



ORIGINAL PAPER

The Right to Honour, Reputation and Image of the Natural and Legal Person in Post-Communist Romania

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Abstract

The right to honour, reputation and image, as well as the right to privacy, tend to protect the peace and the tranquillity of personal and family life, resulting from the notion of freedom and hence the difficulty of determining the circumstances to put them into operation. If we assumed that the right to privacy absorbed the right to image, it could be declared about the right to dignity that it included the right to honour and reputation. Each of them should be considered as an autonomous right, but in the context of the protection of personality rights. Unlike the Communist regime, in the transitional period Romania, the legislator admitted that the infringement of non-patrimonial rights attracted the same consequences, either in the hypothesis of damaging the rights of individuals or legal persons, so that only the natural person had the name as attribute of identification, whereas the legal person was identified by the legal entity's official legal name. Any infringement to the name of the natural person or legal person is, in fact, a violation of the right to honour, reputation or image. This article provides an overview on the evolution of the Romanian legislation on addressing the protection of these rights and of the concept that not only the individuals, but also the legal persons may suffer moral damages.

Keywords: *non-patrimonial right, dignity, freedom of expression, audio-visual communications, mass-media*

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General considerations

Having the role to protect the human personality and dignity, the juridical norms that protect honour, image and professional reputation are essential in any democratic society, in which the human being is the fundamental value. The evolution of the society imposed, having as purpose a harmonious living, the necessity to judicially protect and guarantee dignity, honour and reputation of people, without consideration for the statute of natural or legal person. Altogether, the way in which we ought to also regulate the defencing mechanisms of dignity, honour, image and reputation, still constitutes the subject of numerous debates. The general regulations regarding the right to honour, reputation and image, along with the right to a private life, are no longer sufficient, given the circumstances of the progressive development of mass media, the emergence of new computerised ways of communication (social networks), in the same time with the significant growth of their impact on the public opinion.

The inclusion of the human dignity in the very first article of the Romanian Constitution, amongst the supreme values of a state governed by the rule of law, confers to this the value of fundamental constitutional principle (Deleanu, 2007: 454; Buta, 2013: 26). Nevertheless, the inclusion in the group of the supreme values was not intended to confer to dignity more significance in our juridical system, allowing us to notice the reticence of the legislator for the definition of this concept (Radu, 2015: 92), along with that of the Constitutional Court to mention it in its decisions: “The functions and the contents of these values, in our constitutional system, are rather unclear, due to the fact that, on one side, they leave the impression of meta-judicial concepts and, on the other side, the Constitutional Court usually avoids to make direct use of these values, and, when it does, it avoids to determine the exact content of them” (Dănişor, 2009: 50). In art. 58 from the new Civil Code, the Romanian legislator enumerated, in order to exemplify, the right of personality – “the right to life, health, physical and psychical integrity, to dignity, to the personal image, to the observing of private life, and other legally protected rights”, the formulation “and other legally protected rights” bringing forward the issue of establishing “other legally protected rights” that belong to the group of the rights to personality.

Undoubtedly, we cannot exclude, among them, the right to name, pseudonym, honour, reputation, and neither can we do this with quite a few freedoms, directly or indirectly recognised by the civil law, such are: the freedom of thought and conscience (including the confessional freedom), the freedom of expression, the freedom of travelling and settlement, the freedom of working and profession, the freedom of association, the freedom of getting married or remaining unmarried, the freedom to live in seclusion or in a community or of free union; then, the freedom to have a large family or to not have any children, the freedom to adopt a child, the freedom to choose the friends, the freedom to select the way of dressing and of eating; the freedom to make arrangements for the funeral ceremony (Cornu, 2003: 185). Encompassed in the title of the rights to personality, other authors also include the right to anonymity, the fundamental guarantees for the hospitalisation of people with mental disorders, the inviolability of the domicile, the right to the personal image, the right to the personal voice, the right to confidentiality (Deleury and Goubau, 2002: 97-214; Cornu, 2003: 184). All these rights and freedoms, even if they are not mentioned in an expressed legal disposition, have a lot in common with the rights to personality, from which they cannot be separated, because they also represent “inherent qualities of the human being”. All these rights and freedoms are gathered in what can be

called, in a broader respect than that of “the rights to personality”, “*the freedom to display the personality*” (Radu, 2013: 179-196).

The rights to personality are the work of doctrine, a work developed and perfected in time (Malaurie and Aynes, 2004: 91; Carbonnier, 1997: 287), an evolution that is very well evidenced by the establishing of the right to dignity, to honour, to reputation, to the respect for private right and image. This fact allows us to consider that, in the lack of an exhaustive regulation, it is not only difficult to accomplish a perfect determination and systematisation of these rights, but also this determination, no matter how detailed it is, could be soon surpassed by the natural evolution of the demand for the protection of the character of personality (Malaurie and Aynes, 2004: 85).

The personality that these rights refer to, should not be confused with the technical notion of legal person, which is the quality to be subject of law, but it owns a wider meaning, describing the human being with all the features, including the biological, psychological and social aspects. We are concerned – for this analysis – only about the right to honour, reputation and personal image, these rights resonating both in the civil law, the labour law (Radu, 2013: 179-196), and in the administrative and commercial (business) law, because the subject who can suffer the infringement of these rights can be a natural person (freelancer, employee or civil servant) or a legal person. The right to honour, reputation and image, along with the right to private life, tend to protect the peace and tranquillity of the personal and family life and result from the notion of freedom, determining the difficulty of the circumstances to put them into operation. If we assumed that the right to privacy absorbed the right to image, it could be declared about the right to dignity that it includes the right to honour and reputation. Even if there are specialised authors who affirm that the honour and reputation are only components of the dignity (Ungureanu, 2006: 9-19), in our opinion, each of them ought to be analysed as an autonomous right, but in the context of the rights of personality protection.

All the rights to personality are recognised to each person, without discrimination, they are opposable *erga omnes*, imprescriptible by acquisitive and extensive prescription (Nicolae, 2004: 421) and they are extra-patrimonial rights, meant for the accomplishment of personality (Malaurie and Aynes, 2004: 91). The rights to personality cannot change their bearer; they do not also have transmissible character, meaning that they cannot be transmitted to the successors. On the other hand, due to the fact that they refer to moral aspects and, therefore, they are not susceptible to have a pecuniary value, they are part of the non-patrimonial rights. As a matter of fact, these rights are non-assignable, because they cannot be the subject matter of a transfer or definitive and imperceptible renouncement, being outside the trading businesses.

Nonetheless, we have to notice that these qualities must sometimes be regarded in detail, because they are not equally valid for all the rights from the category of the rights to personality. There are interferences between the rights to personality (that are extra-patrimonial rights) and the patrimonial rights. For the reason that, from the legal point of view, certain conventions related to the rights to personality (personal image, voice, name exploitation) can be legitimate, there has been discussed, in the doctrine, the emergence of certain “patrimonial rights of personality” (Ungureanu, 2006: 9-19).

Broadly, we can declare that the right to honour, reputation and image, along with the right to secrecy, are rights that protect a person’s moral integrity and the private life. Honour, honesty, good reputation and image of a person are immaterial, ethical goods and they are inherent to the human being. Independently from the perception or the conscience of an individual, regarding his own identity and dignity, a person’s honour, honesty, good

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reputation and image are not innate attributes, but ethical characteristics that are gained during lifetime and, altogether, they determine the way in which a person is regarded by the other members of the society. Restrictedly, all these above mentioned rights are included in the notion of “reputation”, a notion that designates the way in which a person is considered in a society and it can be changed during the lifetime.

There are situations in which, in the press and the other audio-visual ways of communication, the right to honour, the right to reputation and the right to image can be jeopardised. In these cases, the judges have the difficult mission to find the necessary equilibrium between the protection of the individual’s rights to personality, to private life, on one side, and the freedom of expression, respectively, the right to information, on the other side. The attempt to keep a balance between the right to the respect for the private life, consecrated by art.8 of The European Convention on Human Rights, and the freedom of expression, stipulated by art.10, necessitated a permanent readapting to the evolution of morals and manners, the social realities and the juridical requirements, a fact illustrated by the jurisprudence of the European Commission and European Court for human rights (Bîrsan, 2003: 16-20).

The lack of precise definitions for these rights and of a well-established legal background is noticed especially in the area of mass media. The conditions in which the right to honour, the right to reputation and the right to image are infringed, are going to be analysed by the judges, not related to a general formula, but only correlated to a specific case. Any infringement of this rights exposes the person in circumstance to the danger of exclusion, in a greater or smaller extent, from the circle of family, professional, social and juridical relations, and, therefore, they must be protected by law, not only as moral goods, but also as social and juridical values.

The evolution of the legal background after the Romanian Revolution from December 1989

One of the most important democratic achievements of the Romanian Revolution from 1989 is the freedom of expression, stipulated in article 30 of the Constitution. Subsequent to the fact that, in the first sections of the constitutional document, the legislator enounced the essential attributions of the freedom of expression, in the last three sections he imposed certain limits for the exercising of this right. Thus, according to art.30 section 1, the freedom to express the thoughts, opinions or beliefs and the freedom of any kind of creations, oral or written, in images, sounds or other means of public communication, are inviolable. For the exercising of this fundamental freedom, there are instituted numerous guarantees, among which: the interdiction of any kind of censorship; permission for founding publications, the basic component of the press freedom; the interdiction to suppress the publications. In order to avoid the abusive exercising of this freedom, art. 30 section 6 from the Constitution mention that the freedom of speech “cannot prejudice a person’s dignity, honour, private life and neither the right to the personal image”.

Starting from the literary meaning of word “image”, according to which the image is a reproduction of the physical appearance in a picture, or in a television show, in the juridical post-December literature (Andrei and Safta-Romano, 1993: 49-53), it was expressed the opinion that the infringement of the right to the personal image, which the constitutional text refers to, can occur by capturing, preserving and disseminating the image of a person from the editing of independent images, with the purpose of obtaining

a general effect. Therefore, this opinion resumes only to the physical image, included in photographs, films, television shows etc.

Another opinion, a more complex one, asserts the fact that the personal image includes a broader field, referring to the result of the physical and moral features of a person, the opinions and beliefs, the quality of the professional activity, the behaviour inside a society, the coefficient of honour, honesty and loyalty, in relation with the other members of the society, of an individual (Pavel and Turianu, 1996: 27-28).

We should notice that under the protection of art.30 section 6 of the Constitution, there are encompassed dignity, honour, private life and the right to the personal image. While the first three attributes (values) mentioned in the text – dignity, honour, private life – refer to the behaviour of a person, the forth element – the personal image – can be regarded in a wider acceptance, being related to the way in which a person's behaviour is reflected and is perceived by the other members of the society, not only in the manner it is illustrated by a material object, such is a photograph, a printed image, a drawing etc.

These limitations for exercising the freedom of expression regard the forbidding of defaming the country, nation, the inciting to war of aggression, national, racial, class or religious hatred, discrimination, territorial separation or public violence, along with the obscene manifesting, contrary to the good manners (art. 30 section 7 from the Constitution).

These constitutional stipulations were brought into unison with the international regulations on this subject (Tuculeanu, 1995: 123-126). Proclaiming the freedom of expression and to information, art.10 of the European Constitution on Human Rights, concluded at Rome on the 4th of November 1950, stipulates, among others, that the exercising of freedoms can be subjected to many restrictions, conditions, formalities or sanctions of the law, which constitute necessary measures, in a democratic society, for the national security, territorial integrity or public safety, for keeping the order and preventing the crimes, for protecting the health and morality, the reputation or the other's rights, for stopping the divulging of confidential information, or for guaranteeing the authority and impartiality of judicial power. The European Constitution on Human Rights was ratified by the Romanian Parliament through Law no. 30/1194, being consequently integrated into the internal law (art. 11 from the Constitution).

Another important regulation on the freedom of expression is Resolution no.1003/1993 of Council of Europe, in which there is affirmed The Ethics of Journalism. Based on this resolution, the Chamber of Deputies, through Decision no. 25/1994 and the Senate, through Decision no.32/1994, recommended to the entire mass media to take into account and to apply these deontological principles of journalism, whose validity is still considered, after more than 20 years from their adopting, as much as, in Romania, it is still felt the lack of a law to regulate the practicing of the profession of journalist. Resolution no. 1003/1993 includes, among the principles of journalism, the following ones too: the observing of the citizen's right to private life; the right of people who fill a public position that their private life to be defended (point 23); the obligation of mass media to defend the democratic values – respect for the human dignity, opposition against violence and incitement to hatred, rejection of discriminations based on culture, gender, religion (point 33); the obligation of mass media, especially television, to avoid the transmission of shows, messages, images that depict violence, sexual exploitation or depravation, along with the deliberate use of inappropriate manner of speaking (point 35). Resolution no. 1003/1993 also contains ethical principles, among which there can be evidenced that: the journalists ought not to distort the real, impartial information and the

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honest opinions, nor to exploit them, for their own interest, in order to mislead the public opinion (point 21); mass media plays an important role in the evolution of the democratic life, because, through the offered information, it guarantees the participation of citizens to the political life (point 17); in journalism, it is not applied the principle “the end justifies the means”, therefore, the information has to be obtained through legal and ethical means (point 25); to the request of the interested people, mass media, has to rectify the information that proved to be fake or wrong; the national legislation must stipulate adequate sanctions and, whenever it is necessary, damage compensations (point 26).

A corollary of the freedom to expression is the right to information, which represent a person’s access to any kind of public information (art.31 section 1 from the Constitution). Establishing the legal background for the exercising of this right, the fundamental law stipulates that the public authorities have the obligation to correctly inform the citizens on the public issues, but not the personal ones. The right to information must not prejudice against the young people’s protection measures or the national safety. We can notice the fact that, by guaranteeing the right to information, the constituent legislator considered only the public information. The exercising of this right cannot implicate the access to facts and information that do not have a public character and nor to those regarding the national safety or the judicial investigations (Constantinescu, Iorgovan, Muraru and Tănăsescu, 1992: 81). It is our belief that the same exigencies must be imposed on mass media that, without holding a position specific for the state’s authorities, through the power of influencing the public opinion, tend to become the fourth power in the state.

Taking into account the responsibilities of mass media, public or private, the Constitution stipulates their obligation to provide the correct information of the public opinion (art.31 section 4). Besides the obligations stipulated by the legislation, mass media has, first of all, a moral responsibility for citizens and society, especially nowadays, when the information and communication fill a special position in the support of the democratic values (Vintilă, 1999: 154-155).

Another important regulation adopted by the Romanian Government was G.U.O. (Government Urgent Ordonnance) no. 53/2000 on measures regarding the settling of the requests referring to the licensing of compensations for moral damages, which abrogated the Law of Journalism no. 3/1974, excepting the dispositions of art. 72-75 and art. 93. The normative document was stipulating, in art.1 section 1, the right of the prejudiced through an infringement against honour, dignity or reputation, private or family life, the right to image, to ask for compensations or moral damages, and was modifying, through art.4, the Law no. 146/1997, on the stamp duties, as regarding “the establishing and providing of compensations to the natural person, for moral damages against honour, dignity, reputation, private or family life, or the right to image”.

The Constitution attributes the civil responsibility for the infringement of the juridical coordinates, concerning the accomplishment of freedom of expression, to the editor or television host, the author, the organiser of the artistic show, owner of the multiplication device, radio or television station (art.30, section 8). It is noticeable the fact that the juridical responsibility, to which art. 3 section 8, from the Constitution, refers, is the civil responsibility, the penal one being stipulated in the old Penal Code. Unlike the actual Penal Code, the old Penal Code of Romania, from 1968, also protected the esteem, consideration and respect that any person should enjoy. Art. 205 from the old Penal Code used to regulate the insult as following: “The infringement against honour or reputation of a person, through words, gestures, or any other means, or through exposure to mockery,

is punished... (section 1); the same punishment is applied in the situation that a person is attributed a deficiency, illness or infirmity that, even real, they should not be mentioned". On the other side, the calumny, as a crime, is stipulated by art. 206 from the Penal Code: "The public mentioning or imputation, through any means, of a determining fact about a person that, if it were true, would expose that person to a penal, administrative or disciplinary sanction, or the public contempt, is punished...".

The present Penal Code does not regulate anymore, neither the insult, nor the calumny, the only modality in which a person, who suffered an infringement against honour or reputation, can recuperate the prejudice, being to bring an action against, in the civil court. Showing a greater thoughtfulness than before, to the private life, the new Penal Code incriminates, among the crimes that invade the domicile and private life of a person, "the immersion in the private life, without consent, by taking pictures, filming or image registering, listening with technical devices or audio recording of a person who is in his/her house or annexed rooms owned by them, or of a private conversation" (art. 226 section 1), "revealing, broadcasting, presenting or transmitting, without consent, of sounds, conversations or images mentioned in section (1), by another person or by the public people" (art. 226 section 2), along with "revealing, without consent, of data or information on a person's private life, which can bring a prejudice, by an individual who found them out due to his/her profession or position, and who has the obligation to keep the confidentiality about" (art. 227 section 1). These provisions of the new Penal Code are of high importance, because, it might happen that an infringement brought against the private life, to attract an infringement against honour, image and reputation.

The constitutional dispositions, and those of the penal legislation, must be correlated to the provisions of the Audio-visual Law no. 504/2002. An abstract of the content of art.3 section 3 from Law no. 504/2002, can be considered the idea that the liability for the content of the programmes is, according to law, of the radio-transmitter, host or author, accordingly. It is worth noticing the fact that, unlike the present law, the old law of audio-visual, used to content more detailed provisions regarding the reparation of moral damages, resulted from audio-visual communications. Thus, according to art. 2 section 5 from Law no.48/1992 of audio-visual, "The civil liability for the content of the transmitted information through audio-visual channels, through which there resulted material or moral damages, is incumbent on, as the case may be, the host, author, the bearer of the licence for the broadcasting station, the owner of the radio-electric station through which the communication was done". The significant and very important fact to be mentioned here is that art. 2, section 5 was referring to the compensate the moral damages, when the content transmitted through audio-visual channels caused such damages, the provisions of the mentioned law not being able to draw a distinction between the quality of natural and legal person, of the prejudiced. Another important provision of the old law of audio-visual was included in art. 4, according to which: "The person who considers suffering prejudice against one of his/her legitimate, moral or material interest, through an audio-visual channel, has the right to ask for the necessary rectification, and in case of refusal, he/she has the right to reply. The rectification and the reply shall be broadcasted in the same conditions, in which his/her right or interest was infringed. The liability for the transmitting of the rectification or the right to reply, is incumbent on the owner of the broadcasting licence, of the station where the infringement occurred". We should notice, once more, the fact that art. 4 was also mentioning "the person who considers to suffer prejudice", without making a distinction between the natural and the legal person.

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Contrasting with the communist regime, in the transitional period Romania, the legislator admitted that the infringement of non-patrimonial rights can draw the same consequences, either by violating the rights of a natural person, or a legal person, because the natural person has as identification attribute the name, while the legal person identifies through denomination. Any impingement brought on the name, in the case of the natural person, denomination or company, in the case of the legal person, represents, in fact, an infringement of the right to honour, reputation or image.

The belief, according to which the impingement of non-patrimonial rights is also compatible, in the case of the legal persons, has been gradually shaped in Romania, based mainly on the dispositions of art. 54 section 1 from the Decree no.31/1954, from which it results that the protection of non-patrimonial personal rights refer to any person who suffered, among others, an infringement against his/her/its right to name or denomination. Even if only the natural person is able to experience sensations or to have feelings, incompatible to a legal person, it is not less true the assertion that “the term non-patrimonial...refers not only to the circumstance in which this kind of prejudice has not got an economic value, precisely evaluated in money, but not to the fact that the goods, to which such an infringement can be brought against, would not belong to the impinged person” (Albu and Ursa, 1979: 49).

The situation that a legal person cannot suffer from infringement of certain non-patrimonial specific rights (denomination, company), will not lead us to the conclusion that the right to honour, reputation or image are compatible with the quality of legal person. The first approach of this subject in the post-December legislation, can be found in the dispositions of Law no. 15/1991, for the solving of the collective work conflicts, according to which “in case of declaring as illegal the ceasing of strike, the courts will decide on the obligation of the guilty parties to pay compensations requested by the unit, for the damages” (art. 36 section 3). Because the mentioned text is referring to general compensations, and not only to patrimonial compensations, in the Romanian doctrine (Beligrădeanu, 1993: 14-15; Ștefănescu, 1996: 49), it was appreciated that the obligation to moral compensations of the strike organisers, illegally declared or continued, is legally admitted, if the unit suffered from a real non-patrimonial prejudice, severe enough, in this way, the judicial instances having the sovereign right to decision, according to the specific situation of each case (Mazeaud, Mazeaud and Tune, 1957: 407-408). These dispositions were also included, later, by the art.61 section 2 of Law no. 168/1999, on the solving of working conflicts (Radu, 2008: 98, 103), along with the art. 193 section 2 and art.201 section 2 from the Law of the social dialogue.

Other arguments supporting the idea that the image and the reputation of a firm can be infringed, are met in Law no. 11/1991, for the fight against the unfair competition. According to this law, if, by means of disloyal acting and facts there are “caused patrimonial or moral damages, the injured party is entitled to address to the competent court an appropriate civil action” (art.9), without distinguishing if the prejudiced party is a natural or legal person.

Under these circumstances, we appreciate that, along with the natural person, the legal person can also suffer prejudice against the right to honour, reputation or image, in press or through an audio-visual channel. Such infringements can occur when, after the

broadcasting of denigrating affirmations and, as a consequence of these actions, the legal person faced liabilities that materially prejudiced it. Such actions can include, for example: the deed of an employee to disclose secret information regarding the job, or to denounce, in an ill-disposed or easy way, fact that can be imputed to his employer (Radu, 2013: 194); the revision for the granting of environmental authorisation; suspension or annulling of the environmental agreement or authorisation/ the integrated environment authorisation (under the provisions U.G.O. no. 195/2005 on environmental protection); the suspension and the ceasing of a legal person's activity, after the withdrawing of the functioning licence; reduction in the number of people (clients) that resort to a legal person's services and other economic consequences, although susceptible of being evaluated according to pecuniary criteria. Moreover, the deed of the employee to disseminate an open letter with offensive or slanderous allusions constitutes a severe crime, because it affects the reputation and harms the image of the employer (Radu, 2013: 195).

The offered examples are just generic ones, the reality evidencing other situations too, in which the slanderous actions aim the public display of a negatively deformed image, regarding a legal person, image that can cause moral damages – through the distortion of reputation and image, on one side, and materially – through the alterations of the relations with the partners and the clients, and the decreasing of the turnover, on the other side.

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