

НЕКОТОРЫЕ СООБРАЖЕНИЯ О ПРАВАХ ЛИЧНОСТИ В НАЧАЛЕ ТЫСЯЧЕЛЕТИЯ

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Аннотация: правами личности являются те права и свободы, предусмотренные и гарантированные законом, которые предоставляют людям возможность самореализации в различных областях, становления многогранной личностью, отличимой своей уникальностью от остальных. И если до недавнего времени в качестве ориентира уровня демократии любого общества были права человека, мы считаем, что права личности будут те, которые будут иметь значение в дальнейшем. Хотя термин «права личности» используется уже более ста лет, данная концепция не была полностью изучена. Автор проанализировал данное понятие и выявил отличительные черты прав личности, а также сделал их классификацию.

Ключевые слова: права человека, права личности, классификация прав личности, отличительные черты прав личности.

CONSIDERATIONS ON PERSONALITY RIGHTS AT THE BEGINNING OF MILLENNIUM Rotaru-Maslo L.A.

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Abstract: personality rights are those rights and freedoms offered and guaranteed by law, which give to the individual the possibility of self-realization in various areas, thus becoming a multilaterally developed personality, different in his/her uniqueness by all others. And if until recently as a reference criterion of the degree of democracy of any society were the human rights, we consider that personality rights will be those that will make the difference. Although the term of "personality rights" has an age over one hundred years, the concept in question has not been fully studied. The author has tried to define this concept, but also revealed what are the characteristics of personality rights, and made a classification of them.

Keywords: human rights, personality's rights, classification of personality rights, characters of the personality rights.

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The **actuality of researched subject** derives from the very notion of "personality rights". This becomes more and more actual with advancing in time. If at the beginning, the proclamation and value recognition of human rights were an innovative and revolutionary matter, then it became a reference element of a democratic society. However, as the time passed, the human rights became a standard of human existence and most of researchers directed their views further, to the human personality. And "the personality" is, according to the common meaning of this notion, what distinguishes each individual from all others, it designates the subject (person) into the uniqueness thereof. There is no personality except an existing individual, situated in time and space, having an own story and marked by the environment where it was born and grew up" [10, p. 738]. In other words, a personality is what distinguishes all of us, it highlights the features and uniqueness of all of us.

It should be noted that the notion itself of "personality rights" has an honorable age. So, the notion of "**personality rights**" was for the first time mentioned by E. H. Perreau in *Des droits de la personnalité*, Trimestral Journal of Civil Right, Paris, 1909, p.501. Later, this notion was deeply extended and reasoned by several authors, nowadays it is accepted and used in the majority of law systems.

But with all its "honorable" age, notion does not have a strictly delimited content, being rather a declarative enumeration. The existing law systems use different wordings, expressions, which essentially can be reported to the notion in question.

Discussions. The discussions concerning the rights of personality are usually focused on two notions: *secret* and *respect*. This refers to the *secret* protected by means of these rights. The *respect* is owed to the human personality which, by protecting the rights of personality, is immune to interferences from third parties.

Starting from the concept of secret, the doctrine significantly advanced the idea that it is about prerogatives aimed to ensure the respect for certain values – private life, honour, dignity, reputation, image, home, correspondence and so on.

It is true that the protected values are impregnated with the idea of confidentiality, and this relates to the secret of correspondence, phone conversations, electronic messages, secret of private life or of personal data processing. Keeping the discretion of some episodes of family, sentimental life, record of images or sounds on magnetic tape – all these, finally, make possible keeping the individual's dignity. Such assertions are true. Personality rights allow keeping some aspects protected from any indiscreet views and ensure the respect for top-priority values in the individual's life. However, those two statements are not enough to surprise the quintessence of the rights of personality.

The name dedicated to the “personality rights” (name of Germanic origin) qualifies, in general, the rights inherent to the qualities of a human person, the rights belonging to any individual only by the fact that s/he is a human being [11, p. 39]. Being non-property prerogatives [12, p. 110] intimately attached to a person, the personality rights express the quintessence of a human, being intrinsic to this. The personality rights are not included in the patrimony, being known that it designates “the totality or universality of patrimonial rights and patrimonial obligations belonging to a person” [3, p. 8]. Since the personality rights outline the area of top-priority moral values of a human being, we could affirm, by a conventional expression, that they belong to the moral property and are an extension of individual's personality [16, p. 3 - 4].

What we usually incorporate into the name of “personality rights” are actually extra-patrimonial or non-patrimonial subjective rights [5, p. 65] “which mainly refer to the protection of physical and moral features of a human being, to the individuality or personality thereof. [4, p.69] If expressed more precisely, as stated by a French doctrine, these are rights inherent to the quality of human being and they belong to any individual only due to the fact that it is a human being. That is why they are called “innate properties”.

Sometimes the steps aimed to outlining the notion of *personality rights* started from defining the subjective rights and delimitation thereof from civil freedoms [7, p. 55 - 64]. Such an analysis has led to the conclusion that, far from being incompatible with the subjective rights, the rights of personality are a particular application thereof. Indeed, the subjective rights and rights of personality may be viewed into a general-to-particular relation. If we go further, we shall notice that the personality rights fall into the category of subjective non-property rights as they protect non-pecuniary (monetary) values. The life, dignity, honour, image or private life cannot be assessed in monetary terms. It has been specified in a useful definition that, as mentioned by authors, the personality rights are “subjective civil rights having no material expression and subjected to the principle of availability. Technically speaking, the personality rights would constitute “civil freedoms” [7, 64].

Without pretending an exhaustive definition, we shall appreciate that the personality rights are extra-patrimonial prerogatives intimately attached to a person, expressing the quintessence of a human being and being intrinsic thereto.

The “*personality rights*” are those rights and freedoms offered and guaranteed by law, which give to the individual the possibility of self-realization in various areas, thus becoming a multilaterally developed personality, different in his/her uniqueness by all others” [14, p. 43].

The **characteristics of the personality rights** arise from the patrimonial essence thereof [1, p. 63]:

a. The personality rights are *absolute* rights. All other persons, as passive undetermined subject, have a general and negative obligation to refrain from any deed or fact that could affect the right of the active subject, i.e. not to do anything that would infringe or impede the exercise of the rights of personality. The rights of personality are *erga omnes* opposable [8, p.68].

b. The personality rights are *inalienable*. Inseparably related to the holder's person, who may not enter into legal deeds by which to alienate thereof, either for a fee or for free, or to waive a right of personality.

c. From acquisitive point of view, the personality rights comply with the rule of *imprescriptibility* [9, p. 421]. No one can acquire, by prolonged, but illegitimate exercise, a right of personality that does not belong thereto. *From extinctive point of view*, the right to act in material sense, which corresponds to a right of personality, is imprescriptible.

d. *There are rights of a strictly personal nature* that may not be in principle exercised than by the holder thereof.

On the **classification of personality rights**, both in foreign and Romanian specialised literature was pointed out the difficulty of grouping thereof, based on certain criteria. Besides, there exists no full agreement on the “list of rights” which make part of the category of personality rights, but a majority of authors agree that the right to physical integrity, right to honour, right to image, right to expression, right to respect for private life, right to reply and right to name are of such a nature. It seems that the list of such rights still remains open, and the clarification of existence and contents of some of them will be difficult (“the events are in progress”, both in our doctrine and in foreign one). In such conditions and considering that we are concerned about the “right to life and to physical integrity” and “legal protection of human body”, we will present some classifications made in the doctrine [11, p. 42 - 44].

Therefore, a first classification distinguishes between two categories of rights of personality:

a) rights related to the physical aspect of a person, which comprise the right of a person to his/her body and right of a person to respect for his/her body;

b) rights related to the moral aspect of a person, which comprise: right to image and to respect for private life; right to respect for presumption of innocence; right to inviolability of home; right to secret of correspondence; right to honour; right to copyright [13, p. 22 - 24].

Another classification distinguishes between three categories of such rights:

a) rights to physical integrity – human body and human life;

b) rights on moral integrity – dignity, consciousness, honour, assumption of innocence, affection;

c) rights to private life – protection of private life, image and voice.

Finally, it is considered that by their legal contents, these rights may be grouped as follows:

a) right to name – that individualises the person in civil relations;

b) right to respect for life, integrity and health;

c) right to respect for private life: right to intimacy; right to secrecy of correspondence; right to own image; right to inviolability of home; right to family life; right to professional life; right to secrecy of own incomes and taxes paid;

d) right to respect for honour and reputation [15, p. 53 - 54].

As for specialized literature in the Republic of Moldova, there are found only references to the need to protect the human personality, but without giving any doctrinal definition or classification. However, there is a tangential attempt to classify them but without qualifying them as being personality rights .

Thus, the authors Sergiu Baies and Nicolae Rosca, talking about the categories of personal non-patrimonial rights, classify them as follows:

1) personal non-patrimonial rights aimed to *individualisation of a subject*, such as: right to name, home, unification, residence, to defence of honour and dignity;

2) personal non-patrimonial rights *aimed to the existence and integrity of subjects* of civil law: right to life, health, reputation;

3) personal non-patrimonial rights *aimed to ensuring the inviolability and secret of personal life*: right to inviolability of home, personal documentation, right to secret of personal life, including medical secret, etc. [2, p.128].

In this context it is imposed [14, p. 44], in our opinion another classification of the rights of personality, grouped in some basic categories. More exactly:

I. Protection of private life:

1. Physical integrity (during the lifetime and post-mortem);

2. Inviolability of home;

3. Right to secrecy:

a) secrecy of private life (in a narrow meaning);

b) secrecy of correspondence;

c) professional secrecy;

d) right to be forgotten.

II. Moral integrity (protection of honour, reputation);

III. Right to the elements identifying a person (right to own image, voice and name);

IV. Right to intellectual creation (work) (copyright);

V. Rights related to civil freedoms (right to expression, to opinion, to information, freedom of religion, freedom of consciousness).

From the enlisted rights, freedom, secrecy and protection of private life make a separate category, enjoying enhanced protection due to their intimate nature.

The other rights protect the personality in its “exteriorised” manifestations. The matter of protection arises, firstly, when person leaves his/her narrow circle of private life, intimacy and, secondly, when such rights are infringed by the peers thereof.

It is required a clear perception of the fact that the study of human rights is, in essence, a study linked to the public law relations, i.e. there are protected the essential rights of an individual against abuses of state and are often called “public rights”. When there are examined the rights of personality, we undoubtedly resort to the same rights, but viewed from another point of view, i.e. through the prism of private law, of relations between private people. As a consequence, we refer in such case to the protection of rights not only against interference of authorities but also against damages that may be caused to us by our peers [6, p. 458].

Concluding the foregoing, we consider that a further step to the democratisation of any society would be the recognition of primordially of the rights of personality. Since we belong to mankind, human rights are recognized to all of us. Meanwhile, the personality rights are strictly individual, more progressive and more advantageous. In such way, the personality inside us is guaranteed and offered great opportunities for development and prosperity. As a consequence, the both parties will win and take benefit therefrom: the more a society is democratic, the more the personality of its citizens is developed, and vice versa, the more the personality of its members is “prosperous”, the higher the degree of democracy certainly is. It is a close

interaction, but this is the only way and path which the real democracy will walk on, actually unique one, through which the democracy will develop and progress.

References

1. *Albu I, Ursu V. Răspunderea civilă pentru daunele morale (Civil Liability for Moral Damages)*. Cluj-Napoca: Dacia Publishing House, 1979. 308 p.
2. *Baies Sergiu, Rosca Nicolae. Drept civil. Partea generală. Persoana fizică. Persoana juridică (Civil Law. General Part. Individual. Legal Entity)*. Chisinau: Publishing and Printing House "Tipografia Centrala", 2004. 464 p.
3. *Chelaru E. Drept civil. Drepturile reale principale (Civil Law. Main real rights)*, 4th edition. Bucharest: C. H. Beck Publishing House, 2013. 520 p.
4. *Cosmovici P. M. Drept civil. Introducere în dreptul civil (Civil Law. Introduction to Civil Law)*, 3rd edition, Bucharest: AllBeck Publishing House, 1996. 208 p.
5. *Lupan E., Sabau-Pop I. Tratat de drept civil român. Partea generală (Treaty for Romanian Civil Law)*, volume I, Bucharest: C.H. Beck Publishing House, 2006. 357 p.
6. *Mazaud Henri et Leon. Leçons de droit civil (Lessons of Civil Law)*. Volume I, volume 2. Paris, 1970. 458 p.
7. *Mihai Gh., Popescu Gh. Introducere în teoria drepturilor personalității (Introduction to the Theory of Rights of Personality)*. Bucharest: Publishing House of Romanian Academy, 1992. 136 p.
8. *Muresan M., Ciacli P. Drept civil. M. Partea generală (Civil Law. M. General Law)*. Cluj-Napoca: Cordial Lex Publishing House, 2000. 280 p.
9. *Nicolae M. Prescripția extinctivă (Extinctive Prescription)*. Bucharest: Rosetti Publishing House, 2006, 647 p.
10. *Rigaux François. La protection de la vie privée et des autres biens de la personnalité (Protection of private life and other benefits of personality)*. Bruxelles: Bruyant, 1990. 849 p.
11. *Ungureanu O., Jugastru C. Drept civil. Persoanele (Civil Law. Persons)*. Bucharest: Hamangiu Publishing House, 2007. 400 p.
12. *Ungureanu O., Munteanu C. Drept civil. Partea generală, în reglementarea noului Cod civil (Civil Law. General Part, regarding the regulation of New Civil Code)*. Bucharest: Hamangiu Publishing House, Bucharest, 2013, 388 p.
13. *Weill Alex, Terre François. Droit civil. Les personnes. La famille. Les incapacités (Civil Law. Persons. Family. Incapacities)*. Paris: Dalloz, 1983. 985 p.
14. *Rotaru-Maslo Liliana. Drepturile personalității – o nouă dimensiune a drepturilor omului (Rights of Personality – a new dimension of human rights)*. // National Law Journal. Chisinau, 2003. № 5. P. 42 – 45.
15. *Cercel Sevastian, Olteanu Edmond Gabriel Considerații privind drepturile personalității (Considerations on rights of personality)*. [Electronic resource]. URL: <http://drept.ucv.ro/RSJ/images/articole/2009/RSJ4/A04CercelSevastian.pdf/> (date of access: 20 March 2017).
16. *Drepturile personalității și bioetica – interferențe normative și corelație de fond (Rights of personality and bioethics – regulatory interferences and fundamental correlation)*. [Electronic resource]. URL: http://www.hamangiu.ro/upload/cuprins_extras/dreptul-persoanelor-dreptul-obligatiilor_cuprins.pdf/ (date of access: 20 March 2017).