PERSONALITY RIGHTS IN THE ROMAN CIVIL CODE

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Abstract

The Constitution of 1991 legislated one fundamental value, legally protected at international and national levels: human personality. The Constitution adopted in 1991 under national referendum solemnly provided that Romania was a democratic and social state governed by the rule of law, where, among other things, the "free development of human personality" was a supreme value, guaranteed by the state. The constitutional statement had a double significance: it provided Romanian citizens with a broad sphere of action to develop their personalities, taken in a complex sense: from cultural, professional, linguistic aspects down to social-economic, political, religious, etc. ones. At the same time, it imposed on the country's governing system – Parliament, Government, Head of State, legal courts, public administration authorities – the obligation to provide the structural and functional framework for a genuine development of each individual's personality. Under the Act for the Revision of the Constitution, adopted in 2003, human personality has been re-constitutionalized being referred to the spirit of the Romanian people's democratic traditions and of the Revolution of 1989. While constitutionally reconfiguring human personality, the derived Constituent Assembly has linked the juridical contents of human personality to the Romanian constitutional traditions. It is not a mere institutional undertaking, but also, and primarily so, a theoretical-applicative one, if we are to also take into account the fact that the new Civil Code has attached particular importance to the personality-related rights, seen as civil rights. The new constitutional statement, to be found under article 1 paragraph (3) of the Fundamental Act, has acquired the value of a constitutional principle, legitimated by a long constitutional tradition. This was also the intention of the constituent law-maker of 1991, reconfirmed in 2003. In consonance with that, the Headnote of the new Civil Code stipulates that the purpose of provisions laid down in Book I ("On persons") is to acknowledge, protect and defend, equally and effectively, the civil rights and freedoms of natural persons, in consonance with public order and public morals.

In this paper, the author attempts to analyze, from a theoretical point of view, the constitutional significance of the free development of human personality.

Keywords: *human personality, citizens' rights and freedoms, personality-related rights, subjective rights, constitution*

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The history of human rights is intrinsically connected with the history of inter-human behaviour, since it is a very constitutive element of the latter[1].

However, whereas the genesis of human rights went as far back as the dawns of antiquity, continued through the Middle Ages and developed under the important contribution of the 17th century, it was only in the years following the Second World War that they were given their definite shape. It was only then that human rights issues attained the level of a political, social and juridical phenomenon, impact on all fields of human existence.[2]

Nevertheless, in last century's final years and our century's first years, we have witnessed a redefinition of the juridical system as a whole in terms of the paradigm of human rights and fundamental freedoms.[3] It turned into a point of observation of the evolution of this human rights ideology and, of course, of modern individualism, the law being defined as an instrument for the achievement of human rights and fundamental freedoms.[4] On the other hand, the new codes adopted in recent years by various European countries are based on these very rights, which makes some authors remark an "inflation of individual personality rights acknowledged by the civil law", while the criminal codes have become instruments "for the protection" of human rights and fundamental freedoms under the influence of the European Court of Human Rights.[5]

The civil law and the criminal law have become familiar with the notion of 'personality rights'[6], which has a disciplinary nature dominated by the civil law, which, in fact, also explains its limits.[7]

Therefore, the notion of 'personality right' is purely doctrinarian; it is a construct of private law advocates meant to justify the subjective prerogatives which, starting in the mid 19th century, have been gradually acknowledged to individuals in their mutual relationship. Their assertion was related to the concern for protecting the individual against the development of the media and then, in late 20th century and early 21st century, against the development of the medical science and biotechnologies. Thus, alongside patrimonial rights, a person, by its mere birth, possesses rights related to personality, such as one's body, image, name, privacy, etc., which shall be respected by other people.[8] Such rights are to be found both in the Constitution and in the Civil and Criminal Codes, alongside public freedoms.

Within the doctrine, the idea emerged according to which the personality right concept is closely related to the need for conceptualization of the civil law branch, which is not meant to be an instrument for understanding human rights and

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[1] See Irina Moroianu Zlătescu, *A Culture of Peace, Democracy and Tolerance in Romania*, Institutul Român pentru Drepturile Omului şi Comisia Naţională a României pentru UNESCO, Bucharest, 2002, p. 5.

[2] See Karel Vasak*, Les dimensions internationales des droits de l'homme*, UNESCO, Paris, 1978, p. x.

[3] See X. Dupré de Boulois, *Droits et libertés fondamentaux*, P.U.F. Paris, 2010, p. 15.

[4] Ibidem.

[5] Ibidem.

[6] Ibidem, p. 35.

[7] Ibidem, p. 38.

[8] Ibidem, p. 38.

fundamental freedoms issues in the juridical system as a whole[9], since by definition it excludes political rights and debt rights, which mainly refer to the relationship between individuals and public institutions.[10]

As regards the possibility for a holder of a subjective right to achieve his/her right through justice, it is worth noticing that this category of personality rights coincides in private law with the initiation of the civil proceedings so that the citizen may have guaranteed the protection of those rights.

Romania's adherence to the Council of Europe in 1993 and the European Union in 2007 made European legal system, as an integrating element, become compulsory and preeminent, and be considered a priority as compared to the domestic legislation that has to be consonant with the international legal system. This is the meaning to be attached to arts. 11 and 20 in the Constitution of 1991, revised in 2003[11], while it also entails the need for revising the fundamental law in 2014.

A general historical survey shows that the Romanian juridical system, which belongs to the Roman-Germanic system[12], includes codified or non-codified normative acts, most of the codified ones being two centuries old.[13] Their application imposed an ample interpretation process, both because of the historical and the socio-economic elements, and because of the requirements of integrating the European law and, obviously, the European jurisprudence. In recent years, we have witnessed a trend towards the unification of the legislation, its harmonization with the sources of the European law, the treaties where our country is a party and, of course, the jurisprudence of the European Court of Human Rights and the European Court of Justice, while not neglecting the important role to be played by the national element of continuity in the legislation harmonization process. This phenomenon is to be noticed, for instance, in the case of the German Civil Code, the French one, the Italian one, if we are to only refer to states belonging to the European Union, but is to be found in the Swiss Code as well. Obviously, all examples refer to states belonging to the Roman-Germanic law system.

Romania also faced the need to elaborate and adopt a new Civil Code[14], a new Criminal Code[15], a new Civil Procedure Code[16] and a new Criminal Procedure Code[17], meant to include the values of the European juridical culture while also respecting the national traditions, and play an important role in the process of modernizing the Romanian legislation in consonance with the trend towards the universality of law.

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[9] Ibidem, p. 38.

[10] Ibidem.

[11] See Irina Moroianu Zlătescu, *Constitutional Law in Romania*, Kluwer Law International Alphen aan den Rojn, 2013, p. 23; Gheorghe Iancu, *Proceduri constituționale. Drept procesual constituțional*, Monitorul Oficial, Bucharest, 2010, p. 38; C. Ionescu, *Tratat de drept constituțional contemporan*, All Beck, Bucharest, 2003, p. 546 *et seq*.

[12] See R David, *Traité élémentaire de droit civil comparé*, Editions des et calendes, Neuchetel, 1971, p. 43; V. D. Zlătescu, *Mari sisteme de drept contemporan*, Pro Universitaria, 2012.

[13] See Irina Moroianu Zlătescu, *Codification in the fields of human rights*.

[14] In force since 1 October 2011.

[15] In force since 1 February 2014.

[16] In force since 15 February 2013.

[17] In force since 1 February 2014.

The coming into force of the Codes raises, of course, the question of a training of all those involved in the administration of justice corresponding to the present day requirements of society.[18]

It is worth mentioning that the protection and the promotion of the human rights and fundamental freedoms is an essential dimension of the new Codes, fully harmonized with the international regulations, in an attempt to have a unitary legal framework, based on the ascending evolution of the European law and the incident international norms.[19]

Considering, for example, the Romanian Civil Code, we can see that in Book I, Tile II, on the "natural person", devotes the second chapter to the "Respect for the human being and its inherent rights", while in Section I, which includes the common provisions, it refers as far as we know for the first time 'expressly' in the Romanian civil legislation to "personality rights" in art. 58. After showing in paragraph 1 of art. 58 that "any person shall be entitled to the right to life, health, physical and mental integrity, dignity, one's own image, respect of privacy", the text continues with statement that this category also includes "other such rights acknowledged by the law", while paragraph 2 of art. 58 illustrates these rights, as seen in the doctrine[20]. The Civil Code text makes use of both the syntagm "personality rights" and that of "non-patrimonial rights", giving the impression that the latter has a broader sense for also including the intellectual creation rights, which belong only to one category, but also the rights representing the attributes identifying the person. In reality, it is one and the same content, as art. 252 in Title Vin the Civil Code on "Defending non-patrimonial rights" literally refers to the "Protection of human personality" and enumerates the rights falling into this category.

These rights, inherent to the capacity as human person, primordial and fundamental to man, are qualified as subjective rights. The personality to which these rights refer goes beyond the juridical personality, in the sense of subject of law, for it integrates the human person together with its social component in its logical and psychological dimension as well.

Freedoms, genuine faculties or virtualities, consecrated by the Civil Code, have multiple features common with personality rights and for this reason they can not be separated, being integrated in the category of personality rights.[21]

The doctrine asserts that to the extent freedoms are consecrated in the domestic law or in the international conventions, they belong to personality rights.

The legal protection of personality is a continually evolving noting, associated to the emergence of new rights and freedoms that are to be protected. This is precisely the reason why the new Civil Code did not make use in its art. 58 of a limitative

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[18] See Irina Moroianu Zlătescu, Monna Lisa Belu Magdo, *Rolul jurisprudenței în aplicarea unitară a legii*, in „Drepturile Omului" nr. 3/2012, p. 30 *et seq*..

[19] Also see Irina Moroianu Zlătescu, *Constitutional Law in Romania*, Kluwer, London, 2013.

[20] See Gheorghe Buta, *Apărarea drepturilor nepatrimoniale în noul Cod civil. Studii și comentarii*, vol. I, Universul Juridic, Bucharest, 2012, p. 561.

[21] C. Bârsan. *Protecția libertății de gândire, de conștiință și de religie în Convenția Europeană a Drepturilor Omului*, în „*In honorem* Corneliu Bârsan", L. Pop, Rosetti, pp. 442-462.

enumeration of the prerogatives attached to the human person, providing instead that there may also be "other rights acknowledged by the law".

In terms of the question whether part of personality rights could be lent to legal persons as well, doctrinarian opinions were not convergent. Undoubtedly, an analogy between the attributes of the legal person and personality rights is not to be excluded, but it is limited to those qualities that not strictly proper to the human condition, such as the name, the social reputation or the industrial secret.[22]

French, Italian, Spanish and Swiss courts acknowledged, in their jurisprudences, the right of the legal person to protection in terms of its honour, privacy, name – rights to be also found in relation to the natural persons.

This conception was assimilated by the new Romanian Civil Code which, in its art. 257, states that the provisions of Title V on "Defending the non-patrimonial rights" shall be applied, by virtue of similarity, to the non-patrimonial rights of legal persons as well.

The doctrine has characterized personality rights as being extra-patrimonial, preferring this term to that of "non-patrimonial", adopted by the Civil Code. The chosen term of "extra-patrimonial" confers accuracy to the characterization of personality rights for it points out not only their lack of economic content but also their exclusion from the person's patrimony.

Aspects pertaining to the 'patrimonialization' of these rights such as exploitation of image, of privacy, refer to the manifestation of personality rights in the area of public law, not in the area of civil law, regarded as human rights, opposable *erga omnes*.

Rights related to existence and integrity, the attributes identifying the natural and the legal person, the rights related to the intellectual creation, etc., are not assets, are not liable to a pecuniary evaluation, and so they can not be included in the patrimony.

As a result, infringements upon these rights entail a moral prejudice, even though their remedy may also have a patrimonial dimension. This relationship between the moral nature of the prejudice and the patrimonial nature of the remedy generated a reconsideration of criteria for the patrimonial evaluation of the remedy, in terms of the damaged value, of the subjective and social resonance of the damage.

The remedy of the prejudice that has no pecuniary correspondent implies granting a satisfaction that counterbalances the effect of the damage with a tendency to remove it. The jurisprudence of the European Court of Human Rights in the field does not operate with pre-established evaluation criteria, but judges in equity, proceeding to a subjective evaluation of the particular circumstances of the case and the bad consequences in the area of frustration that any individual may experience in similar situations, so that the amount of money ruled by the court as moral redress might be enough to ensure a remedy of non-patrimonial values.

Given the extra-patrimonial nature of personality rights, which refer to the human person in its tridimensional wholeness – biological, psychological and social –

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[22] Ovidiu Ungureanu si Cornelia Muntean, *Drept civil. Persoanele - în reglementarea noului Cod civil*, Hamangiu, 2013, pp. 48-49.

these rights are *intransmissible* (art. 58, paragraph 2, Civil Code), meaning that they cease on the person's death, *inalienable*, meaning that they can not be the subject of a convention, transfer, or renunciation, *imperceptible*, meaning that, since not economic assets, they can not be tracked down by the person's creditors, *imprescriptible* extinctively and acquisitively, and *opposable* erga omnes.

The personality rights laid down by the new Civil Code fall into rights referring to the human body (right to life, health, physical and mental integrity) and rights protecting the moral and the social values (right to dignity, image, honour, privacy). Part of these rights, which in a broader sense include individual freedoms as well, have also a public dimension, for they are exercised not only in the relationships between private persons, but also in the relationship between the individual and the public authorities and protect the indispensable human freedoms when these are violated by the State.

The respect owed to human dignity as an absolute right, gave impetus to the evolution and the consecration of personality rights; it was the starting point of this set of rights that are continuously extended and redefined.

The respect owed to the human person includes the respect owed to the human body with the essential component of the person – life. The inanimate human body is not a person and for this particular reason the levels of protection of the two constitutive elements are different.

Even though the domestic and the international legal texts, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on the Defence of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, put life to value in the form of a right, the texts do not give the legal definition of the right to life, a fact that inevitably raises the question of establishing the moment that marks the existence of the person.

The restrictive conception, adopted in 1979 by the European Human Rights Commission, places the emergence of the human person at the moment of birth, while other opinions, based on the maximum "infans conceptus", also found at legal level, in the guarantee of the respect owed to the legal person ever since its debut, places the emergence of the person at the moment of fecundation.

The middle solution embraced at present adopts the principle of respecting the human being since the moment when its life begins, though making a distinction between human embryos, qualified as human beings, and fetuses, qualified as human persons.

The respect owed to the embryo and the fetus refers only to the rules generating the personality right, since the human substratum of the being exists since the moment of conception not that of birth – "it is not the birth that entails the human nature".[23]

As supreme attribute of the human being, the right to life, as a prerequisite for the exercise of the other rights, is protected by the national legislations and the international conventions.

[23] O. Ungureanu, C. Munteanu. *op. cit.,* p. 40.

Thus, the International Covenant on Civil and Political Rights, ratified by Romania under Decree No. 212/1974, consecrates expressis verbis the human persons inherent right to life. This right shall be protected by the law an no one can be arbitrarily deprived of his/her life.

The legal protection of the right to life is also to be found in the position adopted with regard to eugenics, abortion, the way organ transplants is legislated and the position toward euthanasia.

Art. 62 in the Civil Code prohibits the eugenic practices of hereditary biology that jeopardize the human species or tend to organize human selection.

The Civil Code, reproduces in its art. 63 the provisions of the Convention of Oviedo on human rights and biomedicine, which prohibits intervention upon the human genome beyond such purposes as prevention, therapy and diagnosis that do not alter the genome of descendants. Also, the texts of the Convention and those of the Civil Code prohibit the use of techniques of medical intervention for human reproduction, aiming to select the gender of the future child, except for the avoidance of a serious hereditary disease related to gender.

The additional Protocol of Paris of 12 January 1998 develops the principles of the Convention adopted in Oviedo and prohibits human reproductive cloning, attempting to create a human being identical to another human being, alive or dead, bearing the same genetic information, as well as the creation of human embryos for research purposes.

Cloning human beings jeopardizes human dignity, human identity as the unique entity with its own genetic constitution and natural, random recombination of human genes.

The human body as biological constitutive element of personality is inviolable (art. 64, paragraph 1, Civil Code). Art. 3 in the Charter of Fundamental Rights of the European Union, taken over in paragraph of art. 64 of the Civil Code, states that everyone has the right to respect for his or her physical and mental integrity and no one can infringe upon the integrity of the human being except for the cases and under the circumstances expressly and restrictively provided by the law.

Inviolability, as a private law principle, means that an individual can not be constrained to be subject to injuries to his/her body, not even in situations justified by the rightful interest of another individual.[24]

In public law, bodily constraints become legal in nature whenever it comes to the State's interest, tradition or religious precepts, legally acknowledged and given the status of general interest.

Art. 61 paragraph 2 in the Civil Code institutes the principle according to which the interest and the welfare of the human being shall take precedence over the unique interest of the society or of science.

Law No. 95/2006 on the reform of the healthcare system, amended and supplemented in relation to organ removal and transplant, acknowledges the value and the protection of the human body and promotes three principles: everyone has

[24] O. Ungureanu, C. Munteanu, *op. cit.,* p. 25.

the right to respect for his/her body; the human body is inviolable; the human body and its constitutive parts can not be the subject of a patrimonial right.

As a result, a medical action or a transplant may not be performed without the patient's conscious consent, unless they are imposed by an obvious necessity or imminent danger for the respective person, as otherwise they would violate the right to privacy. Law No. 17/2001 on ratifying the Convention of Oviedo – reflected in a condensed form in art. 67 of the Civil Code – refers in similar terms to tests, treatments, experiments or interventions for therapeutic or scientific research purposes, as long as there is no comparative method of investigating the human beings that might establish effectiveness and whether the risks are disproportionate in comparison with the possible advantages of the research, and also as long as there is no expressly written and conscious consent by the person who is the subject of the research in relation with the rights and the guarantees provided by the law for his/her protection.

The provision of art. 68 of the Civil Code on organ removal and transplants from living persons is a regulation of principle for the text refers to the conditions governing this activity which that are provided in special laws, particularly Law No. 95/2006 on the reform of the healthcare system.

Removal of organs and tissues shall be performed only for therapeutic purposes as far as the receiver is concerned and only if it not dangerous for the donor's life. Removal may only be performed from a living donor having full exercise of his/her mental capacity, based on a previous (written) consent and only after the physician or other specialized personnel have informed the donor about all possible risks and consequences of the intervention from a physical, mental, familial, and professional point of view. The consent thus expressed is revocable up to the moment of the removal, while distortion of the consent makes the removal illegal.

The receiver of the removed organs has to give his/her written consent as well, after he/she has been informed about the risks or the benefits of the procedure. If the receiver is not capable to give his/her consent, the consent may be given in written form by a family member or by his/her legal representative.

Removal and transplant of human organs, tissues and cells can not be used for the purpose of obtaining patrimonial or other benefits, under the nullity sanction, except for the cases expressly provided by the law (art. 66 in the Civil Code); the reason why this is so is that, from a juridical point of view, the human body is applied the non-patrimonial nature principle.

Removal of organs and tissues from brain dead persons shall only be done for therapeutic or scientific purposes, on the basis of the dead person's written consent expressed in his/her lifetime or, if such consent is missing, on the basis of the previously and expressly written consent given, in descending order of priority, by the surviving spouse, the parents, the descendants or collateral relatives down to the 4th rank.

The consent that has to be given in the order provided by art. 81 in the Civil Code is of an exclusive nature, meaning that once the consent expressed, the will of the other relatives following after the one who has consented is irrelevant.

The refusal of the deceased person, expressed in writing in the person's lifetime, to donate post-mortem his/her organs, tissues and cells, makes ineffective the relatives' consent for the removal operation, for a living person's power over his/her body extends beyond lifetime and shall prevail upon the family's will.

There is one single exception from the principle of inviolability of the human body even after death, when previous authorization is not needed, and that is the case of autopsy of the dead body, when the removal is made for establishing the causes of death.

Violation of the legal requirements related to removals and transplants, as well as malpractice, entails civil, pecuniary, disciplinary, contraventional or criminal liability of the medical personnel.

A person whose body was injured is entitled to a pecuniary redress to compensate for the material and moral prejudice. The right to damages can not pass over to inheritors; they can only continue the legal procedure initiated by the deceased. However, successors are entitled to damages in their own name for the moral prejudice they suffer from as a result of the victim's death.

On request by any interested person, on the basis of art. 69 in the Civil Code, a court may take the necessary measures to prevent or stop the illegal injuries against the integrity of the human body, alongside the measure of redress for the material or the moral damages.

The legal aspects related to medically assisted reproduction, guarantee of the confidentiality of information and the way this information is transmitted are regulated in the Civil Code in arts. 441-447 and in special laws. Beyond the legal status of the resulting individual, we believe that certain ethic aspects arise related to this individual's identity as compared to his/her genetic ascending line, which voids his/her legal status of its real essence. The respect owed to the human being starting from the moment of conception may raise the issue of the effects of human intervention in the act of reproduction and gestation, which are sometimes motivated by some parents' pecuniary or selfish purposes, being therefore only apparently legal.

The medical resolution of sterility and infertility by means of assisted medical procedures also triggered legal controversies, with a religious or exclusively religious substratum, which tends to associate the act of human procreation strictly with the intimate communion of life partners.[25]

The examination of a person's genetic characteristic features can only be made for medical and scientific research purposes, and under the conditions provided by the law. Unfortunately, art. 65 in the Civil Code does not institute the compulsory nature of the examined person's consent as a precondition and a guarantee for legal restrictions.

Genetic fingerprinting for the identification of a person can only be made in the framework of a legal procedure, civil or criminal, or for medical or scientific research purposes, as provided by the law.

The right to one's image, which was originally the offspring of jurisprudence, was first consecrated in art. 73 of the Civil Code and is a personality right, alongside the

[25] „Revista română de bioetică", vol. III, nr. 3/2005, p. 58.

rights stated by art. 58 in the Civil Code. This right does not perfectly fit the general characteristic features of personality rights, since image can be sold and its extra-patrimonial nature is relative for this right has a patrimonial dimension as well.

The reproduction image, like the source image, is not dissociated from personality, so when speaking of the right to image as a personality right, one also refers to this one last constitutive element of the human being.

In the exercise of right to one's image, a person may not only prevent any reproduction of his/her physical look or voice, but also the use of such reproduction.

The right to image goes beyond the limits of privacy, but when the image immortalizes the person in a private location, the right to image is considered in the practice of the European Court of Human Rights to be a constitutive element of privacy, whose purpose is to protect the person's identity and the area of private intimacy.[26]

The European judges appreciated that privacy has to be protected even in public places if the interaction between an individual and third persons is related to private life, and that any person known to the public is entitled to a legitimate hope of protection and respect of privacy.[27]

Freedom of expression is a limitation of the right to one's image. Protection of personality often collides with freedom of the press, with the public's right to be informed. The jurisprudence factually examines, depending on the circumstances, the two rights which that are considered together, while seeking a fair balance between them, according to the principle of proportionality, after which it concludes whether the right to image may or may be not sacrificed.

In their ruling, the judges take into account the pertinence, the accuracy and the legitimacy of the image as opposed to the information, while also ensuring the necessary tolerance in favour of those who exercise their right to information, as well as a rigorous observance of the principle of dignity.

The consent for reproduction and dissemination of the image shall be express, distinctive, precise, and presumed to have been given for capturing and disseminating a correct and not deformed image of the person. The consent is implicit for public persons who appear in a public place, if publication of the image is useful to illustrate the activity.[28]

Therefore, a public person, whatever notorious he/she may be, has an exclusive right to one's image and its usage, while holding a public office does not involve, from the very beginning, any divulgation from one's private life. The same holds true for issue of the right to image and the implicit consent for reproducing and disseminating the image, in the case of professionals.

Art. 76 in the Civil Code regulates the relative presumption of consent in relation to the right to image and privacy, if he/she whom the information or the material is about has made it available to a natural or a legal person whom he/she knows to work in the field of public information.

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[26] C. Bârsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*, vol. I, p. 601.

[27] Case VON HANNOVER in J. Frenucci , *Tratat de drept european al drepturilor omului*, Hamangiu, Bucharest, 2009, p. 249.

[28] O. Ungureanu, C. Munteanu, *op. cit.,* p. 55.

In all cases, the person's consent for the use of the image has to be undistorted and come from a person in full mental capacity.

Even though the image is attribute of the human body and can not be estranged, it may nevertheless be exploited via reproduction, the image being subject to conceding to another person to be used (reproduction and publicity) for a limited period of time. The usage right can be granted precisely, for a determined period of time or for a long period of time, when the right to use the image is granted for a certain type of products or activities.

A person's right to image ceases on decease, whet it is replaced with the image of the dead body. The memory of the deceased person, protected under art. 79 in the Civil Code, is twofold; one aspect refers to reputation and the other one to image.

The respect owed to the memory of the deceased legitimates those who were closed to the deceased to request that reproduction of the deceased person's image be sanctioned on the basis of the person's dignity principle, which goes beyond the person to protect, by means of it, humanity.[29]

Dignity is a constitutional and a universal principle. In its art. 1, the Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights. Art. 1 in the Charter of Fundamental Rights of the European Union provides that human dignity is inviolable and it must be respected and protected.

Art. 72 in the Civil Code, which transcribes the international documents, states that has the right to respect of his/her dignity and prohibits any infringement upon a person's honour and reputation without the person's consent or beyond the limits provided by art. 75 in the Civil Code.

Honour is not only a token of esteem, high regard and homage paid to a person that distinguishes from other by position or merits but it also evokes a dimension of the person's moral patrimony, which induces the respect of others. The "honour" concept also has an objective meaning, consisting in a conduct norm, a behaviour norm, which is related not only to a collectivity or a group but also to the synthesis of the essential virtues.

Beside the meanings of the concept and the individual perception about one's own dignity, dignity is also a person's innate attribute, which adds to the ethic features, acquired in one's lifetime, and together make up a person's reputation.

Reputation, which has a variable nature, indicates the way a person is perceived within a society. Dignity is a moral asset, a social value protected by the law, which sanctions any action that diminishes or tends to diminish dignity, esteem, reputation.

The conflict between the media and a person's reputation is quite often a topic for discussion; its resolution imposes achievement of a balanced information, within certain limits that are related to the defence of persons' rights and reputation, but, at the same time, fulfillment of the task to communicate information while also respecting the duties and accountability for the accuracy of the information and the ideas of general interest. The possible dose of exaggeration and challenge, inherent to journalistic freedom, brings to attention such issues as the checking of the information and the exceeding of the limits of acceptable criticism, based on art. 10 in the European Convention on Human Rights.

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[29] Ibidem, p. 62.

Dignity is also related to the respect owed to the human body or to the final stage of life. The latter, raises the highly controversial question of euthanasia and, implicitly, whether man is the holder of the right to die, if he is the master of his own existence, who may make the decision to die in dignity.

As far as privacy is concerned, even though it is closely related to the right to dignity, honour, reputation, its protection has a totally different finality that is related to the notion of freedom. The respect for privacy refers to the person's moral patrimony and is an extension or personality.

Privacy has lately become a characteristic value largely made use of alongside the development of technique and persons' more and more involvement in the public life, which often makes it really difficult to delimitate between public and private life.

Art. 8 in the European Convention on Human Rights, which consecrated at European level the person's right to respect for his/her private life, was inspired by art. 12 in the Universal Declaration of Human Rights. This right is equally guaranteed and protected in art. 17 in the International Covenant on Civil and Political Rights and consecrated at domestic level in art. 26 in the Constitution.

As a subjective right of persons, the respect for this right implies a general duty of abstention throughout the area of private life, to which the right to an area of autonomization and exclusion of any interference.[30]

Guarantee and protection of the right to private life are inseparable from the concept of "private life", which proved to be broad and fluid.

It seems that the way this right is exercised, as well as its limits, are exemplifiable, as shown by Council of Europe Parliamentary Assembly's resolution no. 1165/1998, which strengthened the protection of private life against interference from natural persons and private institutions, including the media. As was said, respect for privacy means the right to be left in peace, to be alone, and integrates personal life, family life, sentimental life, financial and health condition, as well as the individual's relations established and developed with other individuals.

The doctrine considers that this concept includes the right to solitude – meaning a person's freedom to reject any unwanted intrusion or observation, anonymity – meaning non-divulgation of personal information, the right to secrecy of interactions and communication.[31]

For its part, the ECtHR considered in its jurisprudence that the concept of private life includes the person's right to personal intimate life, to private social life and to a healthy environment.

It is worth noticing that, in the view of the ECtHR, reflected in the decisions it ruled, the protection of privacy is not limited to private places but operates in public places as well, if the interaction between the individual and a third person takes place in a public context; any person, even if well known to the public at large, shall enjoy a legitimate hope of protection, of respect for privacy. Public persons shall enjoy protection of privacy as well and their right can not be denied, even though delineation between public and private life is difficult to draw.

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[30] Idem.

[31] *Noul cod civil. Studii si comentarii*, Vol. I, coordinator M. Uliescu , Universul Juridic, 2012, p. 267.

Freedom of the press and the public's right to information can not neutralize the right to the protection of privacy, even in the case of public persons. The defence of reputation and of other rights of persons, impose prudence and balance on behalf of journalists, while attacks in the case of public debates shall not exceed a certain threshold. It is only under such conditions that the information becomes legitimate and useful to the public interest, even if its content implies and intrusion into privacy.

Freedom of expression and its two constitutive elements – freedom of opinion and freedom receiving and communicating information or ideas, without interference from public authorities and without taking frontiers into account, can not prejudice the person's dignity, honour, privacy or the right t one's own image.

Art. 70 in the new Civil Code, according to which any person has the right to freedom of expression, a right whose exercise can only be restricted in the cases and within the limits provided by art. 75 in the Civil Code, is based on the text of art. 30 in the Constitution that gives priority to the person's dignity, honour, privacy and right to his/her own image.

Invocation of public interest, the public's right to be informed, can not justify violation of the other personality rights in journalistic activities. Freedom of expression is admissible in a democratic society within the limits provided by the law and the international human rights conventions and the covenants where Romania is a party.

The European Court of Human Rights stated that, in the absence of uniform conception in the European countries about the requirements for the protection of the rights of others, states dispose of a broad margin of appreciation for the regulation of freedom of expression. Nevertheless, it is obvious that this margin has to be fully consonant with the international conventions and covenants where the states are parties.

Freedom of expression related to shocking or worrying information or ideas does not exclude good faith. These are exigencies of pluralism, of open mindedness, and protection of the right becomes meaningful not in the case when inoffensive or neutral ideas are expressed, but when there is a danger of some sort.

Processing of personal data by automatic or non-automatic means, to which art. 77 in the Civil Code refers, can only be done under the conditions and in the cases provided by the law.

Personal data are closely related to the person's rights and freedoms, and their protection refers to the defence of the very personality rights. Collection of personal data starts at birth and extends throughout one's lifespan, till death.

Beside personal data, there also are data of a special nature, related to the person's social or ethnic origin, political or religious beliefs, philosophic concepts, membership to various political parties, etc.

All this information, data, has a potential economic value, depending on its complexity and reliability.

The European legislator, referring in Directive 2003/1998/CE to the relationship between the protection of the data and the right to access to information and freedom of expression, provides the conditions and the guarantees that have to be respected

whenever a public authority makes certain data it possesses available to third parties for reusing it for commercial purposes.

European judges provide increased protection for personal data, among other things by including it in the sphere of the right to life, provided by art. 8 in the Convention, and also by giving the national authorities a certain freedom to establish a fair balance between public interests and the competing private ones.

The protection of personal data is also to be found in Directive 95/45/CE, which establishes the principles governing processing of such data. Thus, the principle of finality limits the use of the data only to the initially established purpose, while the principle of proportionality limits the processing only to the data indispensable for attaining the purpose pursued. The principle of limited conservation, which follows from the principle of proportionality, limits the storage of the data to the period of time needed for the achievement of the purpose for which it has been collected, while the data security principle imposes protection of the data against unauthorized processing.

Transparency of the data, which involves the control thereof and the right to self-determination, refers to informing the person who gives the consent, the characteristic features of the consent and those aspects needed for the intended processing of the data.

By principle, infringements upon a person's life, physical integrity, honour, reputation, dignity, privacy, are invaluable from a patrimonial point of view, which does not mean that the law does not allow for pecuniary redress to compensate moral prejudices.

The protection means, defensive, for violation or threatening of the non-patrimonial rights provided by art. 253 are:

Para. 1 a) prohibition of the illegal action if it is an important one.
b) cessation of the violation and prohibition for the future, if it is still on
c) establishing the illegal nature of the action, if the trouble produced still exists; in the case of violations of non-patrimonial rights in the exercise of the right to freedom of expression, the court may order only the measures provided under paragraph 1 letters b) and c) of art. 253 in the Civil Code.

At the same time, based on art. 253 paragraph 3 in the Civil Code, he/she who was the victim of a violation of such rights can request the court to impose on the perpetrator to fulfill any measures the court appreciates that are needed for the violated right to be restored, such as:

- impose on the perpetrator to publish, on his/her own expenses, the conviction decision ruled by the court;
- any other measures needed for the illegal action to cease or for the prejudice to be redressed.

Also, the prejudiced person can request compensations or, as the case may be, a patrimonial damage for the prejudice, even if non-patrimonial, that he/she has suffered, if the injure is imputable to the perpetrator of the prejudice incurring action.

If a person's non-patrimonial rights are the subject of a present or imminent illicit action and this action entails the risk of a hardly bearable prejudice, all credibly

proved by the injured person, the court can order the provisional measures instituted by art. 255 (2) in the Civil Code, consisting in prohibition of the violation, or its provisional cessation, or the necessary measures for the conservation of the evidence.

In the case of prejudices caused by the means of the written or the audio-visual press, the court can order provisional cessation of the prejudicing action, only if the prejudices caused to the petitioner are serious, if the action is not clearly justified according to art. 75 in the Civil Code and if the measure ordered by the court is not disproportionate as compared to the prejudices. The provisions of art. 253 paragraph 2 in the Civil Code remain applicable.

The restrictive conditions in the field of the media, namely, provisional cessation of the prejudicing action, are meant to avoid that the intervention of justice should turn into instrument of censorship.

Applications for provisional measures shall be solved in compliance with the speedy procedure of the Presidential Ordinance, and if the latter was used before the initiation of the legal action on the merits, the court shall also establish the term for its initiation, under the sanction of the cessation *de jure* of the provisional measure.

On the basis of art. 255 (7), and on request by the interested party, the petitioner has to redress the prejudice by means of the provisional measures taken, if the legal action on the merits was rejected as groundless. Nevertheless, if the accused is not found guilty or the guilt is not a serious one, the court may deny the damages requested by the accuser or may order their diminution.