ALEXANDRU IOAN CUZA IAȘI UNIVERSITY

DOCTORAL THESIS
COMPARATIVE STUDY ON PERSONALITY RIGHTS

- summary in English -

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1. Introduction

This PhD thesis aims to analyse, from a comparative law perspective, the object of personality rights in three legal systems: the Romanian system, the French system and the Spanish system.

The doctoral thesis is divided into three chapters preceded by prolegomena. Chapter I analyses the theories of the concept of personality rights in comparative private law. Chapter II examines the object of personality rights in comparative law and is divided into two parts dealing with the French and Spanish systems of law. Chapter III looks at the subject of personality rights in the Romanian system, with comparative reference to the two systems of law, French and Spanish, analysed in the previous chapter. The final conclusions concluding the paper refer to the so-called "new rights of personality", already discussed in the paper, as well as to some ethical-legal issues concerning the notion of "electronic personality".

2. Prolegomena

The prolegomena to this PhD thesis present, in three parts, some philosophical and historical aspects, with references to ancient mythologies, about the roots of humanity and the concept of personhood.

The first part of the prolegomena deals with the roots, mysticism and history of the creation of humanity. Ancient cultures, the Judeo-Christian tradition or Mexican culture show us that the questions of man's origin, destiny, suffering, evil, death... are questions inherent to every human being and every people. In this chapter, these questions and their answers will be approached from the perspective of occidental philosophical and scientific thought, taking into account the influence of the configuration of Europe and America, but also of the whole world, especially in these last centuries.

The second part of the prolegomena examines from a historical and philosophical perspective, the concept and terminology of the notion of "person", in chronological order, from Antiquity to Contemporaneity.

The notion of "*persona*", "personality" or "*personlichkeit*" appeared in the legal world in two different historical periods and in two different forms, first in the "Institutes of Gaius" in the 2nd century BC, which later inspired Justinian's "Institutes" of the 6th century BC. The 1st book of Justinian's "Institutes" developed the notion and understanding of the concept of the natural person as a subject of law, but also their legal capacity and social status in interpersonal relationships, such as marriage, filiation, adoption or guardianship. Thus, a large number of 19th-century civil codes took this conventional concept as a model for their own private regulations, and the French and German legal systems share this common heritage.

Another concept defining "persona" was developed by the philosophy of the Enlightenment as well as by the doctrinal theories of natural law in the 17th and 18th centuries. The idea of human dignity seen as the primary characteristic feature of the person recognised in each individual, as well as the concept of innate human rights, are ideological creations of Christian ethics and canon law developed through the works of jurists Hugo Grotius, Christian Thomasius and Samuel von Pufendorf and others like them.[1]

The third part of the prolegomena examines the modern perception of personality and the need to protect it. In a context where medicine has undergone considerable changes in recent years, we can say that today life can be transmitted in a different manner from the natural way, quality of life can be assessed before birth by prenatal or pre-implantation diagnosis, life can be saved by prenatal transplants or transformed by genetic modification, survival can be artificially ensured, and our biological destiny, identity and the secret of the human genome can be discovered in their true sense.

Today, man possesses the technical power to intervene and modify the human genome and, as a consequence, to contribute to essential changes in his own species. The bioethical legislation that seeks to manage this power enunciates a religious and philosophical principle rather than a legal imperative: "no one may harm the human species", followed by three prohibitions condemning eugenic practices, reproductive cloning and genetic modification, "which could lead to the conception of hybrid beings, so-called mythological or medieval monsters". [2]

3. Chapter I. Introductory considerations on the theory of personality rights in comparative private law

The first chapter of the PhD thesis analyses the theories of personality rights from a multidisciplinary perspective, but also from the perspective of the Romanian system and comparative law, referring to the French and Spanish legal systems.

The first section of this chapter examines the multidisciplinary perspectives from which the human person is researched and understood in relation to: legal personality; the theological and Christian bioethics; the psychological and philosophical view of human personality; the individual and society.

Under the impact of Darwinism and, more recently, of superficially skilful ethology, some thinkers give priority to the biological, through analogies and forced approximations. Certainly, the individual-animal has neither initiative in the herd, nor independence from his species beyond

[1] Gert Brüggemeier, Aurelia Colombi Ciacchi, Patrick O'Callaghan (editori), *Personality Rights in European Tort Law,* Editura Cambridge University Press 2010, p.7.

[2] Philippe Malaurie, Laurent Aynes, *Les personnes. Les incapacites*, Editura Defrenois, Paris, 2007, p.10.

what is instinctively predetermined - although going up to the human one might guess some outlines of what he will have - whereas the zoon-politikon as an individual is what he is in the social environment, only that he is aware of himself and of the other, aware of his possibilities to refuse, to criticize, to choose between alternatives, to decide, springing from the experience learned from others, previous and contemporary. The animal-person is the product of anthropomorphising, with no relevance beyond the myth.[3]

The main issue that has been raised over time by a long line of great modern thinkers, from Hobbes and Locke to the American founders, and which has proved disappointing, has been the claim that human beings have rights and freedoms that must be respected equally, without being very clear about the basis for this claim. This deliberate reticence about the foundation and content of the concept of human dignity has served liberal democracy well because it has encouraged and supported freedom, equality and tolerance, maintaining a climate of peace. As far as the field of medical ethics is concerned, the liberal principle of respect for the human being, for the person, has been useful in solving ethical problems.[4]

Professor Roger Nerson wrote in 1963 that "laws are made for people, and therefore all legal rules can be regarded as following closely or remotely the personality of man". Nerson also points out that the notion of personality rights is a recent one, although a number of rights inherent in human personality already exist. French courts have never hesitated to recognise the existence of such rights, but it was only in the 20th century, and especially at the beginning of the 21st century, that these personality rights were systematised with the help of legal doctrine.

It is true that, historically, the question of the protection of the human individual was posed in terms of public law, through human rights, before being extended to private law. We could therefore say that personality rights were discovered by transposing human rights theory into civil law.

From the theories of R. Nerson in his studies devoted to the theory of personality rights, we can also deduce many questions that should be answered by studies devoted to personality rights: how does the law see the human being, or rather, how does the person appear in the law? In other words, we question what would be the status of the subject of law?[5]

Given the diversity of anthropological conceptions, the personalist model draws the most important elements from the heritage of anthropological and ethical thinking on life and health, developed over centuries in the Christian Occident, from the elements developed by the great

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[3] Gabriel Popescu, Gheorghe Mihai, *Introducere în teoria drepturilor personalității*, Editura Academiei Române, București, 1992, p.42.
[4] Adam Schulman, *Human Dignity and Bioethics- Essays commissioned by the President's Council on Bioethics*, Government Printing Office, Washington, 2008, pp.15-17.
[5] Edith Deleury, *Une perspective nouvelle: le sujet reconnu comme objet du droit*, în Les *Cahiers de droit*, *13*(4), 529–554. https://doi.org/10.7202/1005053ar, 1972.

philosophers of ancient Greece, and provides a solid justification for ethical principles: physical life is a fundamental value, a condition for every other value; respect for human dignity and the principle of freedom-responsibility.[6]

The second section of this chapter provides a comparative analysis between personality rights and human rights, treating human rights theory and personality rights theory separately.

Human rights theory allows for the protection of individuals against the arbitrariness of public authority and is therefore a public law concept. By contrast, the theory of personal rights protects the individual from other members of society and is therefore a private law concept. In some cases, the two concepts are interconnected, since the failure of the state to act in the event of violations by entities other than those invested with public authority constitutes a violation within the meaning of the European Convention on Human Rights. In order not to create confusion, it should be made clear that personality rights concern only the individual, i.e., freedom and physical and moral integrity.[7]

This section concludes with an analysis of the person in relation to personality. The notions of person and personality refer to the same human individual, but under different aspects. In any case, it is not the person who is the creator of values, but the personality, i.e., the individual taken as a whole, capable of epistemic, pragmatic and axiological thinking; the individual person has and enjoys what he or she has, namely moral, legal and economic rights and obligations, whereas the personality is in a cognitive and action-oriented world. If legal personality is a value that resides in a relationship between human individuality as an object and the subject-state society, the individual person represents the individual who receives wealth as a set of norms whose axiological content refers to what he must be so that through his manifestations as an individual, he behaves anytime and anywhere as something generic, i.e., he renounces his exemplary individuality.[8]

The third section analyses the general theory of personality rights in the Romanian system.

Before the adoption of the New Romanian Civil Code, some authors tried to find a definition as faithful as possible to the legal reality, adaptable to the reality of the time, and in this attempt they correlated the expression of these so-called personality rights with the subjective rights already regulated by the civil law in force, trying to find similarities that could give them authenticity. Among the first Romanian authors who dealt with finding a definition of personality rights, analysing them from a legal perspective, as well as in relation to other related subfields, the authors Gabriel Popescu and Gheorghe Mihai succeeded in giving us the first introduction to the

[6] Manuel Porras del Corral, *Biotecnologia, derecho y derechos humanos*, Editura Publicaciones Obra Social y Cultural Cajasur, Cordoba, 1996, p. 35.
[7] Valerius M.Ciucă, Liviu Damșa, Gheorghe Durac, Tom Rawlings, Carmen Tamara Ungureanu, Augustin Vârnav, Mihaela Vârnav, *Lecții de drept privat comparat*, vol.III, Editura Fundației Academiei AXIS, Iași, 2009, p.59.
[8] Gabriel Popescu, Gheorghe Mihai, *op.cit.,* pp.37-51.

theory of personality rights, probably outlining the first "useful" definition in the Romanian system: "personality rights are subjective civil rights without material expression, subject to the principle of availability. Technically speaking, personality rights constitute civil liberties".[9] This "civil liberty" would consist of: freedom of the home, freedom of capital, freedom of work and freedom of thought. Other authors have argued that the rights and freedoms of the citizen constitute the "moral heritage of public life", while the institutions of civil law and labour law constitute the "moral heritage of social life" of which the individual is the holder.

Currently, the rights of personality are clearly defined in Article 58 of the New Civil Code, which states that "everyone has the right to life, health, physical and mental integrity, dignity, self-image, respect for privacy and other such rights recognised by law", these rights being non-transferable. The doctrine gives a much clearer definition of these rights as "rights inherent to the quality of human person, rights which belong to every individual, being considered as an extension of the individual's personality". A new aspect of this new definition of personality rights is the bioethical context, which is closely linked to scientific developments in the medical field, which have numerous repercussions on the individual's personal life, and since we cannot stop this unbridled course of science, we can at least try to temper the effects it has or could have on the human body by means of legislative regulation adapted to these developments.

The fourth section examines general theories of personality in comparative law, with reference to the French and Spanish systems.

In the French system, attention has been focused on the individual since the 19th century, then the 20th century saw an increase in efforts to create a jurisprudence in this regard (which for a long time retained an "underground" aspect, with judges ensuring the protection of the individual without officially using the expression " personality rights ", which nevertheless appeared in a report of the Court of Cassation from 1968-1969) and a doctrinal systematisation. It ensures that not only the personality - conceived in philosophical terms as 'the self-consciousness of a being that lasts or is rightly or wrongly attributed to an identity', or, in legal terms, as the capacity to be a subject of law - but also 'all the attributes of the human person' are taken into account. Intervention will be late and, for a long time, limited, manifesting more of an action than a reaction to social developments and technological innovations that are dangerous for the soul and body. In 1970, the right to respect for individual privacy was proclaimed; in 1978, the principle was issued that information technology may not infringe human identity, human rights, privacy or individual or public freedoms. It was not until 1993 that the right to respect for the presumption of innocence was incorporated into the Civil Code, and in 1994 the right to respect for human beings and their bodies was affirmed. Thus, even though the body of legislation has been substantially enriched, the determination of personal rights and the definition of their regime still require a great deal of case-law research, and it is necessary to adapt to developments that have led to scientific progress

[9] *Ibidem*, p.64.

and even new rights, such as the right of access to the Internet and the right to the protection of personal data.[10]

In France, the notion of personality rights emerged late, although various aspects of personality were not without protection.

Technically, this protection of personality rights was first indirectly ensured on the basis of civil liability, which allowed courts to sanction violations of personality. Over time, the courts have moved away from the provisions of Article 1382 of the Civil Code to provide specific protection for each category of rights, to which they have given a certain type of originality. On the other hand, the legislator has gradually begun to enshrine certain rights of personality, such as the moral right of the author of a literary or artistic work, the right to respect for private life, the right to the presumption of innocence or even the right to respect for the human body.

However, on the doctrinal level, the general theory of personality rights remains incomplete. Underlining the common purpose of personality rights, which aim to ensure the protection of the development of human personality, some authors support the idea of a general right of protection of personality meant to guarantee certain aspects of it. However, contemporary French law continues to point to the diversity of personality rights, while recognising the existence of common features of the various personality rights.[11] Writing in 1967 in the " Civil Law Treatise " (t.I, n.6) that " it does not seem possible to recognise the existence of a general right of personality in French law, the others being merely the special expression ", Marty and Raynaud rectify in the 1976 edition: " one might doubt the existence in French law of a general right of personality, the others being merely the special expression; but case law tends to recognise them because they generally sanction intolerable violations of personality, particularly through the press".

In 1951, the Commission for the Reform of the Civil Code came out in favour of a general right of personality.[12]

In the Spanish system, legal literature defines personality rights as those rights derived from human nature and the inherent dignity of the person, whose purpose is to protect the most intimate and personal sphere, both in its physical and spiritual aspects.[13]

These rights of personality appear for the first time in Spanish law in the Civil Code, under the amending auspices of Law 13/1981, in Article 162.1, which states: *"Parents who have parental authority ... have legal representation of their minor children who are not emancipated"..." Acts relating to the rights of personality or others which the child excludes, in accordance with the laws*

[10] Bernard Teyssie, *Droit civil. Les personnes*, ed. a 18-a, Editura Lexis Nexis, 2015, Paris, p.37.
[11] Sophie Gjidara-Decaix, *Precis de droit civil*, Presses Universitaires de France, Paris, 2007, pp.52-53.
[12] Bernard Beignier, *Le droit de la personnalité*, Presses Universitaires de France, Paris, 1992, p.50.
[13] Aurora Lopez Azcona, *Derecho civil: persona y bienes. Cuaderno de trabajo*, ed. a 2a, Prensas de la universidad de Zaragoza, 2019, p.63.

and with conditions of maturity, he may perform himself ... ", without the need, in such cases, for parental consent".[14]

The subjective rights of personality that we find in the Spanish Constitution in Article 18.1, in particular honour, personal and family privacy and one's own image, have been transformed, through constitutional incorporation, into fundamental rights of personality.

It is not wrong to call them rights of personality because they would be a Civil Law concept regulating private relationships, away from the public and general space that seems to surround those rights. The Spanish Constitution expressly refers to the dignity of the person, to the inviolable rights that are inherent to the free development of personality as the foundations of coexistence in society, practically framing these rights in public law by placing under the supreme protection of the Constitution these rights whose purpose is to protect the person in the private sphere.[15]

4. Chapter II. Comparative law aspects

The second chapter of the thesis examines comparative law issues and is divided into two parts. The first part treats the object of personality rights in the French system and the second part treats the object of personality rights in the Spanish system.

4.1. The object of personality rights in French Law

French doctrine has not been able to reach a consensus on a definitive list of personality rights, as some authors support a broader conception, such as H.E. Perreau - considering that this category can be enlarged to the extent that there are violations of the personal interests of individuals - as well as a narrower conception (P. Roubier), while others still support a monist theory of personality rights considering that, in reality, there is only one right with several aspects. Faced with such uncertainties, it is necessary for the doctrine to adopt a pragmatic approach.[16]

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[14] „Los padres que ostentan la patria potestad...tienen la representación legal de sus hijos menores no emancipados" ... Se excluyen los actos relativos a los derechos de la personalidad u otros que el hijo, de acuerdo con las leyes y con sus condiciones de madurez, pueda realizar por sí mismo..., no necesitando en esos casos consentimiento del progenitor".

[15] Juan Jose Bonilla Sanchez, *Personas y derechos de la personalidad*, Editura Reus, Madrid, 2010, pp.21-31.

[16]Taking a more pragmatic view of personality rights, we could consider removing from this area certain prerogatives which would not have sufficiently precise content, such as the right to life, work, health, rest or housing. However, some rights are undoubtedly rights of personality, in so far as the legislator or case law has specified the applicable regime. These may be governed directly by civil law, such as the right to respect for the human body (Article 16 et seq. of the Civil Code), the right to privacy and the right to one's image (Article 9 of the Civil Code), the presumption of innocence (Article 9-1 of the Civil Code), or the right to a name. However, other rights may be governed by other branches of law, such as the moral rights of the author (Article L121-1 of the Intellectual Property Code) or the right of reply (Article 13 of the Freedom of the Press Act of 29 July 1881). Finally, there are also rights which have all the characteristics of personality rights, but remain too closely linked to other concepts to be distinguished from them: this is the right to honour or reputation (civil defamation), which is only one aspect of the offence, the right to

The construction and development of the notion of personality rights becomes a real challenge for many French authors to find a clear and precise definition of their object. Even today, personality rights are seen more as non-patrimonial rights that are distinguished by their non-transferable, non-assignable, non-transferable and non-assignable character.[17]

While the concept of personality rights began to evolve slowly with the help of jurisprudence only in 1969, legislative recognition will be much later and rather limited. In 1970, Law No 70-643 of 17 July 1970 recognised everyone's right to privacy, and these provisions were subsequently incorporated into Article 9 of the French Civil Code. In 1978, Law No 78-17 of 6 January, complemented by the law of 1985, established the principle that the digital environment may not infringe human identity, human rights, privacy or individual or public freedoms. It was not until 1993 that the French Civil Code enshrined the right to be presumed innocent until proven guilty.[18], and in 1994 it was also regulated the right of the human being and its body.[19] However, the enrichment of the corpus juris has not led to a determination of the rights of personality or the definition of their regime.[20]

Professor Philippe Malaurie has grouped personality rights into two categories: respect for physical integrity and respect for human dignity. Maître Jean Carbonnier considers the following to be personality rights par excellence: the right to one's own image, the right to honour and the right to dignity. Gregoire Loiseau considers that the main components of personality are: privacy, image, name and numerical personality. Florence Laroche-Gisserot, on the other hand, classifies personality rights into two categories: rights relating to one's own body and rights relating to moral integrity.

One of the main objects of personality rights is the physical integrity of the individual, which involves several aspects of respect for the human body. Firstly, discussions on this subject fall into two categories: the body of the living person or the body of the deceased person.[21]

Article 16-1 of the French Civil Code, after stating that "everyone has the right to respect for his own body", underlines the importance of this principle by stating in paragraph 2: "the human body is inviolable". Following the model imposed by Article 9 of the same Code, the emphasis is on the defensive prerogative attached to the right to respect for the human body, supported by the provisions of Article 16-2 of the Civil Code, namely the power to oppose violations of the body. This power also implies a second prerogative: the freedom to dispose of one's body, within the limits imposed by public order and the rights of third parties. Everyone is

correspondence and the right to voice, which are covered by the right to respect for private life, but also, for the latter, the right to image and, finally, the right to judicial remedy and to a fair trial (rights required by Article 6 ECHR), the general content of which is governed by civil or criminal procedural rules.

[17] Jean-Christophe Saint-Pau, *et.al*., *Droits de la personnalité*, Editura LexisNexis, Paris, 2013, pp.445-450.

[18] See the provisions of Article 9-1 of the French Civil Code governing the presumption of innocence.

[19] See also the provisions of Article 16 et seq. of the French Civil Code.

[20] Bernard Teyssie, *Droit des personnes*, ed.a 19-a, Editura LexisNexis, Paris, 2017, pp. 40-41.

[21] Bruno Petit, Sylvie Rouxel*, Droit des personnes*, ed.a 4-a, Presses universitaires de Grenobles, 2015, p.26.

the owner of his or her own body and can decide what he or she accepts or does not accept with regard to it, which is why acts without consent are punishable.[22]

With the expansion of technology and science, the emergence and development of transplants has modernised and evolved 21st century medicine. Therefore, numerous laws have attempted to regulate and control technological advances in this field, and the first law in this regard was the Caillavet Law of 22 December 1976, which regulated the organ harvesting from living or deceased persons.[23]

While various legal texts have been drafted over the years to regulate procedures involving research on the human person and raising various ethical issues, Law No. 2012-300 of 5 March 2012 on research involving the human person, also known as the Jardé Law, was issued to create a single legal framework for all scientific research involving the human person and reformulates the regulations applicable to old biomedical research, unifying and simplifying the legal regime for such research, thereby favouring the development of public research.[24]

French law establishes in the provisions of Article 16-1-1 of the Civil Code that "the respect due to the human body does not cease with death". The 1994 law (French Public Health Code) prohibits medical research on a brain-dead person if he or she did not consent during life. Also, with regard to the funeral of the deceased person, the wishes stipulated during his or her lifetime regarding: religious or civil funeral, place of burial, burial or cremation (it is forbidden to request the preservation of the body by freezing) must be respected.[25]

What justifies the organ harvesting from deceased persons is the public interest, subject to the consent of the deceased before death or with the consent of living heirs. French law states in Article L1232-1 of the C.S.N.P. that "the removal of organs from a person whose death has been duly ascertained may be carried out only for therapeutic or scientific purposes". The issue of consent is crucial as the third paragraph of the same article states that "such removal may be carried out on an adult as long as he or she has not expressed, during his or her lifetime, his or her refusal to such removal, mainly by registration in a national automated register provided for this purpose.[26]

From the perspective of the moral integrity of the person, the French system recognises the following as personality rights: human dignity, privacy, presumption of innocence and honour.

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[22] Jean-Christophe Saint-Pau, *et.al*., *op.cit.*, p.1293.
[23] François Terré; Dominique Fenouillet, *Les personnes. Personnalité-Incapacité. Protection*, ed.a 8-a, Editura Dalloz, Paris, 2012, p.91.
[24] Marie-Catherine Chemtob-Concé, Anne Cailleux, *L'impact des nouvelles dispositions de la loi relative aux recherches impliquant la personne humaine*, Medecine&Droit 2013 (2013) 30-35, https://doi.org/10.1016/j.meddro.2012.12.007.
[25] Philippe Malaurie, Laurent Aynès, *op.cit*., ed.a 9-a, p.150.
[26] Jean-Christophe Saint-Pau, *et.al*., *op.cit.,* p. 1348.

While French constitutional law has not provided a precise definition of human dignity, giving it only the status of a principle from which all other rights of personality derive, the criminal chamber of the French Supreme Court of Cassation[27]and the civil judge have succeeded to some extent in outlining a definition of the concept of dignity and the concrete values it seeks to protect in each area, criminal or civil. The civil judge, on the other hand, seems to have found in the notion of the dignity of the human person an appropriate way of protecting his or her values, such as consideration,[28], decent[29], image[30] or the person`s autonomy.

In its decision 94-343/344 of 27 July 1994, the French Constitutional Council gave human dignity constitutional status as a principle, affirming a set of principles such as "the primacy of the human person, respect for the human being from the beginning of life, the inviolability, integrity and non-patrimonial nature of the human body, and the integrity of the human species", the purpose of these principles being to ensure respect for the constitutional principle of protecting the dignity of the human person.[31] This fundamentalist approach is also accepted by the doctrine because the dignity of the human person is often presented as the reason for the existence of other rights. It has therefore been held that the dignity of the human person is a primary right and the source of fundamental, human rights.[32]

In the French conception, the concept of "private life" and that of "rights of personality" are difficult to distinguish as there is a certain legal nebulousness prevailing in this area.[33]

The text of Article 9 of the Civil Code is considered by the majority French doctrine as the matrix of the rights of personality, and the legal interest protected by the provisions of Article 9, *stricto sensu*, is the private life. The French Supreme Court, however, considers it to be "a textual matrix of personal rights". However, the French doctrine remains reserved as to whether the case law establishes a general right of personality, since certain rights of personality are based on other legal provisions. In fact, the provisions of Article 9 consecrate the protection of the right to home, correspondence, image or even voice, which are considered as vectors of privacy that are associated with the right to privacy in international and European texts.[34]

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[27] The French Penal Code devotes a chapter to violations of the dignity of the person, dealing with behaviour that contravenes the principle of equality, those that reduce the human being to a commodity (exploiting people), the exploitation of a person's vulnerability or dependence, violations of the integrity of the corpse, or even the institutionalisation of humiliation.
[28] Cass.soc., 25 fevr.2003: Bull.civ.2003, V., nº66.
[29] Cass., 1ere civ., 20 dec. 2000, aff.Erignac: D.2001.
[30] CA Paris, 28 nov.2008: D.2009.
[31] See Cons.const., dec.27 iulie 1994.
[32] Jean-Christophe Saint-Pau, *et.al*., *op.cit*, p.121.
[33]According to Marie-Therese Meulders-Klein, the list of personality rights is not clearly established because these rights are so diverse that they fall into a real legal nebula, with a heterogeneous content and an uncertain status, in Frederic Sudre, La vie privee, socle europeen des droits de la personnalite, p.3.
[34] Jean-Christophe Saint-Pau, *et.al*., *op.cit*, pp.702-704.

With regard to the presumption of innocence established by the provisions of Article 9-1 of the French Civil Code, this concept states that "everyone is entitled to the respect of the right to be presumed innocent". The provisions of Article 9-1 of the French Civil Code are not limited to regulating the existence of the respect of the right to be presumed innocent and to establishing penalties for breaches of those provisions. Paragraph 2 of Article 9 also defines the extent of the infringement of that right and, therefore, its substance. We are referring here to the provision that "before any conviction, everyone shall have the right not to be held out in public as having committed offences which are the subject of an investigation or prosecution". By laying down the conditions for infringement of this right, the legislature is at the same time *ipso facto* revealing the content of the prerogatives conferred on the holder. The provisions of Article 9(1) of the Civil Code therefore establish a right which confers on its holder the right not to be presented in public as having committed a legal offence.[35]

Defamation is defined by Article 29 of the Act of 29 July 1881 as "the attribution of a fact that harms the honour or consideration of a person".[36] However, not all defamation of a person violates the presumption of innocence. The defamation provided for by the special law allows only a general protection of honour, while the protection offered by the provisions of Article 9-1 of the Civil Code is less specific and less concerned with the idea of a violation of honour.[37] The protection given to honour does not only concern moral consideration, but also professional, economic and social esteem. This self-esteem depends on the individual and, at the same time, on the individual's social and professional position.[38]

In conclusion, from the perspective of a general right of personality, we agree that its subject remains to be defined.

4.2.The object of personality rights in Spanish Law

In the Spanish legal system, personality rights are seen as subjective rights and only appear in the second half of the 19th century, which is logical given that the generic category of subjective rights itself appears in the 19th century, which does not prevent the goods, that are the object of these rights, from being protected first.

This concept, which has been the subject of intense debate in Spanish doctrine, was regulated under Organic Law No 1 of 5 May 1982 on the protection of honour, personal and family privacy and protection of the image. This law states that these rights are inalienable, imprescriptible and cannot be renounced, and any renunciation of the protection afforded by this

[35] *Ibidem*, pp.1068-1074.
[36] If it is accepted that the imputation of guilt prior to any final conviction damages the reputation of the person concerned then that imputation is by definition defamatory.
[37] *Ibidem*, pp.1070-1071.
[38] Andreas Bucher, *Personnes phisiques et protection de la personnalité*, ed.a IVa, Editura Helbing & Lichtenhahn, Bâle, 1999, pp.115-117.

law is null and void. However, the doctrine continues to develop in favour of the rights of personality which find their place in various works of civil law, and the first civil lawyers to deal with property and the rights of personality were Valverde, professor and rector at the University of Valladolid, as well as the author of a treatise on Spanish civil law whose first edition dates from 1909. We also remember Sanchez Roman, who dealt at the same time with the general part of civil law studies, and Clemente de Diego distinguished himself with the general part of the elementary course of common and regional Spanish civil law dating from 1923 in Madrid.

It was not until the beginning of the second half of the 19th century that a modern view of the rights of personality (*los derechos de la personalidad*) appeared in Spain, thanks to José Castan, who edited the General Review. These rights, which were considered modern at the time, appeared in the work "*Los derechos de la personalidad*" which was published on page 5 et seq. of the July and August 1952 issue of the General Review. The ideas that appeared in the Review were then transferred to a separate chapter on personality rights in the volume of the 8th edition of the General Part of Spanish Civil, Common and Regional Law published in Madrid in 1952.[39]

In Spanish law, the Civil Code, as amended by Law 13/1981, introduced in Article 162.1 the following provision: *"Parents with parental authority ... have legal representation of their minor children who are not emancipated "..." Acts relating to the rights of personality or others which, in accordance with the laws and with conditions of maturity, the child may perform alone ... ", without the need, in such cases, for parental consent;"*[40] We see here that an exception is made to the right of exercise of the minor in favour of the so-called rights of personality, to which the legislator gives a special importance.

The subjective rights of the personality which we find in Article 18.1 of the Spanish Constitution, in particular honour, personal and family privacy and one's own image, have been transformed by constitutional incorporation into fundamental rights of the personality.[41]

The Spanish Constitution takes on, alongside a purely political content, such as the organisation of the State, Parliament, the Government or the Constitutional Court, a series of general principles and higher values, informing the entire legal system, including civil law, such as freedom, justice and equality, legality, the normative hierarchy, transparency and legal security. In addition to this extensive constitutional protection in the civil field of all these principles and values enshrined in the Spanish supreme norm, at the same time human dignity, the free development of personality and respect for the rights of others, leave their deep mark on civil law,

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[39] Camelia Mihăilă, *L'objet indéterminé des droits de la personnalité. Une rétrospective du point de vue du droit privé compare*, les Cahiers du Cedimes, vol.15 nº3 – 2020, pp.47-60.

[40] „Los padres que ostentan la patria potestad...tienen la representación legal de sus hijos menores no emancipados... Se excluyen los actos relativos a los derechos de la personalidad u otros que el hijo, de acuerdo con las leyes y con sus condiciones de madurez, pueda realizar por sí mismo..., no necesitando en esos casos consentimiento del progenitor".

[41] Gisela María Pérez Fuentes, *Evolución doctrinal, legislativa y jurisprudencial de los derechos de la personalidad y el daño moral en España*, în Revista de Derecho Privado, nueva época, anul III, nr.8, mai – august 2004, p.111-146.

especially in those personalist sectors. In this sense, Article 10.1. of the Spanish Constitution recognises the rights of the person as "the dignity of the person, the inviolable rights inherent in him, the free development of personality, respect for the law and the rights of others are the foundation of the political order and social peace".[42]

The Spanish Constitution, like any other, reflects the state of constitutionalism of its time. And since the authoritarian regime from which the Spanish legal system emerged did not respect the personal integrity of the individual, it was protected to the maximum extent, recognising a specific right, which has rarely been included in other contemporary declarations of rights, alongside the express prohibition of torture and inhuman or degrading treatment or punishment.

Therefore, Article 15 of the Spanish Constitution presents a certain complexity that proclaims in the same legal provision both the right to life and the right to integrity, since "everyone has the right to life, physical and moral integrity and in no case may be subjected to torture, inhuman or degrading treatment or punishment. The death penalty is abolished, except in cases provided for by military criminal laws for periods of war".[43]

As regards the physical sphere of personality rights, the Spanish legal system regulates the right to life involving the rights of the unborn child and embryos, as well as the issues of euthanasia, organ removal and transplantation and blood donation.

In Spanish law, the starting point for civil law relating to the individual is birth. According to Article 30 of the Spanish Civil Code, in order to be recognised as a person, at least two requirements must be met: 1. to have a human figure (to be able to have a human face) even if it is missing a limb or suffers abnormalities; and 2. to live for 24 hours completely detached from the mother's womb. It speaks of legal viability, through foetal maturity essential to live. The birth process and the birth itself coincide in the physical sphere, but civil law preserves the condition of having been born to those who survive beyond that period. [44]

Assisted reproduction in Spain is regulated by Law 14/2006 of 26 May on assisted human reproduction techniques and is considered a freedom, related to the right to health and life, as well as scientific research in other areas of human life. [45]

Eugenics is regulated to some extent by the same law 14/2006 in art.3.1. which prohibits the cloning of human beings for reproductive purposes, thus setting a limit to the subjective right of this freedom. Today we dare to discuss modern eugenics, namely the new eugenics: pre-implantation diagnosis (PGD). While the assisted fertilisation techniques that have been developed

[42] Pilar Gutiérrez Santiago, *La constitucionalización del derecho civil*, Estudios de Derecho; Medellín Vol. 68, Iss. 151, (Jun 2011): 51-86.
[43] Raul Canosa Usera, *La protección de la integridad personal*, Revista de Derecho Político; Madrid nr. 100, (Sep-Dec 2017): 257-309.
[44]Miguel Angel Encabo Vera, *Derechos de la personalidad*, Marcial Pons, Madrid, 2012, pp.47-50.
[45]*Ibidem*, p.50.

since the 1980s were intended to give hope to couples with fertility problems, today they seem to have changed their purpose and are tending to become instruments of eugenics, alongside the trade in frozen eggs. This issue of the new eugenics of embryo selection was first discussed by the French biologist Jacques Testart, who ironically was the first to achieve in vitro fertilisation in France. [46]

So-called surrogacy, or surrogate motherhood, is creating controversy in Spain in the context of political pressure in favour of these procedures.[47] The Spanish doctrine is against the legalisation of this process in Spain, for many reasons, mainly ethical and moral. The Spanish doctrine analyses this process from an ethical-deontological perspective and highlights a number of aspects on which it bases its arguments against the surrogacy. More than 30 years after the controversial Baby M.[48], and after numerous legislative, biomedical or socio-economic experiments in various countries, we can see the development of a mercantilism which not only violates human rights, but also constitutes a huge global injustice in terms of the asymmetry between the parties to this process regarding the vulnerability and precariousness of those who are subjected to it. We can only join this majority opinion, which we consider morally correct.[49]

Active euthanasia is unlawful in Spain, as confirmed by a ruling of the Constitutional Court No. 120/90 which states that euthanasia is not a right to freedom, nor a right to self-determination. It could thus be said that euthanasia is not a fundamental right insofar as the public authorities are not obliged to protect it. Euthanasia becomes an action that is more akin to suicide. Suicide cannot be punishable, but neither can it be allowed, given that the public authorities are responsible for protecting life in all circumstances.[50]

Organ removal and transplantation is regulated in Spanish law by Law 30/1979 of 27 October, which covers the transfer, harvesting, preservation, exchange and transplant of human organs for therapeutic use.[51]

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[46] Roberto Andorno, *Bioetica y dignidad de la persona*, ed.a.2ª, Tecnos, Madrid, 2012, pp.92-97.

[47] In 2016, progress was made in Sweden towards banning surrogacy. The Californian model, responding to the reproductive tourism boom, is a form of outsourcing to poor countries. On the other hand, we find an altruistic model, the benchmark of which is the UK, where the mother is guaranteed to make decisions throughout the process, even to the point of refusing to adopt the child. Countries like India, Mexico and Thailand revised their laws in restrictive directions in 2015.

[48] The Baby M. case was one of the most controversial in surrogacy. The child named BABY M., born in 1986 and whose parentage was at issue, was the subject of 109 N.J. 396 (1988) 537 A.2d 1227 in the New Jersey Supreme Court, which debated the parentage of a child born to a surrogate mother. For legal details of the case, see: https://law.justia.com/cases/new-jersey/supreme-court/1988/109-n-j-396-1.html .

[49] María José Guerra-Palmero, *Contra la llamada gestación subrogada. Derechos humanos y justicia global versus bioética neoliberal*, Sección de Filosofía, Facultad de Humanidades, Universidad de La Laguna, Campus de Guájara, La Laguna (Tenerife), España, 2017, 31(6): 535-538.

[50] Miguel Angel Encabo Vera, *op.cit*., p.57.

[51] This law is supplemented by other legal provisions on the subject. RD.2.070/1999 of 30 December regulates the procurement and clinical use of human organs and territorial coordination in the field of organ and tissue donation and transplantation. Blood donation and blood banks are regulated by the RD of 9 October 1985. A RD of 22 October 1993 regulates the technical requirements and minimum conditions for blood donation and blood banks, and the Order

As far as living donors are concerned, organ transplantation will only be carried out for therapeutic purposes and in centres authorised for this purpose, in accordance with the provisions of Articles 4.1, 9.6 and 11 of RD.2.070/1999.[52] The donation of human organs is exclusively free of charge, according to art.8.1 of the RD of 1999, and donors must be of legal age, mentally competent and in good health. The donor's consent to the transplantation of human organs must be given in writing before the competent authority, i.e., the judge responsible for the administration of the civil register in the district where the procedure is to take place.

As for the harvesting of deceased persons, this procedure can only be carried out if the fact of death is proven, according to the legal technical conditions. These procedures are carried out for therapeutic purposes, the only condition being that the deceased person did not expressly object to them during his/her lifetime.

Blood donation in the Spanish legal system is regulated by RRDD 1.945/1985 and 1.845/1993, and the Order of 7 February 1996 determines the criteria and conditions for excluding blood donors. Blood donation can only be made for the purpose of obtaining therapeutic derivatives.[53]

The spiritual sphere of personality rights in the Spanish legal system encompasses the fundamental right to honour, personal and family privacy and to one's own image regulated by Spanish Organic Law 1/1982 of 5 May, as well as the right to personal data protection, the right to identity and the right to a name, and the moral right of the author.

The first article of Organic Law 1/1982 of 5 May provides that the fundamental right to honour, personal and family privacy and to one's own image shall be protected civilly against any unlawful intrusion, and the criteria established by this Organic Law shall be applied to determine the civil liability deriving from the tort.[54]

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of 7 February 1996 determines the criteria and conditions for exclusion of blood donors. The RD. of 1 March 1996 regulates activities concerning the use of human tissues. These are private law regulations to which are added the legal regime of administrative authorisations of hospital centres, as well as the technical conditions for the exercise of these interventions.

[52] See: https://www.boe.es/buscar/act.php?id=BOE-A-2000-79 , last accessed on 01.11.2020.

[53] Ángel Carrasco Perera, *Derecho civil, introducción, derecho de la persona, derecho subjetivo, derecho de propiedad*, 2ºa edición, Madrid Tecnos, 2004, pp.86-89.

[54] Article 1 of LO 1/1982 provides as follows:

"1. The fundamental right to honour, to personal and family privacy and to one's own image, guaranteed in the eighteenth article of the Constitution, shall be protected civilly against any type of illegitimate interference, in accordance with the provisions of this organic law.

2. The criminal nature of the intrusion shall not preclude recourse to the judicial protection procedure provided for in Article 3. In any event, the criteria of this Act shall be applicable for determining civil liability deriving from torts.

4. The right to honour, to personal and family privacy and to one's own image is waivable, inalienable and imprescriptible. Waiver of the protection provided for in this law shall be null and void, without prejudice to the cases of authorisation or consent referred to in the second article of this law".

For Spanish law, honour is a right guaranteed by Article 18 of the Spanish Constitution and a limit to freedom of expression and information within the meaning of Article 20.4 of the Constitution. According to art.1.1 of LO 1/1982, honour and dignity belong to all human beings, all persons are dignified and the former derives from the latter. No one may renounce or be deprived of his or her personal rights to honour, privacy and self-image, which are inalienable, unalterable and imprescriptible.[55]

The object of the right to privacy is that social and legal reality on which the subject's power is based, that reserved personal and family space or sphere, away from the curiosity of others. The Spanish doctrine considers it a relative perimeter, which must be delimited by the judge dealing with the person, whether or not he or she is publicly known, on the basis of the facts and circumstances of each individual case.[56] Article 18.1 of the Spanish Constitution practically guarantees a right to secrecy, a right to remain unknown, especially in the new modern technological society.[57] It is clear that this approach protects data that is directly related to privacy.[58]

The first article of LO 1/1982, establishes very clearly that the fundamental right to honour, personal and family privacy and to one's own image, guaranteed by Article 18 of the Constitution, shall be protected under civil law from any kind of unlawful violation according to the provisions of this law, which establishes in Chapter II the criteria for determining civil liability.[59]

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[55] Juan Jose Bonilla Sanchez*, op.cit*., pp.75-87.

[56] *Ibidem*, p.174.

[57] "What Article 18.1 EC guarantees is a right to secrecy, the right to be unknown, so that others do not know what we are or what we do, prohibiting third parties, whether private or public authorities, from deciding what the limits of our privacy are, each person being able to reserve a space protected from the curiosity of others, whatever the content of that space." (STC 89/2006, of 27 March, FJ 5).

[58] Paloma Biglino, Juan María Bilbao, Fernando Rey, Javier Matia, José Miguel Vidal et ale., *Lecciones de derecho constitucional II*, Thomson Reuters, Valladolid, 2013, p.545.

[59] According to the provisions of LO 1/1982, these are considered unlawful violations of a person's privacy:

a. "Placing in any place listening devices, filming devices, optical devices or any other medium suitable for recording or reproducing people's intimate life".

b. "The use of listening devices, optical devices or any other means for the purpose of gaining knowledge of the intimate life of persons or of private events or letters not intended for those making use of such means, and the recording or reproduction thereof".

c. "Disclosure of facts relating to the private life of a person or a family which affect their reputation and good name, and disclosure or publication of the contents of letters, memoirs or other personal writings of an intimate nature".

d. "Disclosure of the private data of a known person or family through the professional or official activity of the person disclosing them".

e. "Capturing, reproducing or publishing by photograph, film or any other process the image of a person in places or moments of his private life or outside them, with the exceptions provided for by this law".

f. "Use of a person's name, voice or image for advertising, commercial or similar purposes".

g. "Disclosure of expressions or facts about a person when it defames him or diminishes the esteem in which he is held by others".

The right to image was first regulated in Spain in Articles 18.1. and 20.4 of the Spanish Constitution, the latter regulating the limits imposed on the right to image.[60] Prior to this, the Spanish Supreme Court judgement dated 11-5-1977 had awarded financial compensation to a woman whose image had been damaged by the publication in an encyclopaedia as suffering from an incurable disease. LO 1/1982 considers the image to be the graphic representation of the human figure by a mechanical or technical process and in a legal sense; it is the right of the person concerned to decide whether to disseminate or publish his or her own effigy and therefore to avoid it.[61]

The right to the protection of personal data has imposed itself on the Spanish legal system with unusual speed, given its special morphological characteristics and the jurisprudential technique that gave rise to it. The field of personal data was regulated until 2018 by LO 15/1999, subsequently influenced by the legal provisions imposed at European level by Regulation 679/2016 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data and revoking Directive 95/46/EC (GDPR), and is complemented by Organic Law 3/2018 of 5 December on the protection of personal data and the guarantee of digital rights (LOPDGDD), as well as by all sectoral regulations published before and after the entry into force of the GDPR.

The Spanish system recognizes that since the promulgation of LORTAD in 1992 and then LOPD in 1999, remarkable results have been achieved. However, more work is needed to achieve a reasonable level of effectiveness in the protection of personal data and for this it is necessary that the Spanish Data Protection Agency uses all the legal instruments made available to it by the Spanish legislator. All this can be achieved by making public administrations aware of data recording and complying with all security and guarantee measures in the process of collecting, processing and closing down this data. It is also necessary to make citizens aware of the relevance of the right to protection of their personal data and to claim and defend this fundamental right.[62]

As for the right to identity, an innovation can be found in Law 20/2011 (LRC) on the rights of personality and the right to personal identity, in Article 11, which evokes a concept that is both modern and complex. The article establishes in its first paragraphs that "the following are a person's rights before the Civil Registry: a) The right to have a name and to be registered by opening an individual register and assigning a personal code, and b) The right to register facts and acts concerning their identity, marital status and other personal circumstances as provided by law".[63]

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[60] Art.20.4 of the SC states:" These freedoms are limited in respect of the rights recognized in this title, in the precepts of the laws which develop it and, in particular, in the right to honour, privacy, self-image and the protection of youth and childhood".
[61] Paloma Biglino, *et ale*., *op.cit.*, p.553.
[62] Eduardo Calvo Rojas, *Proteccion de los datos de caracter personal*, în Jueces para la democracia, nº 48, 2003, pp 21-25, accesată ultima dată la 10.04.2022.
[63]Miguel Angel Encabo Vera, *op.cit*., pp.141-142.

In 1987, the Spanish Intellectual Property Law was promulgated, which deals extensively with copyright, underlining the fact that this right is inalienable (art.14), admitting that some of them can be exercised by heirs (arts.15 and 16). However, this law was abrogated by RDL no.1/1996 of 12 April, published in BOE no.97 of 22.04.1996, which regulates the current Intellectual Property Law in Spain.

The current Spanish doctrine recognizes that these moral copyright rights are specifications of the classical rights of personality, the scope of which extends to intellectual creations and, to a certain extent, also to privacy or honor.

The fourth section of this part analyses the rights of post-mortem personality (*personalidad preterita*).

While Articles 29(1) and 30 of the Spanish Civil Code place the beginning of personality at the moment of the individual's birth, Article 32 of the same act states that personality ends with death.[64]

Thus, given that the individual is considered a person until death, at the moment of his death, the person ceases to be a person as such, with his attributes and qualities, and his personal or life relationships and rights are extinguished, his patrimonial rights becoming subject to transmission mortis causa.

In the case of a will expressed during life for post-mortem situations, we consider not only the fate of the deceased's patrimony in terms of his succession, but also the future fate of his body. Although the so-called family piety and the legitimate feelings of the deceased's relatives justify the use of the traditional power of disposal that close relatives have over the deceased's possessions in order to determine the fate of the body, these powers cannot, however, be configured as a true subjective right over the body.

Consent in matters of post-mortem fertilisation and insemination with reproductive material of the deceased spouse is regulated in the Spanish system by Article 9 of Law 14/2006 on assisted human reproduction techniques under the heading "predeceased to the spouse".[65]

The preamble to LO 1/1982 itself expressly states that 'although the death of the subject of the right extinguishes the rights of personality, the memory of the former constitutes an extension of the latter, which must also be protected by law'.

[64] The Catalan Civil Code provides in Article 211.1-3, in almost identical terms, that "civil personality shall cease with death".

[65] Pilar Gutierez Santiago, *La llamada „personalidad preterita": datos personales de las personas fallecidas y proteccion post mortem de los derechos al honor, intimidad y propria imagen*, Actualidad juridica Iberoamericana, num.5, agosto 2016, pp.201-238.

Regarding the protection of personal data of a deceased person, the situation is different from that presented so far, as Spanish law distinguishes between the processing of data relating to deceased persons (excluded from the scope of the applicable law) and the possibility of post-mortem civil protection of the right to honor, privacy and self-image under LO 1/1982.

The special legal status of mortis causa in order to exercise the moral rights of the author is granted by Article 15 TRLPI mentioned above, primarily and as a sign of the Spanish legislator's concern to respect the will and interest of the author, the person (natural or legal) expressly designated for this purpose by the deceased in the will, this initial preoccupation of the law with the will of the author not having been subsequently accompanied by any system provided for the exercise of these rights.

The theory of weighting in the Spanish system has aimed to resolve conflicts between fundamental rights, taking into account the dominant position, which is not hierarchical or absolute, of the so-called personality rights regulated by Article 18 of the Spanish Constitution, among which the freedom of expression and information stand out.[66]

The case weighting method has been used by Spanish courts to resolve conflicts between fundamental rights. To this end, the Supreme Court understands weighting as "the process through which, when a collision between rights is established, it is examined the intensity and transcendence by which each of these rights is affected, with the aim of drawing up a rule which allows the case to be resolved by subsuming it within it".[67]

According to Spanish doctrine, personality rights "are the rights which give individuals the power to protect the essence of their personality and its most important aspects". The Spanish jurist and judge José Castán Tobeñas considers that a constant feature of Spanish legal thought reflected in the legal system is "the exaltation of the human person, as a consequence of a Christian humanism or personalism, which is not in contradiction with the universalist ideal and very different from the atomic individualism, son of the Reformation".[68]

The rights of personality in the Spanish system have evolved and been recognised in a different normative way from the French and Romanian legal systems, influenced by the culture, history and politics of the country that have shaped modern Spanish society. The conservative Spanish family overcame the barriers of the social constraints imposed by the old Franco regime and quickly embarked on the tumult of legislative progress, under the protective wing of the

[66] A se vedea Caballero Gea, José Alfredo, *Derecho al honor, a la intimidad personal y familiar y a la propria imagen. Derecho de rectificacion, calumnia e injuria, Madrid, Dykinson, 2007 apud* libertad expresion y DP en Espana, Mexic.
[67] Gisela María PÉREZ FUENTES, *Dialéctica entre la libertad de expresión y los derechos de la personalidad en la experiencia española*, Revista Mexicana de Derecho Constitucional, Núm. 33, julio-diciembre 2015, pp.211-227.
[68] María de Aránzazu Novales Alquézar, *El concepto de persona en el derecho civil ante una antropología dual*, THÉMATA. REVISTA DE FILOSOFÍA. Núm. 39, 2007, pp. 277-278.

Spanish Constitution of the newly installed democratic regime, which chose to preserve fundamental rights under constitutional law at the expense of civil law.

5. Chapter III. The object of personality rights in Romanian Law

The physical person designates the person regarded as the beneficiary of subjective civil rights and civil obligations, all human beings having this quality.[69] Thus, Article 82 of the Civil Code speaks of "the right to a name", Article 86 of the Civil Code speaks of "the right to domicile and residence", and Article 98, which defines civil status, states that it is "the right of a person to identify himself in the family and in society, through his strictly personal qualities resulting from civil status acts and deeds". Lastly, Article 254 of the Civil Code, which is devoted to the protection of the right to a name, is part of Title V of Book I on the 'protection of non-patrimonial rights'. Since they cannot be valued in money, both the right to a name and the right to marital status can only have the legal nature of non-patrimonial rights.[70]

The beginning of an individual's legal personality lies somewhere between the two seemingly banal points of birth and death, a compulsory trajectory between the two inevitable points. In the beginning, when the idea of "dying well" and the desire to procreate in the power of one's own will had not yet been born, on this obligatory trajectory between birth and death, people declared that the path was optional and found the solution of euthanasia. Nor has the moment of life's debut remained untouched, as it soon became an uncertainty about the parents, who are no longer necessarily a man and a woman, but may involve three people, sometimes involving same-sex parents or a surrogate mother. So, the beginning of human personhood can be a natural miracle or a legalised artifice, both of which involve life, but have distinct legal content.[71]

The right to physical and mental integrity is another fundamental person's right, intimately linked to the person's right to life in the sense that the right to life also includes the right to physical integrity of the person, and any injury to a person's physical integrity implicitly affects the person's right to life. At national level, the guarantee of the right to integrity proclaimed by the Constitution and the Civil Code (Articles 61(2), 62, 63(1) and (2)) is also made effective by the incrimination in the Criminal Code of acts against physical and mental integrity or health.[72]

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[69] Carmen Tamara Ungureanu, *Drept civil. Partea generală. Persoanele*, ed.a 3-a, Editura Hamangiu, București, 2016, pp.299-300.
[70] Eugen Chelaru, *Drept civil.Persoanele. În reglementarea NCC*, ed.a 4-a, Editura C.H.BECK, București, 2016, pp.91-143.
[71] Călina Jugastru, *Reproducerea medical asistată în dreptul internațional privat – ipoteza maternității de substituție*, Revista Dreptul, București, nr.10, (2016): 95-127.
[72] Augustin Vasile Fărcaș, Nicoleta Fărcaș, *Drept civil. Persoanele – în reglementarea noului Cod civil*, Editura Universul juridic, București, 2012, pp.35-46.

Another aspect related to the protection of the physical integrity of the human body is the legal protection of the body after death. This protection is equally linked to the right of self-determination, as it is the individual who decides about the body or parts of the body. More specifically, he can decide on his funeral (burial, cremation, ceremony, etc.) or he can arrange for his body or parts of it to be used for scientific or medical purposes after his death.[73]

The right to life, as well as to physical and mental integrity consecrated both in the Civil Code and in the Constitution, are subjective rights recognised by the State to each individual under its jurisdiction. On the basis of these rights, the holder is entitled to demand, in his own interest, that all other subjects of law abstain from any act or fact likely to prevent him from exercising that right or, on the contrary, to take a certain action, thanks to which the exercise of the positive right becomes possible for the individual. In the case of these rights, there is a combination of the individual will of the right holder and the collective will of the State, expressed in the rules of law which give it the room for manoeuvre for the exercise of those rights. It can thus be seen that part of the issue considered by the civil legislator is linked to the provisions contained in Article 22 of the Constitution, and the two normative texts together reflect a new vision of the human being, who appears not only as a subject of civil law, as a participant in the general civil circuit, as a holder of civil rights and obligations, but also as a subject of constitutional law, with the State assuming an obligation towards him to guarantee his life, his physical and mental integrity, and to ensure him a social status that confers dignity.

The new Civil Code takes over the legal content of Article 22(1) of the Constitution and states in Article 61 that "The life, health and physical and mental integrity of every person shall be guaranteed and protected equally by law". Moreover, the same code includes in an ordinary legislative statement a true constitutional principle. Therefore, para. (2) of Article 61 states that "the interests of the human being must take precedence over the sole interests of society or science". The above statement gives rise to a new conception of the human being, according to which the right to life is considered by the civil law legislator, like the constitutional legislator, as a right inherent in the human being. The civil law rule is therefore no longer confined to recognizing and regulating the civil capacity of the individual, i.e., his capacity to use and exercise his rights, but is now a kind of constitutional rule, since it establishes an order of preference for the interests and good of the human being over the sole interests of society or science.[74]

The issue concerning the beginning of the right to life is particularly delicate, difficulties arise because there is no scientifically uncontestably definition of the beginning of life. The central question that arises with regard to the right to life is whether we should refer to birth or conception. The texts are generally silent on this very important point, and this is all the more worrying because the consequences of genetic manipulation, experiments on human embryos or medically assisted

[73] Gabriel Popescu, Gheorghe Mihai, *op.cit.,* pp.90-92.
[74] Cristian Ionescu, *Dreptul la viață. O perspectivă constituțională*, Revista Dreptul, București nr.9, (2016): 80-96.

reproduction can be very serious, and the protection of the unborn minor is just as important as that of the one who is already born.[75]

From a legal point of view, when we discuss the birth of the right to life, we implicitly discuss the beginning of the capacity of use of the physical person which, according to the provisions of Article 35 of the current Civil Code, "the capacity of use begins at the birth of the person and ceases with his death". Also, "the rights of the child are recognized from conception, but only if the child is born alive".[76]

The current Civil Code, like the Civil Code of 1864 or other laws, does not give a legal definition of death. Of course, it would be risky to impose a rigid legal definition on a problem that can only be resolved by an individualised diagnosis and for which criteria are brought back into question by scientific progress. That is why today death no longer necessarily means a sudden transition from one state to another. It often results from a more or less slow process of degradation of vital functions. However, it must be stressed that during this process of decay, the future deceased remains a person and, as a weakened person, must be protected against possible dangers or what the law would consider as such, such as euthanasia, premature removal of organs, tissues and cells, etc.[77]

Euthanasia or clinically assisted death is forbidden in Romania, although there are opinions and discussions that would support this idea, but the voices condemning this practice are stronger. In fact, it is considered murder, despite the express consent of the victim (active euthanasia). More than ever today, there are more and more people calling for its decriminalisation in favour of what is called compassionate euthanasia, and more and more voices are calling for the validity of an act (living will) by which the individual expresses his or her wish that his or her life not be artificially prolonged in the event of an incurable illness.[78]

The evolution of abortion regulations in Romania is in line with the universal movement for the women's emancipation. History shows that women in Romania have long had an inferior and even dependent status to men. During the feudal period, as a woman was subject to the man and his family, she had an inferior position both in her family and in society, and could even be imprisoned or chained for adultery. Legislative modernity came with the adoption of the *Calimachi Code* in 1817 and the *Caragea Code* in 1818, then with the political and social change brought about by the 1848 Revolution, but the inferiority of women in society was maintained. The subsequent penal codes of 1865 and 1937 punished abortion as a crime, and the 1923 Constitution stipulated equal civil rights for women and men, but men still had rights over women's bodies.

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[75] Jean-Francois Renucci, *Tratat de drept European al drepturilor omului*, Editura Hamangiu, București, 2009, pp. 100-102.

[76] See art.36 in Civil code.

[77] Ungureanu Ovidiu, Munteanu Cornelia, *Drept civil. Persoanele în reglementarea noului Cod civil*, Editura Hamangiu, București, 2013, pp.115-116.

[78] *Ibidem*, p.119.

While abortion was made legal in 1957, from 1966 to 1989 abortion was almost completely banned. Abortion is now legal only in the first fourteen weeks of pregnancy and performed by a specialist, with exceptions strictly regulated.

Article 201 of the new Romanian Penal Code states that "1) Interruption of pregnancy in any of the following circumstances: a) outside medical institutions or medical offices authorized for this purpose; b) by a person who is not a specialist obstetrics-gynaecology doctor and is not authorized to practice medicine in this specialty; c) if the age of pregnancy has exceeded fourteen weeks, is punishable by imprisonment from 6 months to 3 years or a fine and prohibition of the exercise of certain rights", with the exception of : "interruption of the course of pregnancy is carried out for therapeutic purposes by an obstetrics and gynaecology specialist, up to the age of twenty-four weeks of pregnancy, or subsequent interruption of the course of pregnancy for therapeutic purposes in the interests of the mother or the foetus". [79]

The genetic material of the human species forms the genetic heritage of humanity. It is important that this heritage is regulated accordingly, and some legislation has already complied. Article 63(1) of the current Romanian Civil Code reproduces Article 16-4(3) of the French Civil Code which states that "No one may harm the human species. Any eugenic practice which tends to organize the selection of individuals is prohibited". The need for a change also existed in our law since, alone, Article 22 of the Romanian Constitution was insufficient. The current Civil Code has made the expected clarification that no harm may be done to the human species. Next comes the provision on eugenics in the following formulation: "Any eugenic practice which tends to organize the selection of persons is prohibited" (Art. 62(2)). The prohibition of eugenics is also postulated in the new Code of Medical Ethics adopted by the Romanian College of Physicians on 30 March 2012, the latter normative act "incriminates" eugenics as a non-deontological practice, along with euthanasia.[80]

Although there is a general consensus in international legal circles on the existence of a legal subject between the moment of birth and the moment of death, when discussing the foetus, opinions diverge. The doctrine has defined the foetus as a living entity resulting from the conception, in vivo or in vitro, of an ovum, which develops in a woman's uterus and is incapable of surviving and developing outside it.[81]

[79] Laura Maria Stănilă, *Provocările bioeticii și răspunderea penală*, Editura Universul Juridic, București, 2015, pp.135-159.
[80]Călina Jugastru, *op.cit.*, pag.12-14.
[81] Experts believe that this definition covers both the pre-embryo (the fertilised egg prior to implantation) and the embryo as such or foetus (W.Lang).

However, the legal status of the foetus is still legally uncertain, as opposed to the legal status of a person, which is clearly defined by all legal systems - the person must be born, alive and viable, whether fully capable or not.[82]

Medically assisted reproduction or medically assisted human reproduction abbreviated RUAM, has not only aroused excitement and satisfaction in the world about medical advances that have provided much-desired solutions to infertility and sterility, but also plenty of anxiety about the possibility of losing control over such a complex process.

In Romanian law, these genetic innovations have not necessarily found an appropriate legal framework. If until recently the only regulation was provided by case law and doctrine, today this field is broadly regulated by Law 95/2006 on health reform through Title VI, Article 142(t), which states that the regulations contained in the law also apply to in vitro techniques. The new provisions of the Romanian Civil Code stipulate in Article 442 the conditions for medical reproduction with a third-party donor.

Cloning is prohibited by Article 63 of the Civil Code as it represents an intervention on genetic characteristics: "Any intervention aimed at creating a human being genetically identical to another living or dead human being, as well as the creation of human embryos for research purposes, is prohibited". The same wording is used in the Code of Medical Ethics.

Establishing a person's identity on the basis of DNA, without however violating the protection of privacy, genetic fingerprinting must have legal indications based on bioethical data which draw attention to the risk of incrimination solely on its basis, the risk of homologation of denying research with culpability, hence the need for consent to sampling and the prevalence of all investigative data in incriminating a suspect. For this reason, the results belong to cross-examinations, anonymized as to provenance and previous results to avoid possible errors. In the case of relatives, although the risk of error is 1 in tens of millions, it is still necessary to increase the number of genetic markers investigated from 6 to 20 to exclude any doubt of error. The 99.99% probability of guilt or innocence being confirmed by DNA evidence is proof that the evidence is

[82] Many years ago, Boece launched the assessment that the person is an "individual substance of a rational nature" from which it would follow, in addition to delimiting the status of the embryo and protecting human life in formation and not sacrificing it except in the name of higher principles. For religious theories, the embryo bears the divine image and is not merely tissue and is therefore considered a person, hence its intangibility. In contrast to ethico-religious conceptions of the status of the embryo, the zygote is considered to be an individualised programme project, a new individual life, already the man who will be (Tertullian). This is also the reason why the Warqock Report considers the embryo to be human after 14 days (when the development of the primitive lineage which is the basis of individual development begins, until then, for Mc Larin, it is only in a preparation or pre-embryo, according to Grobstein). So, at 14 days it goes from the cellular level to the holistic level and by then the pre-embryo has the potential capacity to be a person. In relation to this status of the embryo the question arises as to the legitimacy of their use for different purposes. Thus, the selection of embryos for IVF through appropriate screening is considered true eugenics of improving the gene pool of a population. The same applies to biomedical scientific research *apud* Gheorghe Scripcaru, Aurora Ciucă, Vasile Astărăstoaie, Călin Scripcaru, *Introducere în biodrept. De la bioetică la biodrept*, Editura Lumina Lex, București, 2003, pp.208-209.

reliable in court. Each person's own heredity gives maximum reliability to the genetic fingerprint, with the exception of inbreeding, in which case similar fingerprints may be found, but use in forensic research and parentage is with 100% probability. However, because this genetic research involves a violation of the right to privacy and individual liberty, it should only be requested and carried out under restrictive legal conditions.[83] Medico-scientific research on individual genetic traits is limited to medical and scientific purposes.

In Romania, stem cell banks are private and impose costs, and intense promotion has led to a significant increase in the commercialisation of stem cells by parents. Since April 2013, the National Registry of Voluntary Haematopoietic Stem Cell Donors has been established in Romania, the institution responsible for processing applications from the country or abroad for the use of haematopoietic stem cells from unrelated donors, regulated by Law 95/2006 on health care reform.[84]

Law 95/2006 regulates the transplant of human organs, tissues and cells, which can only be performed for therapeutic purposes. Even if the law does not expressly require that the transplant must be safe for the recipient's life, this is understood. Of course, the risk exists, but it must be dictated by common sense and professional ethics.

The provisions of Title VI of Law No 95/2006 on health care reform also apply to the removal of organs, tissues and cells from a deceased person. This new regulation allows the removal of organs, tissues and cells from the body of a person who has personally consented to such an operation during his or her lifetime, or in the absence of such consent, the consent of relatives, known as family consent.

As for the right to mental integrity, this was not expressly recognized and guaranteed until relatively late. Most international instruments on the subject do not contain an express reference to the right to mental integrity of the individual. It is clear that this right was not among the first rights to be established internationally. Much later it received due attention, as physical and mental integrity were considered to be two inseparable parts of the human being. However, even today, it is difficult for lawyers to determine its content and how it should be manifested. As a result, this right is subject to continuous 'evolutionary' interpretation as contemporary societies acknowledge its importance.

A particular feature of this right is that very few constitutions in the world expressly enshrine it, the Romanian Constitution being one of the few constitutions that expressly recognize

[83] Scripcaru, Gheorghe, Ciucă, Aurora, Astărăstoaie, Vasile, Scripcaru, Călin, *Introducere în biodrept. De la bioetică la biodrept*, Editura Lumina Lex, București, 2003, pp.162-163.

[84] The rest of the information on all relevant regulations can be found at: http://www.rndvcsh.ro/despre-noi/legislatie/ .

the right to mental integrity in its own right, alongside the Spanish, Portuguese and Slovenian Constitutions.[85]

The rights included in this category are: the right to free expression, the right to respect for private life, the right to dignity, honour and reputation, the right to one's own image and the protection of personal data.

Freedom of expression is thus broken down into the right to disseminate ideas on the one hand and the right to receive them on the other. The latter is the basis of a genuine right to know that belongs to the citizen. While until now freedom of expression has been the most widely mediatized, the issue of the citizen's right to be informed is relatively recent. The European Court of Human Rights, in its relevant case law, has distinguished the two components of freedom of expression. Thus, under Article 10 of the Convention, not only does the press have the role of disseminating information and ideas of public interest, but the public also has the right to receive them.[86]

The constitutional value of the right to respect for private life is found in the provisions of Article 26 of the Romanian Constitution, which states in paragraph 1 that "public authorities respect and protect intimate, family and private life". Like the Constitutions of other states, the 1991 Romanian Constitution does not stop at proclaiming intimate, family and private life, but completes the constitutional protection of the right in question by consecrating certain aspects of this right which benefit from specific protection, including the guarantee of the inviolability of the home, the secrecy of correspondence and the freedom to marry. It can be seen that there is a general framework within which the right to respect of private life is guaranteed under the Constitution, as determined by the principle of the free development of the human personality. Public institutions therefore have a duty to protect the private life and privacy of the individual.[87]

Privacy and its correlative components, whatever they are or will be, must be protected in order to allow the individual personality, with all that it implies, to affirm its development in optimal conditions. Therefore, a normal development of social relations linked to the legal protection of the personality as a value, would not be possible without precise guarantees and without effectively combating everything that is harmful to its affirmation. Man needs a feeling of peace and security in his daily activities, which he acquires when he has the unrestricted freedom to organize and practice his own private life, while respecting the regulated social order and

[85] Nasty Marian Vlădoiu, *Protecția constituțională a vieții, integrității fizice și a integrității psihice: studiu de doctrină și jurisprudență*, Editura Hamangiu, București, 2006, pp.277-286.
[86] See: Bladet Tromso and Stensaas v. Norway (1999), Dichand and Others v. Austria (2002), McVicar v. United Kingdom (2002), etc.
[87] Sonia Drăghici, *Efectele dreptului la respectul vieții private și al demnității asupra dreptului civil*, Editura Universul Juridic, București, 2011, pp.19-22.

discipline. It is therefore in the interest of the state society to ensure the right of the individual to privacy in social relations.[88]

Human dignity is a supreme value and is considered a principle of fundamental rights. This concept is the core around which the standards for the protection of fundamental rights are shaped and reconfigured by reference to the social, moral and legal dimensions.

If we recognise the authority of the concept of 'human dignity' in terms of the constitutional principle of fundamental rights, then we accept the legal force of the principle to, *a priori*, guarantee and protect a fundamental right, together with the rigours of recognition that are subordinate to the concept of 'human dignity'.[89]

One of the rights of personality, described by the doctrine as "primordial rights of the human being", is also the right to reputation, as a component element of the right to dignity, alongside the right to honour. The distinction between the two concepts, honour and reputation, is not easy to make, so that the link between them "can go as far as synonymy: damage to reputation is damage to honour". This link is also apparent in the doctrinal references to the two concepts. Thus, while honour is defined as 'the feeling that a person is morally and legally blameless and is regarded as such in society', reputation is described as 'the way in which a person is regarded in society as a recognized quality. So, the social character of both honour and reputation is undeniable.

The Romanian legislator regulates the right to honour and reputation in Article 72(2) of the Civil Code, together with the concept of dignity, which the legislator does not define: "any prejudice to a person's honour and reputation without his consent or without respecting the limits set out in Article 75 is prohibited". Therefore, the provisions of Article 72 are in line with those of Article 75 of the Civil Code, which provide for the limits to the granting of these rights under the international conventions and pacts on human rights to which Romania is a party.[90]

Like the name, the image of the person is protected as an identifying element of the person, it is a representation of the physical features of the person, when taken without the consent of the person constitutes a violation of the right to privacy.

Derived from the right to privacy, the protection of personal data often appears intimately linked to another fundamental right, namely the right to private life. The right to privacy has a special status in the context of personal rights and has specific forms of manifestation in the virtual environment. In the relationship between the right to privacy and data protection, a new category

[88] Gabriel Popescu, Gheorghe Mihai, *op.cit*., p.85.
[89] Lucian Pop, "Human Dignity – *Constitutional Principle of Fundamental Human Rights",* Central and Eastern European Online Library, 2011, p. 46.
[90] Roxana Maftei, *Dreptul persoanei la reputație în contextul reglementărilor legale naționale și internaționale și a jurisprudenței în materie*, Revista Universul Juridic nr.3, martie 2019, pp.57-63.

of rights emerges from the symbiosis between the two, namely the right to virtual privacy which develops in the internet environment.[91]

Formally recognized as a fundamental right with the adoption of Regulation (EU) 2016/679, the right to the protection of personal data has also been given autonomy from the right to privacy to which it was previously linked, thus giving us an area of freedom, security and justice adapted to the current needs of humanity, which is more and more anchored in a virtual world.[92]

In Romania, the responsibility for the protection of personal data lies with the National Supervisory Authority for Personal Data Processing [93],central autonomous public authority with general competence in the field of personal data protection which is the guarantor of the respect of fundamental rights to privacy and protection of personal data, as laid down in particular in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, Article 16 of the Treaty on the Functioning of the European Union and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Regarding the respect due to the person after his or her death, the theoretical basis is the humanist theory of the definition of the human being as a subject of rights and obligations. This theory incorporates the rights of the human being into those of the deceased.

The transposition into the Romanian legal order of international regulations on the respect due to the person after his or her death, accepted by ratification, have been incorporated into national law as a priority.[94] The first legislative construction in this respect was included in Law no.104/2003 on the handling of human cadavers and the removal of organs and tissues from cadavers for a transplant, which created the appropriate legal framework for the use of human cadavers for diagnostic or teaching or scientific purposes. Law No 95/2006 on health care reform has solved several problems that have arisen in the practice of removal from deceased persons, such as: express consent for removal has been legislated [95]; the functional departments of higher

[91] From the moment the subject accesses the Internet, he/she carries out his/her activities under the sign of his/her own decisions - he/she visits virtual shops, online libraries, sorts his/her electronic mail, purchases goods, etc. These are everyday activities, similar to those carried out in the physical world, the difference being that they are carried out in the virtual environment. They are an expression of the same individual right to self-determination, so they should enjoy the same legal protection. It has been stated in this regard that "the violation of privacy, through newly developed technical means, is a risk - assumed from the moment of actual connection to the Internet - perhaps as important as the violation of privacy in everyday life, through conventional means" *apud* Călina Jugastru, *Reforma Europeană în materia datelor cu caracter personal. Regulamentul (UE) 2016/679 (I),* Dreptul; Bucharest Iss. 6, (2017): 9-41.

[92] Călina Jugastru, *Reforma Europeană în materia datelor cu caracter personal. Regulamentul (UE) 2016/679 (I),* Dreptul; București, nr. 6, (2017): 9-41.

[93] See official website: http://www.dataprotection.ro/ .

[94] Article 11(2) of the Constitution states that "Treaties ratified by Parliament, according to law, shall form part of domestic law".

[95] Article 147, paragraph 4 of Law 95/2006 stipulates that "the removal of organs, tissues and/or cells from deceased persons shall be carried out only with the written consent of at least one of the adult members of the family or relatives, in the following order: surviving spouse, parents, descendants, brother/sister, other relative in the collateral line up to and including the fourth degree, according to the model form approved by order of the Minister of Health".

education institutions were obliged to ensure the religious service and, where appropriate, the cremation or burial of corpses after their use for teaching or scientific purposes; the doctor who carried out the removal was required to restore and reconstruct the physiognomy of the corpse in order to obtain a dignified appearance of the body of the deceased.[96] These provisions of the law are supplemented by the relevant administrative regulations, namely: Order of the Minister of Health No 1242/200731 , which reaffirms the obligation of consent required for the removal of tissues and/or cells from a deceased donor, and Order No 1763/200732 , which transposes European Parliament and Council Directive 17/2006/EC of 8 February 2006. Also, Law No 102/201434 on cemeteries, human crematoria and funeral services enshrined the right to a decent burial and to pay last respects at the deceased's final resting place (Article 2(2)). At the same time, the law establishes an imperative obligation to comply with the wishes of the deceased regarding the place and manner of the funeral procession. If this will have not been expressed, the will of the persons obliged to arrange the burial takes precedence (Articles 2(2), 16 and 17).[97]

The issue of liability for moral damages has been emerging in the field of tort since ancient Roman law, while in the field of contract, the same problem has only arisen in modern law. In Roman law, the concept of 'non-patrimonial damage' was used to refer to physical damage to a person or to his morals, dignity or reputation through private torts, and to punish such torts with financial penalties. Various actions of a person, such as, for example, acts of physical injury and mutilation, abusive words and writings, obscene gestures, defamatory acts or acts contrary to morality, such as attempts at seduction, constituted the crime of insult, which had its own action (*actio iniuriarum*).

In modern civil law, tort liability for non-pecuniary damage has been approached and dealt with in different ways. Thus, in some legal systems (French and Romanian), in the absence of express provisions, civil liability for non-material damage has been accepted and generalized by way of interpretation the legal provisions on civil liability in tort.[98]

The regulation of personal rights in the new Civil Code was a first in Romanian law, being a real progress in the protection of the person in private law. Like the French system, Romanian law ignored these rights until the end of the 19th century, when doctrine and jurisprudence outlined this new field in favour of fundamental rights. Thus, the provisions of Article 58 of the NC civ. state that "everyone has the right to life, health, physical and mental integrity, dignity, self-image, respect for private life and other such rights recognized by law". At the same time, the new provisions of the Romanian Civil Code protect human personality, recognizing the individual's

[96] Article 148 paragraph 7 of Law 95/2006 states that "doctors who have removed organs and tissues from a deceased person shall ensure the restoration of the corpse and its physiognomy by specific care and means, including surgery, if necessary, in order to obtain a dignified appearance of the body of the deceased".
[97] Perju Pavel, *Respectul datorat persoanei și după decesul ei, în reglementările existente în ordinea juridică a unor state europene și nord-americane, precum și în noul Cod civil*, Dreptul; Bucharest Iss. 1, (2016): 16-35.
[98] Gheorghe Vintilă, *Daunele morale. Studiu de doctrină și jurisprudență*, ediția a 2-a, Editura Hamangiu, 2006, pp.45-48.

right to the protection of intrinsic human values such as life, health, physical and mental integrity, dignity, privacy and private life, freedom of conscience, as well as artistic and intellectual rights. Infringements of these rights entail both economic and non-pecuniary damage. The protection of non-pecuniary rights is governed by Title V, Book I, Articles 252-257, which constitute the common law on the protection of personal rights, subject to any derogations which may be required by law.[99]

6. Final conclusions of the thesis

The final conclusions of the paper review the so-called "new personality rights", namely: the right to self-determination, the right to know one's origins, the right to protection of personal data, and the right to be forgotten. At the same time, we take a look into the future with an analysis of the electronic personality.

One of the best-known principles in personality rights is the right to self-determination, which we find primarily in the discourse on the right to one's own body and which we include in this new category of new personality rights, as it is a right increasingly invoked in doctrine and in the legal environment to justify various acts involving the human body.

Another right that we include in this category of new rights is the right to know one's origins. It has emerged in parallel with the spread in many countries of assisted human reproduction procedures, the popularization of the legalization of surrogacy, and the growth of the trade in eggs and frozen sperm.

While in the Romanian system the protection of personal data is expressly provided for in the category of personal rights, Spanish doctrine does not include it in this category and French doctrine treats it, in principle, separately. The right to protection of personal data is intimately linked to the right to privacy and can be considered as the numerical personality of the individual, that personality that we find in the online environment, with all the intimate data attached.

The presence in the virtual environment of almost the entire global population has led to the need for legal regulation of certain aspects concerning the rights of the individual in this environment. This gave rise to the right to be forgotten ("*le droit a l'oubli numerique*" or "*el derecho al olvido*"), which European jurisprudence has always stressed in its constant case law.

Regarding electronic personality or e-personality, we refer to the evolution of artificial intelligence and the implications of this evolution in the life of the individual and human society.

[99] Ungureanu Ovidiu, Munteanu Cornelia, *Protecția drepturilor nepatrimoniale cu privire specială asupra drepturilor personalității în concepția Noului Cod civil*, în Revista română de drept privat vol. 2012, nr.1, 2012, pp.244-263, disponibil online la HeinOnline, accesată la 21.04.2020.

The arguments that are put forward in favour of e-personality imply similarities between AI systems and human qualities, so that one could recognize the personality of these systems before the law. Such similarities relate to the moral sensibility towards machines that are humanoid in appearance, the natural language of these robots, natural communication or the fact that they have been given names.

In the context of the promotion of the EU Parliament's 2017 report on e-personality and robotics, the scientific community has since been concerned with analysing the legal and ethical implications of a potential regulation on the civil liability of artificial intelligence systems, as well as granting a legal personality to these entities that would allow the management of liability for potential damage caused in the exercise of the activity for which they have been programmed.[100]

As we have pointed out since the beginning of this paper, technological progress shows us that we constantly need to track this progress in relation to our daily needs and the impact it might have on our lives. As the impact of technology on human activity is growing, the potential risk caused by the use of robotics, but especially autonomous robots, needs to be analysed from the perspective of the privacy and autonomy of the human data being used. Although some of the promise of these technological innovations has not yet been fully realized, a profound change is expected on the extension of robotics into new areas of human interaction that are predictable to produce a number of profound changes in the way individuals will perceive some fundamental concepts such as privacy or companionship. The human-centric vision of these new technologies raises many complex ethical and legal questions that should be addressed at this early stage of the project to avoid finding ourselves sometime in the not-too-distant future, in a science-fiction reality that we can no longer manage. The important thing is to understand the importance of technological innovation and adapt it to our needs, without getting to the point where we confuse the concepts.

[100] Simon Chesterman, *Artificial Inteligence and the limits of legal personality*, în ICLQ vol 69, October 2020 pp 819–844, online la https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/artificial-intelligence-and-the-limits-of-legal-personality/1859C6E12F75046309C60C150AB31A29, last accessed on 26.03.2022.

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IV. National legislation

In the Romanian Law

1. Constituția României;
2. Codul penal românesc;
3. Codul civil românesc;
4. Legea 95/2006 privind reforma în domeniul sănătății;
5. Legea nr. 95/2006 privind reforma în domeniul sănătății, publicat în Monitorul Oficial al României, Partea I, nr. 765 din 22 octombrie 2014;
6. Legea nr. 82/2012 privind reţinerea datelor generate sau prelucrate de furnizorii de reţele publice de comunicaţii electronice şi de furnizorii de servicii de comunicaţii electronice destinate publicului;
7. Legea nr. 506/2004 privind prelucrarea datelor cu caracter personal şi protecţia vieţii private în sectorul comunicaţiilor electronice;
8. Legea nr.104/2003 privind manipularea cadavrelor umane si prelevarea organelor si tesuturilor de la cadavre in vederea transplantului.

In the French Law

1. Code civil francais, ed. a 114-a, Editura Dalloz, Paris, 2015.
2. Codul penal ;
3. Codul de sănătate publică ;
4. Legea 94-654 29 iulie 1994 privind donația și utilizarea elementelor și produselor corpului uman, asistenței medicale la procrearea și diagnosticul prenatal ;

5. Legea 2013-715 din 6 august 2013 privind bioetica autorizând în anumite condiții cercetările efectuate asupra embrionului ți celulelor stem embrionare ;
6. Legea 76-1181 din 22 decembrie 1976 privind prelevarea de organe (legea Caillavet) ;
7. Legea 2012-300 din 5 martie 2012 privind cercetările implicând persoana umană (legea Jarde);

In the Spanish Law

1. Codul civil ;
2. Codul Penal ;
3. Constituția spaniolă ;
4. Legea 14/2016 din 16 mai privind tehnicile de reproducere human asistată ;
5. RD.2.070/1999 din 30 decembrie care reglementează obținerea și utilizarea clinică de organe umane și coordonarea teritorială în materie de donare și transplant de organe și țesuturi ;
6. RD din 9 octombrie 1985 privind donarea și băncile de sânge ;
7. RD din 22 octombrie 1993 privind cerințele tehnice și condițiile minime privind donarea de sânge și băncile de sânge ;
8. RD. din 1 martie 1996 se reglementează activitățile privind utilizarea țesuturilor umane;
9. LO 1/1982 din 5 mai privind protecția în domeniul dreptului civil a dreptului la onoare, intimitate personală și familială și la propria imagine.

V. International and European legislation

1. Convenția europeană a drepturilor omului;
2. Convenţia pentru protecţia drepturilor omului şi al demnităţii fiinţei umane faţă de aplicaţiile biologiei şi medicinei: Convenţia privind drepturile omului şi biomedicina, Oviedo, 4.IV.1997;
3. Regulamentul (UE) 2016/679 rivind protecţia persoanelor fizice în ceea ce priveşte prelucrarea datelor cu caracter personal şi privind libera circulaţie a acestor date şi de abrogare a Directivei 95/46/CE (Regulamentul general privind protecţia datelor);
4. Tratatul privind Funcționarea Uniunii Europene.

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