THE ELEMENTS PROTECTION OF IDENTIFICATION OF PERSONALITY IN PRIVATE INTERNATIONAL LAW OF THE REPUBLIC OF MOLDOVA

Rotaru-Maslo L.A. Email: Rotaru-Maslo17105@scientifictext.ru

Rotaru-Maslo Liliana Alexeevna - Doctor of Law, Associate Professor,
DEPARTMENT OF PRIVATE LAW,
ACADEMY OF ECONOMIC STUDIES OF MOLDOVA, KISHINEV, REPUBLIC OF MOLDOVA

Abstract: *the rights of personality are those subjective rights which outline the most important values of the individual, are guaranteed by law and give everyone the possibility to develop. One of the manifestations of personality rights are the elements of identification: name, image, voice. The author made a evolutionary analysis of these elements, showing the route traveled by each of the items in question. Another concern of the author was the analysis of the protection of the elements of personality identification both from the point of view of the domestic law and from the point of view of the private international law of the Republic of Moldova. If gaps have been identified in the domestic legislation, the author comes with proposals of „lege ferenda".*
Keywords: *rights of personality, the right to own image, the right to name, the right to own voice.*

ЗАЩИТА ИДЕНТИФИКАЦИОННЫХ ЭЛЕМЕНТОВ ЛИЧНОСТИ В МЕЖДУНАРОДНОМ ЧАСТНОМ ПРАВЕ РЕСПУБЛИКИ МОЛДОВА

Ротару-Масло Л.А.

Ротару-Масло Лилиана Алексеевна – доктор права, доцент,
кафедра частного права,
Экономическая Академия Молдовы, г. Кишинёв, Республика Молдова

Аннотация: *права личности - это субъективные права, которые подчёркивают наиболее важные ценности человека, гарантированы законом и дают людям возможность развиваться. Одним из проявлений прав личности являются идентификационные элементы: изображение, голос и имя. Автор сделал подробный анализ эволюции этих элементов, показывая пройденный путь каждого из них. Кроме того, другой задачей автора было - проанализировать элементы защиты идентификации личности, как с точки зрения внутреннего законодательства, так и с точки зрения международного частного права Республики Молдова. Там, где были выявлены недостатки в национальном законодательстве, автор приходит с предложениями lege ferenda.*
Ключевые слова: *права личности, право на своё изображение, праве на имя, право на собственный голос.*

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The **actuality of research subject**. The actuality of research subject derives from the importance of personality rights and the need of their protection. The rights of personality, as we have established [13, p. 42-45], are a new dimension of human rights. The author has proposed a new classification of personality rights [14, p. 94], so in the third category was included the right to identification elements of the person (the right to own image, voice, name).

Discussions. A manifestation of the rights of personality represented, outside the private life, the image of the person. Judgments that have given satisfaction to victims have revealed the circumstance [9, p. 273] that touching the image constitutes a personal injury. Legal protection is all the more necessary since the message that the person's physical image transmits is one of the most powerful forms of expression and is inseparable from the subject it represents.

The photo of an actress (named Rachel) on the deathbed was published without her prior or her heirs authorization. The judgment of the Seine Tribunal (*Rachel's business* was settled by the Seine Tribunal on 16 June 1858) gave satisfaction to the artist's relatives and opened the door to a whole jurisprudence.

The Court ruled that the right to oppose the reproduction of the image of the dying is absolute and is based on respect due to the mourning of the family. Ignoring this right means damaging the most intimate feelings the descendants of the deceased are trying. On the line opened by the Rachel case, the French judicial practice in the field of image law is particularly rich. Long before the first laws making, the courts faced claims for compensation from the victims who invoked the advertising exploitation of their images. Although decisions have sometimes been contradictory, even within the same legal system, they remain valuable through the principles they draw and the distinctions they operate in attempting to terminologically fix the right to the image as the right of personality.

The first decisions that evoke the right of the individual to his own image are contemporary to the emergence and development of photographic technique, which made it possible to reproduce the physical features even without the consent of the person concerned.

Regardless of the fact that it treats the right to image distinct from the respect of private life or integrated in, a certain element constantly appears in the decisions of the judges - the consent required for the reproduction of the image.

The mere fact of publishing a image of person without authorization entitles him/her to indemnity (Bardot, Papillon). Different issues related to image reproduction have been found in court rulings: the possibility of revoking the agreement to publish, the use of photographic clichés solely for the purpose of expressing consent (Brially), the prohibition of fixing images in public places without authorization, even if the one in question is in a group.

For the latter case, the decision taken by the Mayor of Grasse (according to which professional photographers are not allowed to capture the images of passers-by) is relevant; the judgment was appealed to the Grasse Correctional Tribunal, which ruled that „the limitation imposed on the work of photographers responds to the need to ensure respect for the human person and individual freedom", being "far from disregarding the principle of freedom of trade and industry" [10, p. 11].

In the American realm, the origin of the recent appearance of this right is both jurisdictional and legislative. Jurisdictionally it is found in a decision of the State Court of New York in 1902, which was particularly criticized and aimed at protecting the image of a subject of right against advertising exploitation, as well as the use of image for profit, without the consent of the person.

The concept of own image includes both the physical appearance of the person and his existential attributes. Thus, it is no less unlawful to use for commercial or advertising purposes the name, that is the credit or the prestige of a person, if he has not consented [7, p. 19].

In Europe, the protection of privacy and own image appears only after the Second World War and is also of jurisprudential origin. In France have been pronounced judgments, which have recognized the right to property of each person on its image. All courts have decided that to publish the image of a minor can only be done with his or her consent, as well as with the holders of the parental authority consent.

The earliest legal signs of the protection of personal interests appear in Switzerland in the nineteenth century in the Code of obligations of 14 June, 1881, then taken over in the Civil Code (1912).

It is also forbidden and sanctioned to make public the aspects of the marital life of different people. The private life of the notable persons was the first wich have obtained the strongest protection because it is the most seriously threatened, due of the interest it has for the media and its recipients, the lives of such people. Thus, in France, it has been decided that it is an attack on the private life of the person, even the simple publication of a telephone number or address of a singer, without his consent [12, p. 108].

For example, in French law, the Law of 17 July 1970 protects private life and all its aspects (including the right to own image). Moreover, the criminal protection granted to this right is enshrined in very restrictive terms. According to Article 368 paragraph(1) and paragraph (2) of the French Penal Code, "is punished anyone who voluntarily damages the intimacy of the private life of another ... fixing and transmitting with the help of a particular device the image of a person in a private place Without its consent ". The same consent is mandatory when the taking of the image (shooting) will be fulfilled "during a meeting in the eyes of its participants" (Article 368 paragraph (2)). Equally punishable is the disclosure or publication of images fixed in contravention of Article 368 (Article 369 of the French Penal Code). The Italian Court of Cassation, following the analysis of several cases of infringement of the right to one's own image, established the following:

1. It is totally unacceptable to obtain a profit from reproducing the image of a known person (it is unlawful when is done without the consent of the person concerned).
2. It is not allowed to accompany the advertising messages with a reference to another person, thus involving its active support.
3. Joining the image of a known person to a product (thus creating the appearance of indirect support of the product) - is enough to qualify it as unlawful.
4. The right to a personal image must be distinguished from the right to secret, which has as its object the non-disclosure of personal facts, which third parties have no legitimate interest in knowing. [9, p.284-285]

German jurisprudence also firmly pronounced: it is illegal to use the image of a person without her consent. Section 50 and Section 51 of the New York Civil Law claim that, in order to be considered an offense (it is the right to own image), it must be done "for advertising or commercial purposes". From the above we can conclude that only the person himself/herself is the master of his own image. Is not a property right but a right of personality.

Completing the jurisprudence on the positive protection of the identity of individuals, European judges also considered, in particular the case of Von Hannover v. Germany (Case 24 June 2004), that the States had the task of taking all measures to ensure that third parties, including journalists, respect the right to the image of persons under their jurisdiction. This triumph of the right to privacy on freedom of expression, about which

the Court does not cease to repeat that "it is one of the essential foundations of democratic society," is all the more remarkable - and it was even more remarkable - for Monaco. This relationship was not, however, decisive for European jurisdiction.

For Court it was decisive that the concerned person did not have any official position within or for the State of Monaco, that the photographs made, mainly concerned details of her private life, even the concerned person was in places frequented by the public, and that it had been made by the paparazzi without the knowledge and consent.

Under these circumstances, the Court stressed, "freedom of expression must be given a lesser interpretation".

She also concluded that "the protection of privacy for the prosperity of every person's personality, protection that goes beyond the intimate family circle and also includes a social dimension, acquires a" fundamental importance ", and that" any person, even known to the general public, must be able to benefit from a "legitimate expectation" of protection and respect for privacy. " But what is the German State's protection obligation in this case? First, in the duty to clarify its legislation when it comes to the distinction it makes between the "absolute personalities of contemporary history," whose private life could be protected only in their intimate sphere, and the "relative personalities" who would entitled to broader protection. The criteria for this distinction must be clearly stated. Internal jurisdictions, whether constitutional as in the present case, must interpret national law in such way as to bring it into line with the requirements of the Convention [4, p. 42-43].

Thus, facts capable of damaging the right to one's own image can be classified into two categories:

- the facts of capturing, preserving and distributing the image of a person;
- mounting facts [11, p. 51].

What characterizes both categories of illicit acts is that the violation of the right to one's own image took place without the consent of the injured person.

It is necessary to distinguish between the public life and the private life of a person. When the image is captured or broadcast when the person is in public life, there is a presumption of tacit consent.

The problem occurs when a person refuses to fix or reproduce the image, even when is in public life. The solution in this case is unambiguous - the right to one's own image must necessarily be respected. A required condition is, however, that the refusal must be expressly manifestated, it may be tacit, when it may be concluded from certain circumstances that the person does not agree to fix and diffuse the images.

Capturing the image of a person in a private place is not possible without express or tacit consent. If this agreement has been obtained, then the person's image will have to be taken and broadcast correctly, without distorting or defaming his image, likely to damage his / her dignity and reputation. It is a mandatory condition and for the situation when the person is in public life.

Thanks to modern technology, it is possible to capture and disseminate a person's image without her consent, moreover, without her knowledge. It is a situation that falls under the criminal law. Another problem is the offense of mounting, which consists in bringing together independent images or parts of a composition in order to obtain a new ensemble likely to damage the right to own image. The origin of the clichés used in the mounting may also be legal.

But in this case, if the alteration of the images through the assembly would prejudice the right to the image, the author will be punished. When the mounting refers to privacy, the severity of liability will be great.

In the Republic of Moldova the protection of the right to own image is not regulated in the proper way. We are of the opinion, however, that a tangential provision is contained in Article 32 paragraph(1) of the Constitution of the country [1] which provides the freedom of expression of the individual, which can also be done through images. Although freedom of expression is inviolable, the condition is required is that it "can not prejudice the honor, dignity or the right of another person to his or her own view" (Article 32 paragraph (2) of the Constitution).

Enounciation the right to own image in the Constitution is not sufficient, we believe that it is necessary to elaborate other special normative acts in which to stipulate, in particular, that the damages brought about by the non-observance of this right should be punished not only civil, but and criminal. Closely related to the protection of personal image is also the right to the protection of the name. Article 28 of the Civil Code of the Republic of Moldova [2] provides follows:

"(1) Every individual has the right to a name established or acquired under the law.

(2) The name includes the surname and forenames and, in the case provided by law, the patronymic.

(3) The surname is acquired through the effect of the parentage and changes due to the change of the civil status, under the conditions stipulated by the law.

(4). The surnames shall be established at the date of birth, on the basis of the birth declaration."

But in the context of the above enunciation, we are more interested in the provisions of Article 29 of the Civil Code. Thus, is proclaimed the right of every person to the respect of his/her name [5, p. 70]. The natural person acquires and exercises the rights and execute the obligations on his / her behalf (Article 29 paragraph (2) of the Civil Code of the Republic of Moldova [1]). And "the one who uses the name of another is responsible for all the confusions or prejudices that result. Both the holder of the name and his or her immediate spouse or relatives

may oppose such use and demand compensation for the damage "(the provisions of paragraph 3, Article 29, Civil Code of the Republic of Moldova). Further on Article 4 it is specified that: "The natural person is required to take measures to advise his debtors and creditors of the change of name and bears responsibility for damages caused by non-compliance with this obligation. Due to the importance of the well-known subject, ie the protection of the physical person's name, our legislator also referred to the need to protect the name of foreign citizens living in our country.Thus, according to Article 1589 of the Civil Code of the Republic of Moldova "The rights of the foreign citizen or of the stateless person to his/her name, its use and protection are governed by the national law.

The protection against acts denouncing the right to names committed on the territory of the Republic of Moldova is ensured according to its legislation. In other words, the right to acquire, change, modify the name is done according to the foreigner's national law, and its protection and observance on the territory of the Republic of Moldova will be done in all cases according to our legislation.

National civil law also uses the term *pseudonym*. The pseudonym is composed of a word or several words and is used to hide the real name. The pseudonym is not mentioned in the Civil Code, the use of this term is found in the Law on Copyright and Related Rights no. 139 of 02 july 2010 [3]. According to the provisions of article 10, paragraph (1), b) of this law, the author of a work enjoys the right to the name - the author's right to decide how his name will appear in the capitalization of the work (true name, nickname or anonymity). In the specialized literature [8, p.157] it is said that the pseudonym is composed of a word or a group of words and, in essence, is the name someone takes, using it to hide the true name from the public.

Without a special procedure for acquiring the pseudonym, it can be taken at the wish of the person by simple use. Unlike surname and first name, the pseudonym is not registered and does not change by administrative means. We have referred to names, as the names of people known to sell certain products are often used without the consent of the owner.

Under German law, mere use of a person's name for advertising purposes is illicit even if he is not accompanied by the reproduction of his image.

A well-known example of selling a name of a celebrity is "selling" his name against a certain amount of money by soccer player Pele. Today we can all enjoy the coffee that bears his name.

Closely related to image protection is the protection of own voice. This is necessary when:

1) occurs clandestine listening even without recording or broadcasting (it is closely linked to the secret of correspondence);

2) voice uses take place without the permission of its emitter. Unauthorized voice protection is an unlawful capture of the person to whom it belongs, it is a direct damage to the personality;

3) there are some imitation of the voice that creates confusion [6, p. 181]. All these provisions also refer to documentary shows.

By mimicking the voice of some well-known people, as well as by describing some characters in books, or by satiety or cartoons (of a nature to be recognized) or epigrams, they are harming the right to their own image, and the injured person has the right to demand the prohibition, disseminate or publish these facts and be compensated for such damage.

But taking into account the research theme of this thesis, we are referring to the fact that for the protection of the personality rights, including the elements of personality identification, in the international private law of the Republic of Moldova has been offered several solutions.

Thus, Article 1616 of the Civil Code provides that claims for compensation for damage caused to the personality through the mass media are governed, at the choice of the injured party, by:

a) the national law of the injured person;

b) the law of the State in whose territory the injured person is domiciled or resides;

c) the law of the State on whose territory the damage-related consequences have occurred;

c) the law of the State in whose territory the person causing the damage has his domicile or residence.

In our opinion, it was referred to the mass media as a condition of prejudice to the rights of the personality, as it is the most common, most widespread and most accessible way of causing injury. As a rule, in this way, the rights to personality identification elements are often damaged: the right to the own image, the right to name, the right to the own voices, and the right to the moral integrity of the person.

Also, the multitude of offered solutions has its rational basis . Thus, the first variant at hand of the injured party is that the claims for damages caused to him/her to be governed by his national law. And the national law, within the meaning of Article 1587 paragraph (2) of the Civil Code, the national law of the citizen is considered the law of the state whose citizenship the person has. Citizenship is determined according to the law of the state whose citizenship is invoked. If the person has two or more citizenships, the national law is the law of the state with which the person has the closest links. For stateless persons, national law is the law of the state in which he or she is domicilied or resides. And the national law of the refugee is considered to be the law of the state granting asylum (according to the provisions of Article 1587, paragraphs (3) - (4).) The national law of the citizen of the Republic of Moldova who, according to foreign law, is considered to have another citizenship is

considered as the law of the Republic of Moldova (paragraph (5)). The provisions of letter b) of Article 1616 of Civil code are also in favor of the injured person, because the law of the state on whose territory is his / her domicile or residence. And this involves a relatively long living and knowledge of the legal provisions of this state, which gives the injured one the opportunity to use his claims as best as possible.

The solution provided by letter c) of Article 1616 of Civil Code - the law of the state on whose territory the damaging consequences occurred- is a compromise solution when the injured person is in a short period of time or in transition and his personality rights have been harmed.

And finally, the fourth solution - the law of the State in whose territory the author of the damage has his domicile or residence- has a punitive character for the guilty person, in this case will be applyed the provisions of the state with which person has long-lasting connections caused by a long-lasting and relatively steady life, and this would hypothetically mean that other people might find out about his unworthy actions.

Concluding the foregoing, we affirm that the rights of personality, in any manifestation thereof, should benefit from increased protection from the law. And the solutions offered by the international private law of the Republic of Moldova are focused on the damage caused by the mass media. This assertion is accepted by most legal systems. However, we come up with a proposal that Article 1616 be complemented by a paragraph stipulating that the right to reply against personality touches is governed by the law of the state in which the publication was appeared or from where the emission was broadcast.

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