., which between December 2010 and January 2011 used computer software by which she intercepted without right the telephone calls and communications made by her husband C.I., by telephone, meets, objectively and subjectively, the constituent elements of the offense of unlawful interception of a transmission of computer data in continuous form, as referred to in article 361(1) Criminal Code, with the enforcement of Article 35 (1) Criminal Code”* [Galati Court of Appeal, Criminal and juvenile cases Section, Criminal Decision No. 746A of 21 June 2017].

Although, by marriage, the independence of men and women is limited in a way, the provisions of the art. 310 Civ.C. acknowledge the *professional independence and the right to privacy* for the spouses. The spouses can *freely dispose of their time, choose and determine the social relationships* they wish, *choose freely the profession* they want to pursue [according to Article 327, sentence I Civ.C., “Each spouse is free to pursue a profession (...)”. If practicing the profession would be incompatible with family life and the spouses fail to reach an agreement, the specialized literature considers that the only legal solution is divorce].

Last but not least, it should be noted that spouses have the right to *keep their correspondence secret*, provided that all this *does not affect or harm the obligations arising from the marriage*. This personal independence of the spouses must be seen in the entirety of the mutual duties of the spouses derived from the marriage. The personal independence of the spouses must not affect family life, nor must they conflict with the other duties which the spouses have toward each other.

If practicing the profession was incompatible with family life and the spouses fail to reach agreement, the literature considers that the only legal solution is the dissolution of marriage.

Conclusions

As our study shows, the personal duties (obligations) imposed on spouses cannot restrict the affirmation of their personality. The joint living of the two spouses requires many decisions to be made concerning both the family household and the upbringing and education of children. As stipulated in Article 308 of the Romanian Civil Code, the spouses must decide in common as far as marriage is concerned.

However, in accordance with the legal provisions, each of the spouses enjoys full independence as regards their personal life. In this respect, each of the spouses will decide on their health, their professional training and the establishment of friendship relations with other persons.

Moreover, as the author has already mentioned, we must bear in mind that the personal independence of the spouses must not affect family life, must not conflict with the other duties which the spouses have toward each other.

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