

CONCEPT , CLASSIFICATION AND LEGAL CHARACTERISTICS OF PERSONALITY RIGHTS

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Abstract

Patrimonialization of personality rights - without losing their primary capable of originating , the extrapatrimonial is a natural tendency of modern times".¹

Key words: doctrine, law, rights of personality, individual rights

INTRODUCTION

As the rights of personality are combined individual patrimonial and extrapatrimonial² rights, "which refers primarily to the protection of the physical and moral human being individuality or personality to it".³

French doctrine defines personality rights - rights inherent quality of the human person belonging to any individual by the very fact that it is human. Therefore, they are called "innate property".⁴

MATERIAL AND METHOD

Evokes the fact that they are intimately attached to the person concerned rights holder and legal literature worn phrase "personal non rights".⁵

¹ B. Ionescu, *The right to own image. A practical perspective* , Ed. Universe Law, Bucharest, 2013, p. 40

² E. Lupan, I. Sabău-Pop, *Romanian Civil Law Treatise*, vol. I, General Part, Ed . CH Beck, Bucharest, 2006, p. 65

³ P. M. Cosmovici, *Civil Law. Introduction to civil law*, third edition, Ed. All Beck, Bucharest, 1996, p . 69

⁴ A. Colin, H. Capitant, J. de la Morandière, *Elementary Course of French civil law*, translation by V.G. Cadere, I. Miloaie, vol. I, Seventh Edition, Bucharest, Central Printing Office, 1940, p. 127. In the view of the authors, civil rights are three subdivisions: the inherent personality rights, family rights and the rights of property.

⁵ M. N. Costin, M. C. Costin, *Dictionary of civil, D-K*, vol . II, Ed . Lumina Lex, Bucharest, p. 222

Sometimes fixing term efforts personality rights left the definition and delimitation of the subjective rights of the latter civil liberties.⁶

Such analysis led to the conclusion that far from being incompatible with the individual rights, the rights of a particular application are personality thereof. Indeed, individual rights and personality rights might be viewed in a general - particular relationship. If we go on, note that personality rights are subsumed class subjective patrimonial rights as free expression protects pecuniary values. Life, dignity, honor, image, privacy can not be measured in money.

The other definitions⁷ of personality rights have been classified as "civil rights expressionless subjective material subject to the principle of availability. Technically speaking, personality rights would be "civil liberties".

Other authors have defined personality rights as "privileges extrapatrimonial intimately attached person expressing human essence, it is intrinsic"⁸. A different definition of the classical expressed in Romanian literature, is that personality rights "encompasses all those concerning human rights, the man, in the fullness of his physical condition, spitituale and social rights are inherent and which is endowed with this quality itself."⁹

So property rights exceed personality, characterized by assessing its monetary items. Since emerging field of moral personality rights valued the human being might say, in a conventional expression, that they belong to "moral heritage" .

Starting from the idea that only evokes a range of moral values, the French courts have held that personality rights belong moral heritage and constitute the personality of the individual.¹⁰

Rightly been said that it is impossible to draw a definitive inventory of personality rights¹¹. The fact is that, from a historical perspective, the first values of this kind, in the focus of jurisprudence and

⁶ In this regard, see P. Kayser, *Les droits de la personnalité. Aspects théoriques et pratiques*, „Revue trimestrielle de droit civil”, vol. XXIX, 1971, p. 448–454

⁷ Gh. Mihai, G. Popescu, *Introduction to the theory of personality rights*, Ed. Romanian Academy, Bucharest, 1992, p. 55-56

⁸ C. Jugastru, *Reflections on the concept and evolution of personality rights*, http://www.humanistica.ro/anuare/2007/Anuar%20Humanistica_V_2007/art15Jugastru.pdf

⁹ *Right to their own image. A practical perspective*. Collection NCC. Ed. Universe Law, Bucharest, 2013, p.42

¹⁰ Tribunal de Grande Instance of the Seine, June 23, 1966 and June 25, 1966, judgment cited by R. Lindon, *Les droits de la personnalité*, Paris, Dalloz, 1974, p. 20

¹¹ The French doctrine speaking even a "inflation" personality rights, see X. Pradel, *Le préjudice dans le droit civil de la responsabilité*, Paris, Librairie Générale de Droit et de Jurisprudence, 2004, p. 123

doctrine were private life, the image of the person and prerogative disposition of his body .

The evolution was marked personality rights in the international landscape, by several factors . On the one hand, the increased attention to human, viewed the individual detached from the group, and, on the other hand, the impact of modern technology to its rights. Intervention legislature delayed long enough so that the creative effort of jurisprudence and doctrinal systematization role are considerable.

Some rights of personality are simultaneously and identify attributes of a person: the right to a name (name), right at home (registered). For this reason, the two categories-personality rights and identification attributes-common characteristics. He stressed, however, that personality rights can not be considered a mere extension of individual attributes. "Appealing to essentially observing regulations and principles governing institutions, using some taxonomy to didactic (which, like any taxonomy, not out schematism) can sustain a reasonable basis that the individual attributes are by definition attributed to the assumed personality rights are par excellence"¹². For example, name, address (common law) to assigned person than its manifestation of will, so that identification attributes have a dual nature (considered at the same time, rights and obligations for the holder), justified by the imperatives of social life-one must have a name, to have a state civil, a home, whatever they may be.

Legislator presumed interest and will of the holder, so that "behavior" attribute goes beyond individual interest. Conversely, if personality rights, will not be presumed, but is left to the potential holder will choose the desired behavior , under the principle of availability. Other rights of personality, not serving individualization of family or society, not identifying attributes (eg, the right to privacy, the right to physical and mental integrity, copyright - non-patrimonial side).

Protect human intrinsic values, the common goal of all credentials gathered in this category is the protection of human individuality in its essential aspects. Disregarding the rights of personality may attract both patrimonial consequences and damages.¹³

¹² Gh. Mihai, G. Popescu, *op.cit.*, p. 59-60

¹³ I. Albu, V. Ursa, *Civil liability for moral damages*, Cluj- Napoca, Ed. Dacia, 1979, p . 63

Romanian¹⁴ and foreign doctrine¹⁵ abounds in different classifications of non-property rights, and the multitude and variety of criteria underlying the classification of non-property rights increase the difficulty of this task. Given the triad of human structure - man the bio-psycho-social being - we distinguish between the following categories: rights concerning human personality that bio- psychic entity (the right to life, right to physical and mental integrity, and most recently right own voice); personality rights defining man as the subject of emotional or affective states and relations (the right to honor, the right to reputation, dignity, right to the feelings of affection for a being close to death); rights protect man as a social being (in a subdivision, talk of rights belonging to the individual: the right name, the right home, the right to privacy, the right image, rights of intellectual creation - side and non-patrimonial rights that define legal: the right name, the right location, the right to own company, logo).

In the academic literature¹⁶ was made the distinction between primary law and secondary law personality personality. "Primary law of personality can be defined as the fundamental right of every person to control third party access to their Personality Syndrome by signs that characterize such as name, picture and voice and object, if necessary, their use by et all. This right is called primary measure, which is recognized every human being in the light of humanity and dignity of everyone, without discrimination, thus attaching personality. He reveals, therefore, a primary character as personality or first - degree thereof. Right is right personality derivative famous people to control commercial exploitation of their personality, that right to exploit personal or grant exploitation for commercial or advertising of attractive values belonging to elements that evoke personality, such as name, picture or voice, so to prevent any unauthorized commercialization which might make. This right is called secondary because, unlike primary law assumes that personality has gained

¹⁴ T. Ionașcu, E. Barasch, S. Brădeanu, M. Eliescu, V. Economu, Y. Eminescu, M. I. Eremia, E. Roman, I. Rucăreanu, V. D. Zlătescu, *Romanian Civil Law Treatise*, vol. I (General Part), Bucharest, Ed. R.S.R. Academy, 1967, p.29; E. Lupan, *Introduction to civil law*, Cluj- Napoca, Ed. Argonaut, 1999, p . 106-107; E. Lupan, I. Sabău-Pop, *Romanian civil Treaty ...* , p . 65; Tr. Ionașcu, I. Christian, M. Eliescu, P. Anca, V. Economu, Y. Eminescu, M. I. Eremia, V. Georgescu, *Natural person right RPR* , Bucharest, Ed. Academy, 1963, p . 427 and p . 429; A. Cojocar, *Civil Law. General Part* , Bucharest, Ed. Lumina Lex, 2000, p . 81-82

¹⁵ See J. L. Aubert, *Introduction au droit, troisième édition mise à jour*, Presses Universitaires de France, Paris, 1984, p. 97-98

¹⁶ G. Loiseau, *Des droits patrimoniaux de la personnalite en droit francais*, in *Revue de droit de McGill*, 1997, p.333

notoriety heritage value by the effect of the subject, the manner in which we can consider that acted as a derivation of personality and its second degree".

Although slightly different definitions of personality rights converge to identify the same features: inalienability, indistinguishability, indefeasibility, extrapatrimoniality, erga omnes enforceability.¹⁷

The inalienable rights of personality can not form the subject of transfer deeds, natural aspect given that these rights are inextricably linked to the person of the holder. Arising from the inalienable character, indistinguishability personality rights only mean others unable to track them. If we admit noticeability, inalienable character would remain a mere fiction.¹⁸

In terms of acquisition, personality rights can not be acquired by long possession but illegitimate. In terms of fire extinguishers, the right of action to personality rights, is in a material sense, inalienable. Personality rights are individual rights which, by their nature, are patrimonial or highly personal in the sense that human being are inextricably linked and can not exist without it. Are therefore non-hereditary can not be lost or abandoned, are born and ends when the person holding them. That, by their nature, personality rights are non-property does not mean that these can not be attributed in any case or in any case, a heritage value. There is a trend lately patrimonialization the personality right, noticeable tendency for the right to their own image. Today, we notice the existence of image service contracts, based on which, especially the stars, he alienated to third parties the right to have their portrait.

CONCLUSIONS

To issues mentioned above, that the personality rights can thus acquired thru a patrimonial contract, one can conclude some lack of homogeneity in terms of the characteristics of this legal category. The issue concerned the legality Image contracting law was the object of numerous studies¹⁹ concluding that they are available while the service is just right for

¹⁷ Specialized legal literature, M. Parquet, *Introduction generale au droit*, ed.4, Breal, 2007, p.19; G. Yildirim, *L'autonomie financiere dans la communaute de vie*, Pulim, 2001,p.288, and expressed the view that the distinction between right and right extrapatrimonial heritage is irrelevant. As long as the heritage is defined as all rights of a person to distinguish between heritage and extrapatrimonial reveals, therefore, a poor comprehension of things, as any law is, by definition, heritage. According to this view, any subjective act as part moral and part patrimonial.

¹⁸ Iosif Robi Urs, Petruta Ispas, *Civil Law. Main real rights*, Hamangiu Publishing, Bucharest, 2013, p.270

¹⁹ T. Anelka, N. Forte, *Economie Droit*, Breal, 2005, p.39

a specified use. Per a contrario, must be regarded as void a contract for the assignment of all rights to exploit the image of a person in general terms and without any limitation.

A definitive renunciation of a right that protects private life is void, such as a right of personality²⁰. Speaking of heritage with reference to personality rights, it is possible that "Times change, and the right will not be stuck in the form of words, the sophistries, the scholastic, thus defeating the natural evolution and eventually mandatory. Right unrealistic that is not keeping pace with the contemporary requirements is entitled fallen into disuse. So patrimonialization of personality rights-without losing but capable of primary, original, the extrapatrimoniality is a natural tendency of modern times".²¹

Currently, domestic and international doctrine and jurisprudence has not reached a common understanding on a complete enumeration personality rights. It is, moreover, why the legislature Romanian, difficulty grasping the exhaustion of all these rights, effectively left open listing made using²² the phrase "and other similar rights" at the end of the enumeration made personality rights .

²⁰ Civ. Bruxelles, room 14, judgment of 30.06.1997, apaud. G. Vogel, *Encyclopedie judiciaire de Droit Luxembourgeois*, Larcier, 2010, p.479

²¹ B. Ionescu, *op. cit.*, p.40

²² Art . 58 para. (1) Civil Code

REFERENCES

1. I. Albu, V. Ursa, *Civil liability for moral damages*, Cluj- Napoca, Ed. Dacia, 1979
2. Civil code
3. T. Anelka, N. Forte, *Economie Droit*, Breal, 2005
4. J. L. Aubert, *Introduction au droit, troisième édition mise à jour*, Presses Universitaires de France, Paris, 1984
5. A. Colin, H. Capitant, J. de la Morandière, *Elementary Course of French civil law*, translation by V.G. Cadere, I. Miloaie, vol. I, Seventh Edition , Bucharest, Central Printing Office, 1940
6. P. M. Cosmovici, *Civil Law. Introduction to civil law* , third edition, Ed . All Beck, Bucharest, 1996
7. M. N. Costin, M. C. Costin, *Dictionary of civil, D-K*, vol . II, Ed . Lumina Lex, Bucharest
8. T. Ionașcu, E. Barasch, S. Brădeanu, M. Eliescu, V. Economu, Y. Eminescu, M. I. Eremia, E. Roman, I. Rucăreanu, V. D. Zlătescu, *Romanian Civil Law Treatise*, vol. I (General Part), Bucharest , Ed. R.S.R. Academy, 1967; E. Lupan, *Introduction to civil law*, Cluj- Napoca, Ed. Argonaut, 1999; E. Lupan, I. Sabău-Pop, *Romanian civil Treaty* ; Tr. Ionașcu, I. Christian, M. Eliescu, P. Anca, V. Economu, Y. Eminescu, M. I. Eremia, V. Georgescu, *Natural person right RPR* , Bucharest, Ed. Academy, 1963; A. Cojocaru, *Civil Law. General Part* , Bucharest, Ed. Lumina Lex, 2000
9. B. Ionescu, *The right to own image. A practical perspective* , Ed . Universe Law , Bucharest , 2013
10. C. Juguștru, *Reflections on the concept and evolution of personality rights* , http://www.humanistica.ro/anuare/2007/Anuar%20Humanistica_V_2007/art15Juguștru.pdf
11. P. Kayser, *Les droits de la personnalité. Aspects théoriques et pratiques*, „Revue trimestrielle de droit civil”, vol. XXIX, 1971
12. G. Loiseau, *Des droits patrimoniaux de la personnalité en droit français*, in *Revue de droit de McGill*, 1997
13. R. Lindon, *Les droits de la personnalité*, Paris, Dalloz, 1974
14. E. Lupan, I. Sabău-Pop, *Romanian Civil Law Treatise* , vol. I, General Part , Ed . CH Beck, Bucharest, 2006
15. Gh. Mihai, G. Popescu, *"Introduction to the theory of personality rights"*, Ed . Romanian Academy, Bucharest, 1992
16. X. Pradel , *Le préjudice dans le droit civil de la responsabilité*, Paris, Librairie Générale de Droit et de Jurisprudence, 2004
17. Iosif Robi Urs, Petruta Ispas, *Civil Law. Main real rights*, Hamangiu Publishing, Bucharest, 2013

