


PERSONAL IDENTITY AND THE CHALLENGES OF ITS FULL PROTECTION: AN ESSAY IN THE CONTEXT OF THE EXPANSION OF PERSONALITY RIGHTS

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ABSTRACT

This research aims to analyze aspects related to personal identity, especially in what consists of the conceptualization of this right of personality and the way it is understood, not only by doctrine, but by legislation and jurisprudence in Brazil. The importance of the theme is due to the need to broaden the understanding of personal identity as a right of personality and its repercussions on the full formation of each individual, as well as its effective protection. In this sense, the present study seeks to point out personal identity as an autonomous right of personality, to analyze its protection through the study of legislation and jurisprudence, including foreign ones, and to identify the possible and consequent threats to other rights of personality in the face of a possible legal-protective deficit of personal identity. To this end, the study uses the hypothetical-deductive method, with bibliographic analysis as the main methodological procedure.

Keywords: Identity Person. Personality Rights. Expansion of Personality Rights.

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INTRODUCTION

Personal identity is a matter of study in several areas of knowledge. Understanding what the "who" of each one is, and how this "who" is formed, sharpens not only collective curiosity, but also scientific research. The explanations about what is important and can contribute or have repercussions in the formation of personal identity follow interdisciplinary paths, covering biological, genetic and psychological aspects, in addition to social issues.

In this sense, personal identity has been understood as the set of all the elements that were the individual, his physical traits, customs, tastes, convictions and beliefs, in short, everything that is capable of identifying him as unique and as part of groups that share some of his characteristics. Because it is an intimate aspect of great social importance, personal identity is inevitably also protected by the Law.

In this perspective, the present study will present an investigation of the theme of personal identity as a right of personality, showing its autonomy among the others, its conceptualization and the need for broad understanding.

Next, an analysis will be made of the current context of legal protection of personal identity, through the study of the legislation, doctrine and jurisprudence existing on the subject in Brazil, evidencing the possible existence of a legal challenge from the perspective of the expansion of personality rights; In this part, foreign legislation will also be briefly analyzed, especially the Italian one, a pioneer in the jurisprudential use of the right to personal identity, as well as the Peruvian one, which is more advanced in this theme, especially in the legislative context.

After these investigations on the right to personal identity and its protection at present, which is apparently insufficient, the possible threats to other personality rights will be raised, resulting from the absence of legal instruments that guarantee that the formation of personal identity occurs in an adequate and full way, in order to answer the question: Under the aegis of the expansion of personality rights, is it possible that the lack of protection of personal identity, understood narrowly, threatens the protection of other personality rights?

In the study, the hypothetical-deductive method was used, having as its main methodological procedure the bibliographic research, since, through the doctrine related to the object of this study, in addition to the legislation and jurisprudence, it was sought to confirm the hypothesis initially raised that the protection of personal identity, currently, is at risk, in view of the restrictive view of its scope and elements that compose it.

The article uses a qualitative approach, since it is especially concerned with aspects of reality that cannot be quantified. Furthermore, it is a study that is based on basic research, which aims to generate new knowledge, useful for the advancement of the Science of Law, proposing possible perspectives and, especially, seeking to foster an increasingly constant and in-depth study on the subject, especially because it focuses on an analysis from the perspective of the expansion of personality rights.

Furthermore, it is characterized as a research with an exploratory and explanatory objective. Exploratory because it aims to provide greater familiarity with the research problem, with a view to making it more explicit or to construct hypotheses, and explanatory, insofar as it also aims to identify the factors that determine or contribute to the occurrence of the phenomena under analysis.

PERSONAL IDENTITY IN THE CONTEXT OF THE EXPANSION OF PERSONALITY RIGHTS

Personality rights began to be discussed in the historical context of the second half of the nineteenth century; the expression encompasses those rights that are proper to the human condition, those without which the person is less of a person, being absolute, inalienable, imprescriptible and unavailable rights, and even, in a natural law view of the subject, preexisting their recognition by the State³.

The conception of personality rights is intimately linked to the dignity of the human person, which has been invoked with increasing frequency in the solution of concrete cases, and this is due to the fact that the Federal Constitution⁴ presents the idea that the dignity of the human person as a value that guides the other rights and guides the creation and application of the entire legal system, being foreseen as a reason for existence, the foundation of the Democratic State of Law itself.

It so happens that the idea of the dignity of the human person is presented in a fluid way and, although it is described in an abstract way, Anderson Schreiber summarizes that:

Its concept can be formulated in the following terms: human dignity is the value-synthesis that brings together the essential spheres of development and fulfillment of the human person. Its contents cannot be described in a rigid way; it must be apprehended by each society at each historical moment, from its own cultural substrate. More important than the conceptualization is the understanding of the

³ SCHREIBER, Anderson. Personality rights. 2nd ed. São Paulo: Editora Atlas: 2013. p. 05.

⁴ BRAZIL. Constitution of the Federative Republic of Brazil. Brasília, DF: Senado Federal: Centro Gráfico, 1988.

purpose of its incorporation into the legal system: to protect the human condition, in its most genuine aspects and manifestations.⁵

To demystify the practical application of the dignity of the human person, the main attributes that compose it were listed, and from this come the rights of personality, whose protection flows into the support of one's own dignity. In fact, the right to one's own body, to physical integrity, to one's name, and others, are expressly provided for in Chapter II of Book I of the current Brazilian Civil Code, which aim to protect the human condition integrally, guaranteeing its dignity.

Personal identity is one of those rights that aim to guarantee the dignity of the human person, but which has characteristics that differ it from the others. It is evident that each of the personality rights has different applicabilities, but even though they have multiple applicabilities, they aim to protect a specific aspect of the human condition.

The right to one's own body, for example, can be invoked in very adverse situations, such as blood transfusions in Jehovah's Witnesses or protection from any type of aggression, the invocation of body modifications, such as those performed due to sex reassignment surgery or breast reconstruction after cancer treatment.

In these cases, the human condition is being analyzed against the background of only one element that composes it, the body. When it comes to personal identity, the discussion is not limited to one or another aspect that defines the individual, but encompasses all of them together. It is a right whose protection must occur in a context of expansion of personality rights.

It is always possible that new instances of human personality arise that claim protection, so that the Civil Code presents an open list, so that, if there are new expressions, new rights, these are protected under the aegis of the general clause⁶. This is the case of the right to personal identity.

In his work, Anderson Schreiber brings the idea of personal identity strongly linked to the name, but not the name in a strict sense, but widely understood as the correspondent, which stamps the identity of the individual⁷. For him, the right to personal identity is the one that protects the individual from having his name, the representation of himself associated

⁵ SCHREIBER, Anderson. Personality rights. 2nd ed. São Paulo: Editora Atlas: 2013. p. 08.

⁶ MORAES, Maria Celina Bodin. Expanding personality rights. Available at: <https://www.researchgate.net/publication/288490662_Ampliando_os_direitos_da_personalidade>. Accessed on: 26 Feb. 2023.

⁷ Ibid., p. 211.

with any condition *sotto falsa luce* (in a false light) so that society does not see him according to erroneous aspects.

In his conception, the protection of identity is revealed in the protection of who the community understands the person to be. The author brings that the protection of personal identity aims to ensure that the individual is perceived by others according to his identity, and not in a different way from who he is.

Although the author points out that personal identity is not restricted to the elements that make up the person in isolation, he understands its protection with the purpose of promoting his or her faithful representation to the collectivity, to the other. According to Carlos Alberto Bittar, identity is the right that establishes a link between society and the individual⁸ and that has as its essential function, the identification, the individualization of the person, preventing him from being confused with another.

It so happens that in this perspective, the understanding of what personal identity is is restrictive, because its existence goes beyond the representation of the individual before the other and goes beyond the limits of mere identification. Bittar even links identity to the name and identification in such an explicit way that, when concluding his understanding of identity, he points out the fundamental importance of the civil registry for its protection.

It is evident that when the other has a mistaken view of who the individual really is, there is a violation of his dignity. But the mere protection of the perception of others about who the individual is does not exhaust the protection of the right to personal identity. Likewise, although there is a need to protect the identification of individuals, this is not the only parameter for protecting who they are. To reduce the protection of personal identity to the protection of the way in which the other sees the individual, causes the reduction of identity to identification, which would be the guarantee that the individual must be identified according to his identity. However, although similar and closely related, identity and identification are not confused.

The confusion between identity and identification occurs with great frequency, so much so that, in his work, Anderson Schreiber states that "the name stamps the person's own identity";⁹ when, in fact, it only expresses one of the elements that make its identification possible. Although identity and identification are very close terms that aim to individualize people through their characteristics, it is clear that identification refers to

⁸ BITTAR, Carlos Alberto. *Personality rights*. 8th ed. São Paulo: Saraiva, 2015.

⁹ SCHREIBER, Anderson. *Personality rights*. 2nd ed. São Paulo: Editora Atlas, 2013. p. 211.

elements that are outside the individual, it is superficial, while identity is inherent to him, it is his essence.

In Carlos Alberto Bittar's view¹⁰, personal identity is classified as a moral right of personality, which refers to the name and other individualizing signs. From there, it is possible to clearly see the confusion between identity and identification; So much so that, throughout the explanation that the author makes in relation to personal identity, he makes a relationship to the name, to the civil registry, even entering into the need to protect the business name.

When one analyzes the current civil legislation in search of legal provisions that use the term identity, one frequently verifies the occurrence of this apparent confusion. In chapter IV, which deals with limited liability companies, in section III (administration), the Civil Code in force provides:

Article 1,062. The administrator appointed in a separate act shall invest himself in the position by means of a term of investiture in the book of minutes of the administration.

Paragraph 2 - Within ten days following the investiture, the administrator must request that his appointment be registered in the competent registry, mentioning his name, nationality, marital status, residence, with presentation of an identity document, the act and date of appointment and the term of management.

The appropriate term, in this case, would be "identification", insofar as the document pointed out aims to identify the individual, individualizing him from the others, through superficial characteristics that do not enter into elements of his essence, his intimate, because it is not credible to imagine that the document aims to point out the philosophy of life, sexual orientation, political ideology and other attributes. When only identification is sought, the ideal would be for the document to be called an "identification document", and not an identity document.

Therefore, it is important to highlight that the protection of personal identity goes beyond the correct and reliable identification of someone, as it is necessary to expand their protection, which is fully possible and vitally necessary. Identity is broader and deeper than identification, and its protection depends on the integral protection of the person and his attributes, because each of these attributes is, in fact, a trait of identity. The protection of personal identity aims to protect the truth of the individual and it is possible that this protection occurs through the protection of the other personality rights (name, image, honor)

¹⁰ BITTAR, Carlos Alberto. Personality rights. 8th ed. São Paulo: Saraiva, 2015.

as long as such protection occurs jointly, since the separate protection of each of these rights does not represent the full protection of identity.

The current challenges of law, in this perspective, arise from the need to expand the protection and understanding of what identity is, not limited to its fragmented protection or the protection of identification, but also from the entire process that involves its construction. The individual only develops authentically when the process of constructing his identity occurs properly, and this is still an issue that is little discussed, especially in the field of law.

THE CURRENT CONTEXT OF PROTECTION OF PERSONAL IDENTITY AND THE CHALLENGES FOR ITS PROTECTION

Currently, the right to personal identity is not expressly provided for in any legal diploma in Brazil. Even considering that the list provided for in the Civil Code is not exhaustive, the absence of an express provision for this right cannot be ignored, as it may induce that the aforementioned right was not given due importance by the legislator.

Personal identity, as the sum of all personal attributes, expresses who the individual is. The task of developing and forming identity is complex and does not occur once and for all, but continuously, uninterruptedly. The law, currently, has a restricted applicability in relation to the protection of this personality right. The legislation does not provide for it expressly and when it mentions the term "identity" it often confuses it with identification; doctrine and jurisprudence have apparently not yet found a way to protect or conceive identity effectively and broadly.

In the judicial context, it is observed the existence of judgments based on other personality rights that, as they are integral parts of identity, reveal themselves as an expression of identity protection, but do not protect it in its entirety; it is even very common to use the term "identity" in conjunction with some other, such as "cultural identity", "gender identity"¹¹, "family identity" and others.

Jurisprudence is still timid in the sense of protecting personal identity in its broadest expression. The Superior Court of Justice (STJ) issued a brilliant understanding in a lawsuit for annulment of birth registration filed by one sister against the other, basing the request on

¹¹ BRAZIL. Federal Supreme Court. Direct action of unconstitutionality 4275. Federal District, 2019. Available at: <<https://www.jusbrasil.com.br/jurisprudencia/stf/768143102>>. Accessed on: 24 Feb. 2023.

the fact that the mother had made the civil registration of someone else's newborn as her own, based on defect of consent, due to ignorance of the child's genetic origin¹².

During the process, it was demonstrated that the mother made the registration in view of the affective ties with the baby, aware of the lack of blood ties, and there was no element capable of demonstrating that the registration would have been carried out in bad faith through the declaration as true of a non-existent family bond. Thus, the decision was based on the existence of socio-affective ties that are also capable of constituting the family bond.

In order to maintain the socio-affective ties existing within the family, there was no rectification of the civil records and, in addition, the judge was careful to mention as the basis of his decision, the need to protect the foundations of personal identity formation, in the following terms:

As a major foundation to consolidate the acceptance of socio-affective filiation in the current legal system, the general clause for the protection of human personality is erected, which safeguards filiation as a fundamental element in the formation of the identity of the human being. Allowing the deconstruction of recognition of maternity supported by a relationship of affection would have the power to extirpate the child - today an adult person, in view of the 17 years of processing of the process - predominantly a factor in the construction of her identity and the definition of her personality.¹³

Although the understanding has mentioned the need for the protection of filiation because it is a fundamental element for the formation of identity, it is not possible to specify whether it is genetic identity, as recognition of ancestry, or whether it refers to ancestry and family as an element of identity formation in a global way.

It can be observed from the absence of judgments that conceive of autonomous and broad personal identity and from the use of the term "identity" in the Civil Code, as mentioned in the previous topic, that there is an important difficulty in interpreting what personal identity actually is, what is the asset protected by this right of personality.

The path taken by Brazil towards the protection of personal identity is not so different from that observed at the beginning of discussions on the subject in other countries, as is the case of Italy, a pioneer country in the application of this right in concrete cases, even before the existence of a legal provision about its protection.

¹² BRAZIL. Superior Court of Justice. Special Appeal (3rd Panel). Available at: <<https://www.jusbrasil.com.br/jurisprudencia/stj/14318607>> Accessed on: 24 Feb. 2023.

¹³ Ibid.

In Italy, the legal clash in relation to identity began with two emblematic cases in which other rights, such as image and name, were interpreted in an expanded way to protect personal identity¹⁴. In the first case, a pamphlet publicized by the National Committee, about the revocation of the divorce law in force at the time, which would be submitted to a referendum, printed a photograph of a couple, giving the idea that they were in favor of the revocation of that law.

The couple claimed that they were deceived, as they took the photograph believing that the image would be used in a photo contest and, in addition, they were in favor of divorce, contrary to what the pamphlet suggested. In the first instance, the judge understood that the improper use of the image occurred in the absence of authorization from the plaintiff couple. The Roman Court went further and understood that there had been a misrepresentation of the personality of those photographed; asserted that the situation triggers injury to political opinion and violation of personal identity through the linking of their images to the idea not defended by them.

In the second case, a famous oncologist was interviewed about the dangers of smoking for the development of cancer. During the interview, he mentioned that some types of cigarettes were less harmful than others. Maliciously, a cigarette manufacturer used a photograph of the famous doctor to publish that, according to him, the type of cigarette it manufactured was fifty percent less harmful than the others¹⁵.

The doctor filed a lawsuit, in which the protection of the name was interpreted extensively for the protection of the plaintiff's personal identity, to the extent that it was demonstrated that the misuse of the name violated the personality of its holder. In view of the lack of a legal provision for the right to personal identity in Italy, in both cases, the general clause for the protection of the person was applied, which provides:

The Republic recognizes and guarantees the inviolable rights of man, both as an individual being and in the social formations where his personality develops, and requires the fulfillment of the inalienable duties of political, economic and social solidarity¹⁶.

¹⁴ RAFFIOTTA, Edoardo. Notes on the right to personal identity. Disponível em: <https://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0173_raffiotta.pdf> Acesso em: 25 fev. 2023.

¹⁵ Ibid., p. 06, "according to Prof. Umberto Veronesi – director of the Cancer Institute of Milan – this type of cigarette reduces almost half the risk of concoction".

¹⁶ Art. 2. The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality develops, and requires the fulfillment of the mandatory duties of political, economic and social solidarity. (ITÁLIA, 1947).

Currently, Italian legislation provides for the right to personal identity and conceives it as a fundamental and personality right, and it is determined that the processing of personal data must occur in harmony with identity, which demonstrates maturity in relation to the fact that all individual attributes form personal identity.

Peruvian legislation, likewise, currently has an express provision for the right to personal identity. The country's constitution provides for the rights to life, to their identity, to their moral, psychological and physical integrity, and to their free development and well-being¹⁷. The infra-constitutional legislation also expressly presents the right to identity and points out that the child and adolescent have the right to an identity that includes name, nationality, their descent and also refers to the right to the integral development of their personality¹⁸.

In this case, the reductionism of identity to identification is initially observed and, when the legislator intended to protect the formation of identity, it used the term personality to the detriment of identity. The absence of a legal provision is perhaps the least challenging difficulty in protecting personal identity in Brazil or in other nations, since, with a general clause for the protection of personality rights, it becomes possible to protect them, even if there is no explicit legal correspondence. The confusion between the terms identity and identification, on the other hand, may represent a more accentuated difficulty in the broad and integral protection of personal identity.

Identification, even if it is more superficial, formed by extrinsic attributes of the individual, must be protected. However, when some confusion occurs and identity is perceived only as identification (name, surname, image), its full protection proves to be an impossible task, as it represents a universality of elements that is not limited to superficial issues related to identification.

¹⁷ Article 2 – Every person has the right: 1. To life, to his identity, to his moral, mental and physical integrity and to his free development and well-being. The conceived child is a subject of law in everything that favors him. Available at: <https://www.oas.org/juridico/spanish/per_res17.pdf>. Access em: 25 fev. 2023.

¹⁸ Article 6.- To identity.- Children and adolescents have the right to identity, which includes the right to have a name, to acquire a nationality and, as far as possible, to know their parents and bear their surnames. They also have the right to the integral development of their personality. It is the obligation of the State to preserve the registration and identity of children and adolescents, punishing those responsible for their alteration, substitution or illegal deprivation, in accordance with the Penal Code. In the event of such alteration, substitution or deprivation, the State shall restore true identity by means of the most appropriate mechanisms. When a child or adolescent is involved as a victim, perpetrator, participant or witness of an infraction, misdemeanour or crime, his or her identity or image will not be published through the media.

Furthermore, the protection of personal identity cannot be limited to the protection of how a person is perceived by others, how he or she is identified. It is necessary, in fact, to seek the implementation of measures that provide an adequate identity formation by means that give the individual the ideal conditions for development.

There are several situations that lead to believe that there is no adequate protection of the formation of personal identity. The virtual environment is an example of how the individual is exposed to techniques and experiences carried out by the algorithm, as the algorithm is developed to achieve an end and, to this end, provides varied stimuli by testing them on users, maintaining and improving those that work and discarding those that do not generate any positive result for the purpose for which it is intended¹⁹.

The individual is becoming a kind of guinea pig, an object on which the most advanced manipulation techniques are developed. The great legal challenge arising from this reality is, initially, to verify and recognize that these manipulations and this dynamics of operation happen on a daily basis.

Faced with this reality, the Federal Government, through the Ministry of Human Rights and Citizenship, announced the creation of a Working Group to combat hate speech in the virtual environment. The group will be formed by representatives of the ministries of Racial Equality, Justice and Public Security, Education and Indigenous Peoples, as well as experts from other areas so that it is possible to discuss measures to implement a culture of peace, respect and preservation of human dignity²⁰.

It is known that the formation of identity depends on biological issues and that, in this regard, there is little to be done immediately, since the entire genetic load is already prepared and adjusted by the entire ancestry. But there are ways to facilitate that the social environment, in which the individual is immersed, is as diverse as possible from a cultural perspective and is not impregnated with practices and techniques of control that shape behavior and the way of perceiving reality.

In this context, therefore, there is a need for a broader interpretation of the right to personal identity, not restricting it to identification. It is necessary that the aforementioned right be interpreted more frequently in conjunction with the right to psychological integrity,

¹⁹ LANIER, Jaron. Ten arguments for you to delete your social networks now. São Paulo: Intrínseca, 2018.

²⁰ MDHC creates working group to combat hate speech and extremism. gov.br. 2023. Available at: <<https://www.gov.br/mdh/pt-br/assuntos/noticias/2023/janeiro/ministro-silvio-almeida-anuncia-criacao-de-grupo-de-trabalho-para-combater-o-discurso-de-odio>>. Accessed on: 22 Feb. 2023.

for example, and not only with the right to a name, to the image, under penalty of superficialization of the protected good.

According to Bittar, subliminal techniques that induce behavior and establish a split, a misalignment between the action and the intention of the one who receives a message, causing the reduction or elimination of discernment, are acts that attack psychic integrity²¹. It so happens that, in the final analysis, the absence of psychic integrity has repercussions on the impossibility of forming an authentic identity.

The author mentions that practices that tend to imprison the mind and that obscure psychic discernment are prohibited. In this way, any actions aimed at violating the individual's personal, political, philosophical, religious and social convictions are prohibited. The broad protection of personal identity passes through the sieve of the protection of psychic integrity in a much more prominent way, in the current scenario, than other personality rights.

The process of developing personal identity depends on full psychic integrity and not only on the recognition of the individual's personal characteristics before third parties or on the registration of his name, surname and other accessories arising from him. However, the challenge of effective protection is quite considerable, as it would be important to break or propose changes related to a highly profitable production system, that of the functioning of algorithms, for example, which always causes relevant political and economic embarrassments.

Although the General Data Protection Law exists today, its applicability has not yet been effective in relation to the data that also make up the behavior pattern of users of the virtual environment such as the time spent watching one video and not another, the number of likes on certain publications, types of publications most visited, but to identification data.

Verifying the existence of insufficient legal protection for the right to personal identity in all its amplitude, due to interpretative gaps and the absence of a consolidated doctrine that gives scientific support to judicial decisions, it is verified that other rights may be threatened by the interrelation related to all personality rights that, in the final analysis, aim at the protection of the dignity of the human person; Here is what will be analyzed in the next topic.

²¹ BITTAR, Carlos Alberto. Personality rights. 8th ed. São Paulo: Saraiva, 2015.

POSSIBLE THREATS TO PERSONALITY RIGHTS IN THE FACE OF INSUFFICIENT UNDERSTANDING AND PROTECTION OF THE RIGHT TO PERSONAL IDENTITY

The deficient formation of personal identity is something that has serious consequences, not only in the face of the individual himself who – not knowing who he really is, may have difficulties in all areas of his life, whether in the family circle, interpersonal ties in general, in the school and professional environment – or in his attributions as a citizen: when he has to establish some political and social position, defend his ideals, educate those under his responsibility or influence people in his circle of relationships.

Notwithstanding the issues harmful to the individual and the community arising from an underdeveloped identity, it is also necessary to point out the possible threats to other personality rights generated due to the absence of efficient mechanisms for the legal protection of personal identity. Initially, it is important to highlight the threats to the very dignity of the human person.

When they do not exist, or when the existing legal mechanisms are not efficient for the full protection of identity, when they are limited to providing for issues related to identification, serious gaps are opened that can result in the degradation of humanity itself.

There are many environments through which the individual goes through throughout his life and, through the experiences he lives, forms his identity. However, in view of the growing number of users in social networks and the decrease in the age of individuals when they begin to have access to these networks, it is verified that one of the great challenges of today is the protection of the formation of identity in the context of digital media.

With the realization of this research, it was not possible to locate the existence of the link of personal data existing and manipulated in the virtual environment to the right to personal identity in any legal text, doctrine or jurisprudence in force, which clearly demonstrates the deficient legal protection of the right object of this study in the digital context.

In fact, since the formation of personal identity is undergoing several manipulations in the virtual environment and without an effective attitude of the State in order to protect users from manipulation attacks, personal identity is at serious risk and, with it, the dignity of the human person. The central purpose of the recognition of the dignity of the human person and its protection in the legal system is to protect the human condition itself²².

²² SCHREIBER, Anderson. Personality rights. 2nd ed. São Paulo: Editora Atlas: 2013.

Precisely for this reason, everything that attacks the human condition, that which intends or has the power to objectify the person, to make him a means to an end is contrary to his dignity²³.

This is exactly what happens when, without any effective legal protection, the individual spends hours of his day immersed in social networks and, through the use of data and behavior patterns obtained by the detailed analysis of these data and patterns, believes he is browsing freely, but is having his unconscious mapped and used. The algorithm transforms the human unconscious into a means to achieve the purpose for which it was developed.

The objectification of the person is blatant. Not only is your subconscious used as a means, but all your behavior, your acts in general; their identity is violated and their dignity deconstituted. In the digital environment, it is not necessary to convince the user of anything, because to convince is to make known as such²⁴, and what the algorithm does is anything, except to want to make known.

The manipulation carried out in the virtual context uses methods of reward and punishment, which do not act on the individual's rational, but on the unconscious, the act of reflection is dispensable, because human action is maneuvered using the same techniques used for animal training, for example.

The absence of legal protection for the formation of personal identity in the virtual environment impairs, or makes impossible, its development and, in addition, transforms the individual into an object, a guinea pig who is unaware of this situation. The dignity of the human person, in this perspective, is under undeniable threat, but it is not the only right of the personality in this situation.

The absence of protection and promotion of the integral and full development of personal identity also reveals a threat to life in society itself. When there are no doctrinal or political discussions about identity, the task of understanding the importance of the different and the difference also suffers. In a context of lack of valuation of the different by the individual who was not able to adequately form his identity, two basic problems arise, according to Amartya Sen: the disregard for identity and singular filiation²⁵.

²³ KANT, Immanuel. Fundamentação da metafísica dos morales. São Paulo: Martin Claret, 2019.

²⁴ ABBAGNANO, Nicola. Dictionary of philosophy. São Paulo: Martins Fontes, 2007. p. 758.

²⁵ SEN, Amartya. Identity and violence: the illusion of destiny. São Paulo: Iluminuras, 2015.

Disregard for identity occurs when the individual neglects any relationship of influence of some feeling of identity with others, except with himself, which would lead him to see himself as someone already whole, which does not represent reality, because the interdependence between all people is indisputable. Furthermore, the possibility of seeing oneself as whole makes it possible to interpret that everyone else is too, breaking with feelings of fraternity, solidarity, responsibility, among others.

Deconstruction by singular or unique affiliation is the interpretation that any individual belongs to only one group and, in this way, the individual has an absolutely limited perception of all the complexity that involves the identity of the other, since each individual belongs to many groups and each of the groups to which he belongs gives him a range of meanings, for "the incentive to ignore all affiliations and loyalties other than those that stem from a restrictive identity can be profoundly misleading and also contribute to social tension and violence."²⁶

The ability of an individual to perceive and recognize the complexity of the identity of others is intimately linked to the existence of a complex and developed identity in himself. When there are not enough means for the full development of identity, nor incentive to improve identity, through culture, political, historical and social knowledge, for example, the individual, alienated from these perspectives, tends to be simple-minded. However, it still has an inherent complexity due to issues that do not involve any choice such as name, age, gender, affiliation, country, state and hometown. All these characteristics already matter in specific living conditions.

The processes of deconstruction by identity and understanding of identity through aspects of singular affiliation are dangerous. In the first case, the individual becomes selfish and self-centered, and may close his eyes to social problems, ceasing to fight for causes that he understands are not his own and ignoring issues that apparently do not affect him directly.

In the second case, the simplification of identity, the understanding that the other belongs to only one identity group, strengthens negative feelings of intolerance, polarization, and violence. It is very common for individuals, at this stage of identity perception, to find correspondence with common thoughts such as "a good criminal is a

²⁶ Ibidem, p. 39.

dead criminal" and the like, as it reduces the entire identity of the other to just a condition of their existence that may even be temporary.

This type of distorted thinking and understanding concretizes the other in a single figure and this figure is given the treatment it "deserves", disregarding all other aspects of its existence. In this sense, other personality rights are put at risk, such as honor, physical and psychological integrity and life itself. It is not uncommon for someone to be labeled in a simplistic way and ends up being defamed, humiliated, disrespected in their entire existence, which are effects resulting from the absence of protection and promotion of the full development of personal identity.

Cases of xenophobia against Arabs and Muslims occur very frequently and the phenomenon of singular affiliation is one of the factors behind this situation. After the attack on the Twin Towers in the United States in 2011, the Arab and Islamic community in the United States suffered several threats of burning mosques and other unacceptable violence²⁷. Although the terrorist attack took place more than a decade ago, cases of prejudice against these communities still persist.

The prejudice itself, directed at black people, women, people who live in favelas, and any minority group, is the result of the absence of public policies interested in the proper construction of personal, plural identity based on the richness found in difference. These types of prejudice are not limited to the form of treatment given to individuals from minority groups, but to all areas of their lives, reflecting in the difficulty of entering the labor market, for example.

The precarious legal protection given to personal identity, when it restricts its scope to mere identification, ends up generating the feeling that identity is identification. That the individual is his name, his body, his color, his race, his easily perceptible attributes, superficial attributes and limit the person to these characteristics. It turns out that, although all these elements are integral parts of the individual, none of them, in isolation, is the individual.

Considering that all personality rights are intimately interconnected, to the extent that it is impossible to protect the dignity of the human person in a fragmented way, protecting some rights and denying others, it is evident that the absence of legal protection of personal identity has negative repercussions on all other personality rights, and it is essential that

²⁷ AITH, Marcio; Dávila, Sergio. Arabs and Muslims say they are being threatened. **Folha de São Paulo**. Available at: <<https://www1.folha.uol.com.br/fsp/especial/fj1309200140.htm>>. Accessed on: 25 Feb. 2023

legal science focuses more closely on the broader interpretation of the protection of personal identity, under penalty of withering away human dignity as a whole.

FINAL CONSIDERATIONS

Personal identity is a right of personality that is not provided for in the current Civil Code, and its protection derives from the application of the general protection clause that aims at the full protection of the dignity of the human person. With the realization of this research it was possible to verify that the doctrinal, legislative and jurisprudential interpretation of what personal identity is is deficient, to the extent that there is no understanding that contemplates the breadth of all the personal attributes that identity encompasses.

The doctrinal understanding relates identity to name, image, filiation and other elements that are too superficial and, in the final analysis, are, in fact, elements that identify the person, differentiating him from the others. These are elements of identification. Although identity also allows identification, it is not restricted to this purpose.

The current legislation, in the same way, in several provisions, confuses identity and identification, and even the identification document is called an identity document. Jurisprudence, still very timid in deciding based on the protection of personal identity, when it does, generally uses the term in combination with others, such as cultural identity, gender identity, among others.

The restrictive view of what personal identity is also restricts its tutelage. The research allowed us to realize that the understanding of personal identity only as an identification of the individual threatens all other personality rights. It is necessary to become aware of the proportion of the elements that were the identity, in addition to being extremely important to understand the process of identity formation, through interdisciplinary study, using existing knowledge about time in other areas of knowledge, especially psychology.

From the moment that the depth and breadth of personal identity is recognized, it will be possible to claim the protection of its formation and of the integrality of the person, since personal identity is precisely the "who" of each one, in its totality, is the sum of all the elements that form the individual.

When identity is formed in a deficient way, the individual, unaware of the complexity of his own nature, may also have difficulties in perceiving the complexity of others.

Following this perspective, it reduces the existence of the other to attributes, or just to an attribute, that forms it, giving it a treatment that is often disproportionate, or incompatible with everything that the other is and represents. This situation is often what causes acts of racism, intolerance, violence and disrespect.

Another consequence is that insufficient formation of personal identity also prevents the individual from recognizing himself as a member of groups that have characteristics similar to his own. Not seeing himself as part of any other group, the individual loses the ability to perceive the needs of these groups, of which he is often a member. In this way, a narcissistic and selfish culture is created that can cause social problems of great proportions.

Thus, there is an urgent need for an improvement in the understanding of the right to personal identity, being protected in its entirety, considered in a broad way and not restricted to identification. When identity is also protected in its formation, with the creation of instruments that consider it in all its fullness, several problems related to intolerance and prejudice can be avoided, ensuring that the dignity of the human person is protected more effectively.

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