

Right to personal identity: its distinction with other rights of the human being¹

Derecho a la identidad personal: su distinción con otros derechos del ser humano

Direito à identidade pessoal: sua distinção com outros direitos do ser humano

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Abstract:

This article concerns the right to personal identity and its differentiation with other rights of the person, such as name, image, the right to privacy, honor and information. However, the debate on the limits and the intrinsic content of the rights of the person is still maintained, because originally there was significant confusion about the existential interests of the human being.

Keywords: personal identity; honor; privacy; name; reputation.

Resumen:

En el presente ensayo concierne sobre el derecho a la identidad personal y su diferenciación con otros derechos de la persona, como son el nombre, la imagen, el derecho a la intimidad, al honor y a la información. No obstante, aún se mantiene el debate sobre los límites y el contenido intrínseco de los derechos de la persona, debido a que originariamente existió una significativa confusión sobre los citados intereses existenciales del ser humano.

Palabras clave: identidad personal; honor; intimidad; nombre; reputación.

Resumo:

Este ensaio trata do direito à identidade pessoal e sua diferenciação com outros direitos da pessoa, como nome, imagem, direito à privacidade, honra e informação. No entanto, o debate sobre os limites e o conteúdo

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intrínseco dos direitos da pessoa ainda se mantém, pois, originalmente, havia uma confusão significativa sobre os referidos interesses existenciais do ser humano.

Palavras-chave: identidade pessoal; honra; privacidade; nome; reputação

1 Introduction

It is not an easy task to describe the concept of "personal identity" in a comprehensive sense and, moreover, considering that it was difficult for this legal figure to be accepted by jurists and legal scholars (Fernández Sessarego, 2015b, p. 123). It generated many doubts, which is understandable to the extent that, for its apprehension, it was necessary to refer to its libertarian philosophical assumption or support, and to its full application in legal experience through the three-dimensional theory of Law, as it was raised in Peru by the remembered Master Carlos Fernández Sessarego (2017, p. 157-158).

In fact, the novelty of the concept of "personal identity" led to the fact that in the legal field it was confused, on the one hand, with other notions that are conceptually close to it, such as distinctive signs, the intimacy of private life, honor and reputation. On the other hand, the confusion was generated by the fact that the generic concept of "personal identity", both in its static and dynamic aspects, includes various aspects of it.

In this regard, it is necessary to remember that all the rights of the person are essentially linked insofar as they all have the same and unique foundation, since they protect various aspects of the same being, which is the human being (Zeno-Zencovich, 1996, p. 435 et seq.). In fact, all these rights always refer to the "I", insofar as it is the person whom the law protects in a broad and comprehensive way (Fernández Sessarego, 2015a, p. 57 et seq.). The human being himself is the only and absolute foundation, the *raison d'être* of rights, as well as, according to Vincenzo Roppo (Roppo, 1983, p. 29), his claim to the limitation of powers and behaviors of others that distort or do not respect them.

The fundamental relationship between the various rights that protect the human being explains the possibility of confusion that can arise between rights that protect aspects that are very close to or related to the person.

Subsequently, the process of distinguishing between the right to personal identity and the other existential interests that are close to it began. The differentiation of rights has been the joint work of jurisprudence and the critical analysis of doctrine.

2 Personal identity, name and image: differences

The name is presented as a distinctive sign of the person, as the simplest and most direct instrument for his or her primary identification (Zeno-Zencovich, 2009, p. 535 et seq.). It is recognized that the name fulfills an identifying and individualizing function of the human person within society, the affirmation of one's own self (Perlingieri, 1982, p. 272).

The name is one of the means of static identity of the person, although it is neither sufficient nor totally certain to account for the identity of a human being. It is an instrument of identification of the person (Alpa; Resta, 2019, p. 191 et seq.). However, the name does not account for the essence of the subject, while the globalizing notion of personal identity, on the contrary, is a universal expression that allows the approach to the "personal truth" of each subject. What is said about the name is also applicable to the pseudonym, which reaches the importance of the name, tending to replace it.

It has been possible to conceptually outline the demarcation between the right to personal identity, as a social projection of the person as his or her essential truth, and the distinctive signs of the person (name, pseudonyms etc.).

Regarding the right to the image, as Guido Alpa and Giorgio Resta (2019, p. 215 et seq.) have rightly expressed, its recognition historically constitutes a contribution of French jurisprudence, which began to deal with the issue during the twentieth century. In Italian legal experience, the first judgments that dealt with the matter date back to the end of the nineteenth century. For this reason, the different contribution of the French and German models in the construction of a system of civil protection of the person is particularly clearly reflected. If for fifty years there was French influence, that place was taken by German legal culture, for its conceptual and analytical basis.

Thus, the attention of Italian jurisprudence in the first decades of the twentieth century was focused on three aspects: (a) whether the image is the object of a subjective right, or is protected only indirectly by the rules of civil and criminal liability; (b) whether the right to the image can be disposed of as it is any other economic right and, especially, whether, in the case of minors, valid dispositive acts can be carried out without the intervention of those exercising parental authority; (c) if consent to the publication of the portrait taken of the person is revocable.

Indeed, since the middle of the last century, Italian doctrine has taken different positions in the context of the more general controversy over the very existence of the rights of the person

(Dogliotti, 1999, p. 177). It can be said that, in the field of the protection of personal identity, the image is presented as a primordial distinctive sign. It should be noted that the problem of the image became more complex, due to the improvement of the means and techniques of dissemination that characterize our society.

Law is concerned with the legal protection of the external appearance of the person, of his somatic profile. The object of the right to the image, as indicated in his time by Emilio Ondeï (1965, p. 348), is also the protection of the physical profile of the person and its reproduction by any means, which cannot necessarily be a literally faithful copy and can be intentionally altered or deformed. The illegitimate use of the image can be detrimental to the honour, decorum and reputation of the subject (Perlingieri, 1994, p. 162), so its use must be assessed in each case (Perlingieri, 1991, p. 392).

The image, together with the name, constitutes another element to configure the static identity of the subject (Alpa; Resta, 2019, p. 215 et seq.). We cannot forget the other aspects of the person, of a static nature, which contribute to recognizing his identity, his social truth. As in the case of distinctive signs, and particularly of the name. The image is insufficient to account for personal identity on its own. Massimo Dogliotti has rightly stated that neither distinctive signs nor image exhaust the identity of the person (1999, p. 177). These static elements do not provide a complete social projection that defines the subject's personal identity.

3 Differences between the right to privacy and the right to personal identity

The notion of personal identity is also linked to the notion of intimacy of private life. In effect, the right to privacy protects the interest of the person to enjoy an environment in which he or she can develop what constitutes the core of his or her private life. It consists of the right not to represent one's own personal affairs externally, that is, those that the subject requires to be removed from the curiosity of others. These are those activities that lack social significance. Privacy is a category in itself, matured to be used as a legal instrument in modern society (Palladino; De Mattia; Galli, 1963, p. 37).

Intimacy can be described, as developed by Adriano De Cupis, one of the most renowned European specialists on the rights of persons, as the way of being of the subject, in which aspects of his life are excluded from the knowledge of others (1982, p. 283). Therefore, it entails the legal protection of particularly personal and family situations and experiences, which do not

have a socially appreciable interest for third parties (Caterina, 2019, p. 148). In general, the right to privacy legally protects the interest of keeping the internal sphere of the person confidential, avoiding its public disclosure, especially through the mass media or computer networks, that is, it protects the subject from public curiosity (Paradiso, 2020, p. 139).

However, it should not be forgotten that the right to personal identity protects the "sameness" of the subject, his or her personal truth, while in the right to privacy of private life the problem of "personal truth" is not important, so that the sphere of his or her privacy is a matter of legal protection. of those behaviors that are on the margins of any form of intrusion by those people outside the world of personal and family intimacy.

The existential demand for protection through the juridical, the sphere of personal and family privacy is closely linked to a certain moment. The need for legal protection of the privacy of private life is accentuated with the appearance of the transformations and changes that are becoming evident in industrial and technological society. In society, through the notable advance in communications, contacts between people are accentuated and community life is weakened and the value of solidarity declines (Dogliotti, 1999, p. 143).

4 Background of the right to privacy in doctrine, jurisprudence and legislation

The right to privacy is universally protected in Article 12 of the Universal Declaration of Human Rights of 1948, in paragraph 17.1 of the International Covenant on Civil and Political Rights and in Article 8.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Article 12 of the Universal Declaration reads as follows: "Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks".

It is in the United States of America that, for the first time, the existential need to protect personal and family privacy arose. The most remembered case concerning the protection of privacy is the work of Samuel Warren and Louis Brandeis (1890), two North American scholars

who in 1890 published a renowned essay that has been the starting point for the development of the study of the right to privacy (Auletta, 1978, p. 26)².

In Italian legal experience, the Civil Code of 1942 does not protect personal and family privacy. Some authors, before its promulgation, had already referred to the right to *riservatezza*, as is the case, among others, of Massimo Ferrara Santamaria, who proposed that it was a specific configuration of the fundamental rights of the rights of individuals, one of his typical autonomous affirmations (1937, p. 169).

Many other authors have dealt with the subject by urging its legal protection, as is the case of Francesco Carnelutti, who stated that the person has the right not to have his privacy violated, not to be exposed to the public without his consent or without the interest of society demanding the sacrifice of individual interest (1955, p. 5-6). For his part, Adolfo Di Majo stated that this right postulates the judicial concretization of various unlawful factual situations rather than the rigid description of the content of a subjective right (1962, p. 92-93). Among other jurists, such as Mario Bessone, he pointed out that the right to privacy and confidentiality are part of the category of the rights of the individual (1978, p. 585).

On the other hand, other authors, such as Franco Ligi, considered that the right to privacy is the existential interest of living a private life, free of unwanted publicity, that private personal aspects not be made public (1956, p. 171), although of variable scope in relation to the person, as Giorgio Giampiccolo (1958, p. 472).

Adriano De Cupis (1982, p. 336) is recognized as the most vehement defender of the right to privacy, considering it as a general right, despite a certain perplexity in the doctrine, as noted by Michele Giorganni (1971, p. 139 et seq.), also in view of a jurisprudential intervention that is not always coherent, as is the case in other experiences, and the German one, as Alessandro Somma (1996, p. 807) reports well. Pietro Rescigno is right when he states that this right has made a notable contribution to the elaboration of the category of the rights of the person, which even at the beginning of the twentieth century had been criticized on the basis of formal logical objections that hid, in reality, a rejection even of a political nature (1981, p. 188).

However, the Italian jurisprudence promptly assumed the protection of personal and family privacy. Thus, although the Italian Civil Code of 1942 did not regulate in its text a rule of express protection of personal and family privacy, Article 2 of the Italian Constitution of 1947, which recognizes and guarantees "the inviolable rights of man", acts as a general clause

² However, it is necessary to point out that ten years before the appearance of the famous essay by Warren and Brandeis, that is, in 1880, Joseph Kohler (March 9, 1849 – August 3, 1919), a renowned German jurist, alluded to "*an individual right that protects the secrecy of private life from unauthorized publicity.*"

that serves as a foundation for the protection of any natural right or existential interest that is based on the dignity of the person, notwithstanding some dissenting voices, such as that of Francesco Macioce (1984, p. 25-26).

No it is necessary, in the case of the rights of the individual, that there be a norm that expressly includes a certain subjective right in order to produce its protection. It would be sufficient to have recourse to Article 2 of the aforementioned Constitution. Authors such as Cesare Massimo Bianca stated that, with respect to the right to privacy, two phases of evolution in Italian law can be evidenced. The first, around the seventies, and a second, current phase, characterized by the intervention of the legislator, especially on the protection of personal data (2002, p. 176).

In effect, the right to privacy legally protects the requirement of the person that the facts and acts of his or her private life not be disclosed, an existential interest that has been recognized after an intense jurisprudential debate and its constitutional support (1988, p. 584-585). This right differs from the right to secrecy, in that the latter prohibits the public dissemination of situations of the subject's private life, while the right to privacy prohibits the abusive knowledge of the private life of others and the communication to third parties of confidential facts. For this reason, it can be said that privacy protects the subject against public curiosity, while the right to secrecy protects it against individual curiosity. This has led jurists such as Arianna Fusaro to argue that the need to legally guarantee the privacy of the person is an undeniable requirement of modern society (2002, p. 188).

As pointed out by a sector of Italian doctrine, the concept of privacy (*riservatezza*) translates into the Italian legal system the notion of privacy, which has its origins in the legal system of the United States, where it is conceptualized as the right to be let alone, understood as the power to exclude third parties from the knowledge of personal facts and to oppose interference in the physical or moral sphere of the personal (2019, p. 169).

In the case of the Peruvian legal system, the situation is similar. Article 3 of the 1993 Constitution acts as a general and open clause through which it is possible to protect any right of the person, even though it is not typified as an express subjective right within the positive legal system.

In Italian jurisprudence it is possible to find numerous cases of protection of personal and family privacy. It may be mentioned that the Constitutional Court, in its judgment of April 12, 1973, expressly recognized the right to privacy among the inviolable rights of man protected by Article 2 of the Italian Constitution, which recognizes and guarantees them. The Supreme

Court, for its part, on May 27, 1975, following the indication of the Constitutional Court, resolved the famous case in which the victim was Princess Soraya, the second wife of Mohammad Reza Pahlavi, the last Shah or emperor of Iran. In this last pronouncement, an autonomous right to privacy of private life is configured. The Supreme Court's ruling represented a significant shift in Italian jurisprudence. It should also be remembered that in the notorious case of the famous tenor Enrico Caruso, in 1956, issued almost twenty years before the aforementioned ruling, the Court, ignoring the Italian doctrine that was developing the issue of privacy at that time, had not favorably resolved the lawsuit for the protection of privacy of the renowned singer.

However, it is necessary to keep in mind that seven years after having ceased to protect Caruso's privacy, the Supreme Court of Italy, with a ruling dated April 20, 1963, protects the intimate details of the historic love affairs between Benito Mussolini and Claretta Petacci, exposed in a film about the life of the former. The court, in effect, recognized the privacy of private life, but without explicitly referring to the right to privacy. In effect, the Supreme Court based its ruling on arguing that the disclosure of news about a person's private life was detrimental to the "freedom of self-determination in the development of man's personality as an individual" (Bigliuzzi Geri *et al.*, 1986, p. 174).

5 Scope of the notion of intimacy

It should be considered, as Alberto Trabucchi points out, that a broad and general right to privacy is increasingly recognized, that is, the protection of private life as a fundamental right of the person to safeguard himself from the various forms of intrusion into the sphere of privacy, as well as above all from all forms of invasive disclosure of his or her personal acts and facts (2017, p. 333).

For its part, another sector of Italian doctrine has considered that the right to privacy of the individual is presented, unlike other aspects of protection of the rights of the person, closely linked to the profound transformations that occur in industrial society, which has introduced a different model of life: increasing contact, but also, greater alienation between subjects with respect to the community dimension of society, broader dynamism and circulation that allow people to act in environments and situations independent of each other, taking on different roles and projecting different profiles of the person himself. However, mainly due to the incessant technological advance and process, the improvement of the mass media and the instruments of

data and news collection that, acting in an unprecedented way, could cause serious injuries and aggressions to the privacy of the subject, so they necessarily require adequate and effective defenses (Dogliotti, 1999, p. 206).

The close link with the most characteristic elements of industrial society explains, as Massimo Dogliotti has pointed out, how the demand for the protection of the privacy of the person was manifested (until the second half of the nineteenth century) in the Anglo-Saxon world (especially in the legal experience of the United States), developing decades later in continental Europe, between contrasts and oppositions that put into question the very category of the rights of the person, currently consolidated. In fact, as he indicates, the controversies were encouraged, in addition to the scarcity (in reality, non-existent) of normative protections of the legal systems for this right of the person, by its content that is sometimes indeterminate (unlike other rights such as name, physical integrity, which have a more specific and concrete object) and susceptible to enrichment and new openings (1999, p. 207).

As one of the Italian jurists who has most influenced the law of persons in Peru, Pietro Rescigno, points out, the danger of aggression and invasion in the internal sphere of the individual is as old as the curiosity of the human being. The professor emeritus of the University of Rome "La Sapienza" also rightly affirms, in the matter of the rights of the person the most delicate problems are precisely those that concern the protection of privacy (1996, p. 235-236).

Today, Rescigno maintains, the threat to the privacy of the person has grown due to the progress of technology, which creates new and unpredictable forms of reproduction and dissemination of the subject's word, thought, and image. Cinema, photographs, and the internet all set their eyes on previously recondite areas of the person (1996, p. 236).

Juan Morales Godo, a professor at Peru's Universidad Nacional Mayor de San Marcos, said that "achieving a definition of the right to privacy is not easy." For this jurist, reaching a definition of privacy has not been achieved either in the common law system or in the Roman-Germanic system to which our legal system belongs because it has been "practically impossible to enclose all its possibilities in a definition" (1995, p. 104-105). It is for this reason that the definition is produced in a negative sense when it is maintained that it is that sphere of a person's life that, due to its connotation and its own characteristics, should be excluded from public knowledge.

It is feasible to understand the scope of the legal right protected when referring to "privacy", as well as to specify the consequences suffered by the person who has been the victim of an illegitimate intrusion into his or her intimate sphere. These consequences depend on the

intensity and seriousness of the intrusion or interference in the sphere of privacy of private life, taking into account the parameters of the uses and customs that impede social life. On the other hand, it is also feasible to determine which acts and manifestations can be considered as intrusions, intrusions or interferences in the privacy of private life.

The right to privacy has a dynamic content, which is a function of various variables, which, for authors such as Vincenzo Zeno-Zencovich, are constituted by the data, by the way in which they are obtained or presented, by the recipients, by time. The notion of privacy cannot be separated from the social environment in which the "subject of law" lives, so its protection can be accentuated or liberalized, as the case may be (1986, p. 933).

The subjective right to privacy is the legal response to the existential interest of the person in preserving from the knowledge of others a restricted space of his or her private life. It is in the justified interest that the acts, of any scope or modality, are not exposed to intrusion, curiosity, snooping or interference by others. Therefore, the intimacy of private life is represented by all those activities and attitudes, gestures, words that, carried out in the restricted sphere to which mention has been made, normally lack social significance.

In this regard, the Supreme Court of Italy has pointed out, as Fernández Sessarego points out, that even in the case of characters widely known to the public, the right to privacy of private life cannot be rejected. An exception to this rule is only made if it is required by "a real social interest in information or other public demands" (2015a, p. 163 et seq.). Public figures, therefore, have an intimacy that must be protected within the limits set forth.

Meanwhile, the Peruvian codifier of 1984, being aware of the importance for the person of the protection of the sphere of privacy of personal and family private life, provided for its protection through Article 14 of the Civil Code in force (Fernández Sessarego, 2016, p. 204 et seq.). Because the human being requires this protection to develop his life free of intrusions and shocks, which cause alteration of his necessary psychic balance and inner serenity.

6 Limitations on the right to personal and family privacy

There is a natural limitation of the right to personal privacy that comes from family relationships. In the context of the family, each of its members, although on the one hand they require the protection of such relationships against third parties, on the other hand implicitly renounce a section of their intimacy that they share with the members of their family, which knows aspects of that intimacy as the product of a life in common.

The natural renunciation of a portion of the intimacy between family members originates before marriage. Failure to disclose intimacies, that is, certain serious or compromising situations, may be grounds for contestation of the marriage by the other spouse.

As Pietro Perlingieri rightly notes, the intimacy of private life as an existential right worthy of legal protection also assumes importance in relation to the place-community of affections. In the broader problem of privacy, a role in itself relevant assumes the protection of the privacy of private life in the family sphere. The position of the subjects that constitute its nucleus concerns internal relations, characterized by the need for reciprocal discretion, guaranteeing it to the subject and the family group as a whole, as well as to external relations, by the need for third parties not to carry out searches and disclosures harmful to the intimacy of family life (1991, p. 389).

Likewise, knowledge of inner experiences can find its cause in the correspondence exchanged between the future spouses. Hence the obligation for each of them to return the aforementioned correspondence in order to preserve from the curiosity of third parties aspects of the privacy disclosed in it. In this sense, Article 80 of the Italian Civil Code of 1942 establishes that, in the event of a breakdown of the betrothal or promise of marriage, the return of the gifts received on the occasion of said act may be demanded. By analogy, it has been affirmed that the existence of the obligation to return correspondence and even photographs and other memories has been considered (Dogliotti, 1999, p. 157).

The right to privacy should also be considered to entail certain duties or limitations in terms of its exercise. Since the Law is a relationship between subjects, there are no absolute rights regarding its exercise. As stated by Professor Carlos Fernández Sessarego in the Explanatory Memorandum of the First Book of the Civil Code of 1984 dedicated to the rights of individuals, that "the intrusion into private life or its disclosure is justified when there is a defined social interest, a reason of public order". Thus, "in the face of a circumstance of this nature, such as a police investigation, it is not possible to oppose the respect that the law recognizes for the privacy of the person." On the other hand, the holder of the right may give his assent for the disclosure of his privacy, provided that this does not cause injury to good customs (2016, p. 204).

In this regard, the social interest in knowing some aspects of the subject's private life, without this meaning penetrating the very core of his privacy, is especially manifested in the case of people who, for whatever reason, have acquired public notoriety. For this reason, the protection of the private life of such persons is restricted, to a certain extent, without this

entailing an undue interference in the sphere of privacy itself. This does not mean ignoring or putting limits on the right to personal and family privacy of public figures. These groups are entitled to the right to have privacy that must be respected, even if some activities of their private life can be revealed without harming the privacy or honor of the subject. Privacy is at the core of private life, except for exceptional reasons of public interest in accordance with a legal or judicial mandate. The notoriety acquired by a person does not deprive him or her of the right to have his or her privacy respected, even if, for reasons of social interest, the protection of certain aspects of his or her private life is restricted to a certain extent. As Pietro Rescigno rightly notes, the press, cinema, radio, television (currently social networks), are a matter of decisions by judges in the event of infringement of privacy, including that of public persons, a matter that has not been alien to legislators (1996, p. 235).

7 The right to privacy and the conflict with freedom of information

In modern times, there are two rights in community living that, both protected by constitutions, tend to collide. On the one hand, the right to privacy of private life and, on the other, the right to information enjoyed by the social community in the face of facts of general interest. It should be borne in mind that, when dealing with the right to information, which is based on freedom of expression, we must take into account its dual aspect, which consists, on the one hand, in collecting and providing information and, on the other, in the right of each person, and of society, to receive it.

It is complex to establish a definitive demarcation between the two rights that allows the judge to have a criterion applicable to cases in which conflicts of this type arise. It is up to judges to evaluate the circumstances in order to find an adequate solution to the conflict, that is, in those in which the protection of privacy, on the one hand, and that of the social interest in knowing details that encroach on the sphere of privacy of private life, on the other, are irreconcilable.

As Carlos Fernández Sessarego has expressed, the problem of the contrast of interests between the right to identity and freedom of information dissipates in form if it is taken into account that what is worthy of protection is not the image that each person has of himself, it is not a matter of accepting the psychological or mental claim of the person who sustains his or her identity on an exclusive vision of the root Subjective. On the contrary, what is evident is that personal identity must be based on objective elements, on notorious behaviors and

situations. Evidently, what is at stake is to legally protect the "historically proven truth" (2015a, p. 193).

For this reason, Massimo Dogliotti, in Italian legal doctrine, has not been wrong to affirm that the problem regarding the limits of the protection of privacy of private life and freedom of expression has not yet been resolved. Therefore, it can be seen that there is still no precise delimitation between the two rights, each of them is deserving of legal protection. In reality, the problem is that of the limits and compatibility between opposing interests (1999, p. 228).

However, the existential right to privacy of a person's private life is a fundamental right, that is, a requirement that derives from his or her very nature of being free, the importance of freedom of information, which is the basis of any social organization that respects the dignity of the person, cannot be ignored. This freedom not only has an individual aspect but, at the same time, a social aspect, due to the interest of the community to be informed of what is important in it.

8 The Peruvian Civil Code of 1984 and privacy

Article 14 of the Peruvian Civil Code concerning the right to personal and family privacy has as its antecedent Article 80 of the Civil Code of Portugal, of 1967, and Article 18 of the Civil Code of Bolivia of 1975. As Professor Fernández Sessarego expressed in the Explanatory Memorandum of Book One of the Peruvian Civil Code of 1984:

[T]he person would lack the psychic balance necessary to live his life, in a community dimension, if he did not have psychological quietness and tranquility, with an elementary spiritual tranquility, with the certainty that the acts of his intimate life are neither scrutinized nor divulged (1985, p. 81).

It was this conviction that led the Peruvian codifier of 1984 to incorporate the right to the protection of personal and family privacy into the code, despite the fact that there was little legislative precedent on the matter, although, on the contrary, there were numerous cases protected by the comparative jurisprudence of countries with even greater legal tradition. In certain cases, without having an express rule that legally protects it.

The text of the current Article 14 includes, as mentioned in the Explanatory Memorandum to Book One of the Peruvian Civil Code prepared by Professor Fernández Sessarego, "two different but related situations linked to the protection of the privacy of private life, whether personal or family". As stated by the 1984 codifier, Professor Fernández Sessarego, in the aforementioned Explanatory Memorandum of Book One, in such situations

"they consist both in the simple intrusion into said sphere and in the disclosure of any act pertaining to it". Thus, "in the first case, the aim is to prevent the person from being kept in constant anxiety or anxiety by carrying out acts motivated solely by the unjustified and inconsequential curiosity of third parties, for reasons that do not respond to a social interest". It is, for this reason, that the norm "aims to prevent, with the same purpose, the deployment of various attitudes that involve snooping and intruding on the privacy of private life or represent an invasion, rummaging or improper search of the person's goods or properties, without a public interest" (Fernández Sessarego, 1985, p. 80).

In fact, the 1984 codifier considered that Article 14 protected two situations linked to the protection of privacy, such as the fact of simple intrusion or intrusion into the sphere of personal and family privacy, on the one hand, and the disclosure of facts related to the privacy of the subject or his family, of the other.

It is necessary to specify that the codifier of the Book of Personal Rights of the Peruvian Civil Code of 1984 considered that the broad expression "revealing" included two different but related situations, namely, the primary, referring to the "simple intrusion" in the sphere of privacy, and the secondary related to the disclosure of what had been unduly "revealed" of said privacy through an undue intrusion, that is, of what had been evidenced as a result of said interference.

9 Personal identity, rights to honour and reputation: differences

The right to honor and the right to reputation protect very close and proximate existential interests. In the first, the feeling that the person possesses in connection with his or her own consideration is legally protected. As Adriano De Cupis pointed out, it is "the feeling or awareness of one's own personal dignity" (1982, p. 251). Therefore, it is a subjective attitude of self-esteem of the subject. On the contrary, in the sphere of the right to personal identity it is situated in an objective dimension where what is protected is the personal "truth", the social projection of the subject in its fullness of truth.

Reputation, unlike honor, is the valuation that other members of society have of the person. Fame, as it is also known, has to do with the critical judgment that those who know him or her formulate about him or her while they frequent him or her (Zeno-Zencovich, 1996, p. 91). Unlike the self-esteem in which the feeling of honor consists, reputation is the esteem of

the subject for others, so it differs from honor in that it transcends the realm of simple subjectivity.

In fact, as Vincenzo Zeno-Zencovich has stated, among the differences between personal identity and reputation, the former is constituted by the social projection of the subject's personality and the knowledge that this has the collective, the latter represented by a judgment on the person expressed by society. Therefore, the first is presented as a *Prius* with respect to the second, necessary, but not sufficient. Thus, while identity concerns the epistemological moment of a subject's relationship with others, which can be resolved in positive, negative or neutral consequences, reputation concerns the critical moment, in which a positive or negative judgment is made known (2009, p. 535).

Reputation, because it concerns a value judgment that others make about the subject, "personal truth" is not a priority factor of it. On the other hand, with respect to personal identity, what is relevant is not the valuation. With respect to personal identity, it is an attitude of a gnoseological nature. In reputation, on the other hand, the axiological attitude predominates. Others make a value judgment about the person and on this basis the person's reputation is built, without necessarily being a determining factor in terms of its formulation.

The sustenance and foundation of the right to honor is found in the awareness of the dignity, moral quality and self-esteem of the person. Honor is constituted in the intimate value of the subject. It is a valuable asset, an inner feeling in one's being, a deep conviction, which deserves protection by the law (Fernández Sessarego, 2015a, p. 170 et seq.).

The protection of the honor of the person, says Massimo Dogliotti, comes from ancient times. The Romans considered the fundamental value of social life. This aspect of the person was in Roman law guaranteed by the private *actio iniurarum* and later by public action, considering the interest of the community to the vindication of the offense caused to the subject. Punishable in intermediate law with capital punishment, the attack on honour was a crime in most modern penal codes (such as in the Italian ones of 1887 and 1930) with the aim of entitlement to the person and to order social coexistence, otherwise it would be full of revenge and hatred (1999, p. 196-197).

Honor materializes not only in being demanding of oneself, but, in the social sphere, it is manifested in the consideration and respect that others deserve. As Arianna Fusaro has stated, the doctrine of civil law and penal law considers honor as the feeling that each person has of his or her own moral dignity. From the subjective aspect (*honor strictu sensu*), an objective

meaning emerges, which is provided in the sphere of esteem and respect that the subject enjoys within society, of the community (2002, p. 50).

In the past, it is increasingly difficult to describe what should be understood by honor, so it is often confused with concepts such as dignity or self-esteem. By doctrinal and jurisprudential formants, two aspects of honor are distinguished. One of a subjective nature and the other of an objective nature. The first is the feeling of self-esteem of the person and, the second, is the esteem or consideration that the other members of society, of the community to which the subject belongs, have of the person. In the same way, honor differs from self-esteem, because honor is both the feeling of self-esteem of the person and the consideration that the members of the group in which he relates have of him.

With regard to dignity and honor, it should not be forgotten that the former is inherent to the person, insofar as it is based on the quality of being free. On the other hand, honor is a feeling of the person in relation to the appreciation that he deserves from the other members of his community. Honour finds its foundation in the dignity of the person.

10 Right to information and the right to personal identity

Legal discussions regarding personal identity arise when dealing with the problem regarding the limits that such a situation would impose on the right to information, which entails, for a certain sector of the doctrinal formant, doubts and perplexities regarding the scope of the right to personal identity (Fernández Sessarego, 1990, p. 93 et seq.).

A sector of jurists denies the autonomy of the right to personal identity or advocates its dependence on freedom of expression, which represents a problem that evidences the conflict between interest, mainly individual, which corresponds to personal identity, and the interest, predominantly public, with respect to the circulation of information and the social control that arises from it.

In fact, these are two interests deserving of legal protection, which makes it necessary to reconcile both requirements. The right to information concerns, as it is a subjective legal situation, the presence not only of a power to inform on the part of the holder of the right, but also of a duty such as that of providing truthful information, based on principles of ethics and public order. The fulfillment of the aforementioned duty may be required by the recipients of the information on the basis of what the doctrine has called "diffuse interest", which is not

identified with either the individual interest or the social interest, because it would be an interest of a diverse nature (Zeno-Zencovich, 2009, p. 302).

Both personal identity and the right to information must be protected within a plane of legal equality, so the protection of the former cannot be postulated in a residual manner. It should not be forgotten, as Vincenzo Zeno-Zencovich recalls, that the term information has assumed in the modern era a multiplicity of meanings, often relevant to the jurist. In the first sense, in terms of its content, information is understood to be any data representative of reality that is kept by one subject or communicated by one subject to another. In a second sense, considering its functional aspect, the term information groups together the activities of communication to the public carried out by the media (radio, press, television, internet). In a third meaning, considering its specialty, information is an obligation in the sphere of some subjects who enter into a relationship with others (1993, p. 2).

At the level of the doctrinal formant, the tendency to autonomously and contemporaneously protect both interests is taking hold, seeking a point of balance. The presence of certain risks and difficulties that originate in practice to regulate the compatibility of the two subjective rights cannot be ruled out. All of the above explains that, as Vincenzo Scalisi expressed, "the guarantee of the rights to information and chronicle cannot be proposed or conceived in alternative terms or, even worse, as antithesis with respect to the question of the protection of personal identity and vice versa" (1985, p. 129). As this fine jurist observed, it does not consist in privileging one or the other principle, but in finding a balance in the protection that is attributed to both interests.

These reasons recommend not starting from the prejudice of cataloguing the right to personal identity as a limit of freedom of information (Zeno-Zencovich, 2009, p. 305). Personal truth and its protection is a requirement that the legislator and the State must meet, without ignoring that the right to the expression of thought stands as one of the most precious conquests of our civilization. The simultaneous and harmonious legal protection of both interests seems to be the position most consistent with the aspirations of the individual. It should not be forgotten that personal identity protects the "historically proven truth" of the person.

11 Conclusions

Personal identity, despite its integration and social conformation, supposes being "oneself" and not another. It is the "sameness" of being, it stands as a primary personal interest

that requires legal protection, alongside and in the same way as it happens with other fundamental personal interests, such as life or freedom. The "identity" of the human being, as a free being, is constituted in its dynamic dimension through a continuous self-creative process, through a succession of tasks in which existence consists, as well as adherence to a conception of the world. The identity of the human being is achieved, specified, refined, but also changed in the development of existence.

Personal identity was confused with other rights of the person that are conceptually close to it, however, being a macro right it is made up of various existential interests of the human being. The important thing is that, at the jurisprudential level and the work of an attentive personalist doctrine, it has been recognized worldwide.

References

ALPA, Guido; RESTA, Giorgio. **Le persone fisiche e i diritti della personalità**. 2. ed. Milan: UTET : Wolters Kluwer, 2019.

AULETTA, Tommaso. **Riservatezza e tutela della personalità**. Milan: Giuffrè, 1978.

BESSONE, Mario. Diritti dell personalità, segreto della vita privata e droit à l'image. **II diritto di famiglia e delle persone**, Milan, anno 7, p. 585-595, 1978.

BIANCA, Cesare Massimo. **Diritto civile**. 2nd ed. Milan: Giuffrè, 2002. t. I.

BIGLIAZZI GERI, Lina *et al.* **Diritto civile**. Turin: UTET, 1986. v. 1.

CARNELUTTI, Francesco. Diritto alla vita privata (contributo alla teoria della libertà di stampa). **Rivista Trimestrale di Diritto Pubblico**, Milan, anno 5, p. 1-18, 1955.

CATERINA, Raffaele. **Le persone fisiche**. 3. ed. Turin: G. Giappichelli, 2019.

DE CUPIS, Adriano. **I diritti della personalità**. 2nd ed. Milan: Giuffrè, 1982.

DE VITA, Anna. Commentario all'articolo 10 del codice civile. *In*: PIZZORUSSO, Alessandro *et al.* (org.). **Delle persone fisiche, art. 1-10**. Commentary on the civil code. Bologna: Zanichelli, 1988.

DI MAJO GIAQUINTO, Adolfo. Profili dei diritti della personalità. **Rivista Trimestrale di Diritto e Procedura Civile**, Milan, anno 16, p. 69-99, 1962.

DOGLIOTTI, Massimo. Le persone fisiche. *In*: RESCIGNO, Pietro (dir.). **Trattato di diritto privato**. 2nd ed. Turin: UTET, 1999. t. 1.

FERNÁNDEZ SESSAREGO, Carlos. **Civil Code IV**: explanatory memorandum and comments. Commission in charge of the study and revision of the Civil Code. Compiled by Delia Revoredo de Debakey. Lima: [s.n.], 1985.

FERNÁNDEZ SESSAREGO, Carlos. The right to personal identity. *In*: AA.VV., *Current Trends and Perspectives of Private Law and the Latin American Legal System: Papers Presented at the International Congress held in Lima from September 5 to 7, 1988*. Lima: Cultural Cuzco, 1990.

FERNÁNDEZ SESSAREGO, Carlos. **Right to personal identity**. 2nd ed. Lima: Instituto Pacífico, 2015a.

FERNÁNDEZ SESSAREGO, Carlos. **Law and person**. 5. ed. Buenos Aires: Astrea, 2015b.

FERNÁNDEZ SESSAREGO, Carlos. **Personal Law: Analysis of Each Article of Book One of the Peruvian Civil Code of 1984**. 14. ed. Lima: Instituto Pacífico, 2016.

FERNÁNDEZ SESSAREGO, Carlos. **Law as freedom: the three-dimensional theory of law**. Lima: Motivensa, 2017.

FERRARA SANTAMARIA, Massimo. Il diritto alla illesa intimità privata. **Rivista di Diritto Privato**, Padova, v. 7, first part, p. 169-191, 1937.

FUSARO, Arianna. **I diritti della personalità dei soggetti collettivi**. Padua: Cedam, 2002.

GIAMPICCOLO, Giorgio. La tutela giuridica della persona umana e il c.d. diritto alla riservatezza. **Rivista Trimestrale di Diritto e Procedura Civile**, Milan, anno 12, p. 458-475, 1958.

GIORGANNI, Michele. La tutela della riservatezza. *In*: RODOTÀ, Stefano (org.). **Il diritto privato nella società moderna**. Bologna: Il Mulino, 1971.

LIGI, Franco. Contributo allo studio comparato dei diritti della personalità negli ordinamenti: tedesco, americano, francese e italiano. **Annuario di Diritto Comparato e di Studi Legislativi**, Rome, v. 31, p. 137-202, 1956.

MACIOCE, Francesco. **Tutela civile della persona e identità personale**. Padua: Cedam, 1984.

MORALES GODO, Juan. **The right to privacy and the conflict with freedom of information**. Lima: Grijley, 1995.

NIVARRA, Luca; RICCIUTO, Vincenzo; SCOGNAMIGLIO, Claudio. **Diritto privato**. 5. ed. Turin: G. Giappichelli, 2019.

ONDEI, Emilio. **Le persone fisiche e i diritti della personalità**. Turin: UTET, 1965.

PALLADINO, Alfonso; DE MATTIA, Angelo; GALLI, Guido. **Il diritto alla riservatezza**. Milan: Giuffrè, 1963.

PARADISO, Massimo. **Corso di istituzioni di diritto privato**. 11. ed. Turin: G. Giappichelli, 2020.

PERLINGIERI, Pietro. **Il diritto civile nella legalità costituzionale**. 2. ed. Naples: ESI, 1991.

PERLINGIERI, Pietro. **La personalità umana nell'ordinamento giuridico**. Naples: Università degli Studi di Camerino: ESI, 1982.

PERLINGIERI, Pietro. **Profili del diritto civile**. 3. ed. Naples: ESI, 1994.

RESCIGNO, Pietro. Conclusioni. *In*: ALPA, Guido; BESSONE, Mario; BONESCHI, Luca (dir.). **Il diritto all'identità personale**. Padua: Cedam, 1981.

RESCIGNO, Pietro. **Manuale del diritto privato italiano**. 11. ed. Naples: Jovene, 1996.

ROPPO, Vincenzo. Diritto della personalità, diritto alla identità personale e sistema dell'informazione. Quale modello di politica del Diritto? *In*: AA. VV. **L'informazione e i diritti della persona**. Naples: Jovene, 1983.

SCALISI, Vincenzo. Lesione dell'identità personale e danno non patrimoniale. *In*: AA.VV. **La lesione all'identità personale e il danno non patrimoniale**. Milan: Giuffrè, 1985.

SOMMA, Alessandro. I diritti della personalità e il diritto generale della personalità nell'ordinamento privatistico della Repubblica Federale Tedesca. **Rivista Trimestrale di Diritto e Procedura Civile**, Milan, anno 1, p. 807-833, 1996.

TRABUCCHI, Alberto. **Istituzioni di diritto civile**. 48. ed. Vicenza: Wolters Kluwer-Cedam, 2017.

WARREN, Samuel; BRANDEIS, Louis. The right of privacy. **Harvard Law Review**, Cambridge, v. 4, n. 5, p. 193-220, 1890.

ZENO-ZENCOVICH, Vincenzo. Diritto di informazione e all'informazione. **Enciclopedia Italiana**, Rome, t. 21, 301-309, 2009a.

ZENO-ZENCOVICH, Vincenzo. I diritti della personalità. *In*: ZOPPINI, Andrea (coord.). **Diritto civile**. Milan: Giuffrè, 2009b. v. 1,

ZENO-ZENCOVICH, Vincenzo. Informazione (Profili Civilistici). *In*: ZENO-ZENCOVICH, Vincenzo. **Digest**. 4. ed. Turin: UTET, 1993. v. 9. p.3-21.

ZENO-ZENCOVICH, Vincenzo. Onore e reputazione. *In*: ZENO-ZENCOVICH, Vincenzo. **Digest**. 4. ed. Civil Law Section. Turin: UTET, 1996. v. 13.

ZENO-ZENCOVICH, Vincenzo. Una svolta giurisprudenziale nella tutela della riservatezza. **Il diritto alla informazione e della Informatica**, Milan, p. 932-940, 1986.