

THE PROTECTION OF THE RIGHTS OF THE VULNERABLE AS A COROLLARY OF THE PROTECTION OF PERSONALITY RIGHTS



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ABSTRACT

The article addresses the protection of the rights of the vulnerable from the perspective of guaranteeing and affirming personality rights. The protection of personality rights plays a fundamental role in protecting the vulnerabilities of individuals. Personality rights are those that aim to safeguard essential aspects of the person, such as physical, psychological, moral and social integrity, ensuring their dignity and autonomy. By recognizing and protecting personality rights, the legal system seeks to ensure that subjects can fully exercise their freedom and develop their personality in an autonomous and dignified manner. This includes protection against violations, abuses, and discrimination that may compromise the integrity and well-being of individuals. In this sense, the protection of personality rights works as a mechanism to defend the vulnerabilities of the subjects, ensuring that they are respected in their individuality and that their interests and needs are considered. Through the legal protection of personality rights, individuals can protect themselves from situations that place them in a position of fragility or helplessness, thus promoting greater equality and justice in social relations. Therefore, the protection of personality rights plays a crucial role in protecting the vulnerabilities of individuals, contributing to the construction of a more just, supportive society that respects human dignity.

Keywords: Personality Rights, Protection of the rights of the vulnerable, Fundamental rights, Human dignity.

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INTRODUCTION

The protection of the rights of vulnerable individuals represents one of the fundamental pillars for the promotion of an equitable and just society. This article proposes to explore the protection of these rights from the perspective of the affirmation of personality rights that are essential for the maintenance of the dignity and autonomy of the human being. The protection of personality rights is a legal tool that aims to safeguard the most intimate and essential aspects of the individual, such as his physical, psychological, moral and social integrity. By ensuring these rights, the legal system not only recognizes the importance of individual freedom and the autonomous development of personality, but also establishes protection against any form of violation, abuse or discrimination that may affect the well-being and integrity of individuals, contributing to the mitigation of situations of fragility, promoting greater equality and justice in social relations. The protection of personality rights, therefore, protects the most vulnerable citizens.

Therefore, it is essential to consider the role of the protection of personality rights as an instrument to safeguard the most vulnerable individuals, thus reinforcing the affirmation of human dignity.

PERSONALITY RIGHTS

Civil law in modernity develops from the dialogue between academics, legislators and judges, taking into account the multidisciplinary view of law. The creation of jurisprudence has brought new elements to various aspects of private law, especially to the law of persons. For all this to work properly, it is necessary to adjust theatically and methodologically the various aspects of law, old and new, that involve people and their rights (NERY, 2017, p. 4).

The rights of personality, recognized to the human person in himself and in his interactions in society, despite being currently widely accepted in the doctrine, addressed dynamically in jurisprudence and in more recent laws, such as the Civil Code of 2002, went through a long and difficult process until they were enshrined. They faced ideological obstacles over time, reflected in positions that were not yet fully consolidated (BITTAR, 2015, p. 29).

The absence of a definitive global conceptualization, the difficulty of a uniform approach, since it is seen sometimes from the private angle (personality rights) sometimes

from the public angle (fundamental rights) imprints, as brought in the lines above, different features and disciplines (BITTAR, 2015, p. 30).

However, despite this divergence in conceptualization, the progress achieved in scientific thinking, which seeks to keep up with the advancement of techniques, has made it possible to define essential guidelines on the theory of personality rights, outlining its contours.

The study of personality rights reveals, therefore, a complex interaction between different legal and social disciplines, evidencing the conceptual polysemy and the multiplicity of theoretical approaches. Under various designations, such as Human Rights in the context of International Law, fundamental rights in the context of Constitutional Law, and personality rights in the field of Civil Law, these essential rights are the subject of analysis and debate. In the field of International Law, Human Rights represent a global consecration of the fundamental values inherent to human dignity, encompassing freedom, integrity, security, respect and honor, among others. Its effectiveness presupposes not only normative recognition, but also its consolidation in social and legal practice. In the context of Constitutional Law, fundamental rights acquire a peculiar dimension, being recognized and affirmed by the State in its constitutional norms (BITTAR, 2015, p. 32).

In the context of neo-constitutionalism, there is a pressing need to interpret and reconcile these rights, especially when confronted with each other, demanding a thoughtful and contextualized analysis. In turn, in the study of Civil Law, personality rights are conceived as prerogatives inherent to the human condition, manifesting themselves in private relationships and in the individual sphere. The recognition of these rights as essential elements of the human personality implies effective legal protection, especially in the face of contemporary social and technological transformations (BITTAR, 2015, p. 32).

The fact is that personality rights are not typical or enclosed in a category of rights, not even those considered to be of public law, since personality rights are linked to everything related to the exercise of a dignified life (HIRONAKA, 2019, p. 417). It is in the course of life that, feeling a lack of something essential to him, he seeks from the State, or even against it, the filling of this void (HIRONAKA, 2019, p. 418).

The relationship between the dignity of the human person and the rights of personality is quite significant. The free development of personality is a fundamental right that can be extracted from the CF/88. Personality rights are always fundamental rights, although not every fundamental right can be a personality right (SARLET, 2024, p. 132).

Thus, it can be seen that despite the terminological and conceptual divergences, and there are many (CANTALI, 2009, p. 27), the social and legal relevance of personality rights is undeniable. Its implementation transcends mere normative positivization, requiring an interdisciplinary approach and an expanded citizen awareness. In this sense, human rights education plays a crucial role in the formation of citizens who are informed and aware of their rights, contributing to the construction of a more just, solidary, and integrated society.

Personality rights are umbilically linked to all spheres of life. Not only in civil matters, but, above all, in criminal aspects. Suspects, indicted, accused and even criminals convicted by a final criminal sentence do not lose, for this reason, those rights that make up the essential core of the human condition. An example is the right to privacy. The collective interest in public security does not require the reduction of privacy protection, quite the contrary. The State must promote the protection of privacy as a necessary condition for an effective sense of security, inextricably linked to respect for fundamental rights and due process of law (SCHREIBER, 2014, p. 166).

Thus, in the Brazilian case, in respect to the constitutional text, it seems legitimate to consider personality not as a new stronghold of power of the individual, within the scope of which his or her ownership would be exercised, but as the highest value of the order, shaping private autonomy, capable of subjecting all economic activity to new criteria of validity (TEPEDINO, 2004, p. 23).

ON THE RIGHTS OF THE VULNERABLE AND THEIR RELATIONSHIP WITH PERSONALITY RIGHTS

First of all, it is necessary to identify who are those who are in a situation of vulnerability for the purposes of this article, since all of us, to some extent, are vulnerable.

Vulnerability is an inherent condition of all human beings, since, at some point in their lives, they may find themselves in situations of fragility, helplessness or disadvantage that make them more susceptible to rights violations, discrimination, abuses and social exclusion. The notion of vulnerability is not restricted to specific groups, but recognizes the possibility that any individual may face circumstances that place them in a position of vulnerability. Therefore, while vulnerability can manifest itself in diverse ways and to varying degrees, all human beings are subject to this potential condition throughout their lives (RE, 2019, p. 316).

Each individual, as a human being, has a fragility, and can be exposed to damage, risks and external influences that can affect their capacity for self-determination and autonomy. This vulnerability of the "I" is a fundamental characteristic of the human condition, which manifests itself in the dependence on psychological, social and material resources to balance, act, understand and advance at the individual level. By recognizing the vulnerability of the "I", one can understand the continuous construction of individual identity in relation to the social context and interactions with other subjects. Hence the need to consider the limitations and fragilities of each person, as well as the importance of promoting solidarity and cooperation to face individual and collective vulnerabilities. The vulnerability of the "I" represents the sensitivity and exposure of the individual to internal and external factors that can impact their ability to act, decide and relate in the world, highlighting the importance of protecting and respecting the dignity and rights of subjects in situations of fragility (MELKEVIK, 2019, p. 669).

However, there are situations in which individuals can expose themselves to greater situations of vulnerability, making them more susceptible to rights violations, discrimination, abuse, and social exclusion. These situations of vulnerability can be due to several factors, such as socioeconomic conditions (people in poverty, unemployment, homelessness, or with limited access to basic services such as health and education); minority groups (ethnic, racial, religious, LGBTQ+ minorities, immigrants, refugees, people with disabilities, the elderly, street children, among others, who face discrimination and marginalization); victims of violence (individuals who suffer domestic violence, sexual abuse, child exploitation, human trafficking, among other forms of violence); diseases and health conditions (people with chronic diseases, physical or mental disabilities, or in a situation of vulnerability due to poor health conditions); emergency situations (victims of natural disasters, armed conflicts, humanitarian crises, who are left unprotected and in a situation of extreme vulnerability); elderly (older people who may face social isolation, abandonment, neglect, and difficulties in accessing adequate care and services) and children (street children, orphans, victims of abuse, neglect or exploitation, who need special protection and appropriate care).

Personality rights and the protection of the vulnerable are therefore closely linked. To the extent that personality rights refer to the human person, such as physical, psychic and moral integrity, privacy, freedom of expression, among others, thus protecting the individuality and dignity of individuals, the protection of the vulnerable is related to the guarantee and promotion of personality rights, since subjects in vulnerable situations are

more susceptible to violations of these fundamental rights. The vulnerability of subjects can compromise their ability to fully exercise their personality rights, making them more prone to abuse, discrimination and injustice. Thus, the protection of the vulnerable involves safeguarding the personality rights of these subjects, ensuring that their dignity and autonomy are respected and protected (MELKEVIK, 2019, p. 646).

Directing your energies in your intersubjective relationships, respecting your own will, whether on the spiritual, business and personal planes, is to exercise the rights of personality. When this right is recognized, its holder receives the protection of the legal system to eliminate any obstacle that is placed before him to the achievement of his goals and the exercise of his faculties in society, respecting the very goals imposed by the system and those assumed, spontaneously, by the interested party, through the entanglement in social life. The external actions of the person that offer reflections in the life of relationship with others in society are protected, and therefore are interesting for the law, so that they are not included in its scope: internal actions and those considered indifferent. With this, the person has the full possibility of expanding their physical and business potential, respecting the limits imposed by public order. Thus, it is up to no one to create obstacles to the person's life, hindering his action, under penalty of violating the right in question, which can be enforced *erga omnes* (BITTAR, 2015, p. 168).

RIGHTS OF THE VULNERABLE, PERSONALITY RIGHTS AND FUNDAMENTAL RIGHTS

The State must guarantee, based on each fundamental right, that subjects have ample conditions to exercise their individual rights and have, at least, a real chance of equal opportunities (HÄBERLE, 2022, p. 91).

Fundamental rights and personality rights have already been conceptualized in the doctrine from the perspective of an old and traditional opposition between public law and private law. However, with the rereading of Civil Law from the perspective of the constitutionalization of rights and the complexity of social relations, these categories between public and private are not viewed rigidly. In this context, the concept of the dignity of the human person functions as a principle that favors the integration of the branches of law in a large harmonized system of norms. Although it is didactically convenient and clear to define a well-defined division of fields of action between personality rights, within the scope of Private Law, and fundamental rights, within the scope of Public Law, it is also

necessary to consider that these differences have limits and nuances (BITTAR, 2015, p. 59).

From a natural law perspective, natural rights are innate to the person, and, therefore, if the State does not recognize them, it is up to individuals and organized social groups to claim their recognition, fighting against violence, injustice, oppression and inequality. Martin Luther King and the struggle for civil rights in the USA in the twentieth century are an emblematic example of this process of affirmation of rights, which end up being incorporated by the legislator and enshrined as legal norms. Thus, the origin of natural rights, as a result of human nature, makes men active agents in the cultural production of their own values and achievements, which results in the process, not always peaceful, of transforming natural rights into fundamental rights (BITTAR, 2015, p. 60).

The dignity of the human person, enshrined in the Universal Declaration of 1948 and in the Federal Constitution of 1988, is the theoretical and practical foundation that guides the entire legal system, regardless of the division between public and private law. This contemporary perspective overcomes the old dichotomy between these branches of the science of law, which was based on codification and the Romanist tradition.

Thus, in recent decades, there has been a tendency to unify the criteria for the realization of rights in favor of the full realization of the dignity of the human person, in its various dimensions. In this sense, the contribution of Gustavo Tepedino (2004, p. 19) stands out, who proposes the "constitutionalization of Civil Law" as a way to integrate and complexify the legal vision.

Fundamental rights have a civil-private dimension, which allows their application in relations between individuals. In this sense, as Ingo Wolfgang Sarlet (2021, p. 270) points out, the horizontal effectiveness of fundamental rights is an instrument to ensure respect for the essential values of the human person in the private sphere. On the other hand, private interests are also influenced by public and social demands, which are reflected in open legal norms, such as the "dignity of the human person" and the "social function of property", which have modified the traditional concepts of Civil Law.

Article 52 of the Civil Code implicitly recognizes that personality rights are essential for the protection and promotion of human beings. Although it does not directly grant subjective personality rights to legal persons, it admits the application of the principles of these rights to safeguard them. Personality rights are based on human dignity. For practical reasons, the legislator chose to extend these rights to legal persons, but this does not imply

that personality rights are a conceptually neutral category, equally applicable to legal entities and individuals. The honor of legal entities, unlike the honor of natural persons, is not the main focus of legal protection. While the image of a natural person is an extremely important attribute, constitutionally protected and essential for physical and psychological integrity, the image of a legal entity is more related to the financial impacts of attacks on its reputation in the market. When the dignity of a natural person is affected, the damage is psychological and moral. In the case of a legal entity, the damage mainly affects its ability to generate wealth within its legitimate economic sphere (TEPEDINO, 2004, p. 56).

In view of this scenario, it is no longer possible to adopt a view based on the oldest dogmatic constructions, which are in constant transformation, and which alter the very relationship between human rights, fundamental rights and personality rights. There is a tendency for human rights to become fundamental rights, and for fundamental rights to become personality rights, integrating into the legal system in a broader and more intense way, and raising the level of protection of the fundamental values of the human person (BITTAR, 2015, p. 61).

PROTECTION OF PERSONALITY RIGHTS AND THEIR EFFECTS ON THE RIGHTS OF THE VULNERABLE

Before entering into the specific protection of personality rights, especially those in situations of vulnerability, it is necessary to clarify that, although individuals can protect their rights individually, through specific actions provided for in the Civil Code and in the Code of Civil Procedure, the State must guarantee all individuals mechanisms for the realization of the so-called social rights.

In order to make these social rights effective, it is essential to differentiate the technical possibilities from the political ones. Technically, social rights are as "guaranteeable" as others, and are not by nature discretionary or immune to legal control. There are legal guarantees, such as free public education and healthcare, which demonstrate the feasibility of its automatic and mandatory implementation. Legally, the protection of these rights has expanded, with emergency measures and reparatory actions strengthening their protection. In addition, they guide fundamental legal principles, influencing decisions of the Constitutional Courts. Therefore, it is plausible to develop new guarantee techniques, such as the definition of minimum budget quotas for social

expenditures, ensuring constitutional compliance with state funding, and the introduction of guarantees under international law (FERRAJOLI, 2002, p. 64).

While legal systems cannot guarantee their own effectiveness, new actors have the potential to promote social change through legal strategies. Even in fragile legal systems, there are mechanisms that, if used properly, can increase the impartiality and equal recognition of citizens. Actions such as human rights advocacy, strategic litigation, pro bono legal services, and public defenders can mobilize legal resources in favor of the less privileged, opposing the interests that are mostly represented. This movement aims to strengthen the disadvantaged, protect the marginalized, and destabilize entrenched privileges, as part of a broader effort to build more just and inclusive societies where the rule of law can thrive (VIEIRA, 2007, p. 48).

The protection of personality rights is largely protected by the Brazilian constitutional system, especially habeas corpus, which guarantees freedom of movement. Article 5, items V and X, of the Constitution, ensures the right to compensation for moral or material damages resulting from offense to the image or violation of intimacy, private life, honor and image. In the criminal sphere, the legislation provides for a range of sanctions for the violation of these rights, with the severity of the penalties varying according to the legal interest affected and the severity of the infringing act. Carlos Alberto Bittar highlights crimes against personality, ranging from crimes against life, such as homicide and abortion, to crimes against honor and individual freedom, reflecting the comprehensive protection granted to human personality in Brazilian law (BITTAR, 2015, p. 85). Such rights, in their essence, are not available *stricto sensu*, being non-transferable and non-waivable. The ownership remains unchanged, making it impossible to transfer or relinquish, both legally and physically. However, expressions of its use can be assigned in a limited way, as is the case with copyright, the right to the image, the rights to the body or part of them (BITTAR, 2015, p. 44).

Although characteristics such as non-transferability, non-renounceability, extra-patrimony and unavailability are fundamental in the general theory of personality rights, the analysis of specific types reveals the relative availability of some. The authorization for use by third parties does not detract from the right as such. The exercise of these rights by third parties must respect the limits of private autonomy and not exceed the authorisations of the holder. Any excess, as in the case of the use of the image, constitutes a violation of

the corresponding right, requiring a restrictive interpretation of the declarations of intent (BORGES, 2005, p. 120).

To this extent, the identification of the concrete singularity of subjects in situations of vulnerability is fundamental to understanding the need to protect their will and, consequently, their search for self-determination and autonomy. The denial of the human being as a conscious agent of his own existence, endowed with the will and aspirations for autonomy, self-realization and happiness, leads to his reduction to the condition of an irrational being. In this scenario, he is treated as an object to be controlled, ordered, led and limited, instead of being recognized as an autonomous subject. Freedom, a distinctive characteristic of the human being in relation to other beings who act by instinct and necessity, is compromised. When the individual is relegated in his autonomy to a state similar to that of an irrational animal, devoid of responsibility for himself and lacking foundations in relation to his subjectivity, the question arises as to who would be the superior being in charge of exercising control, order and direction over others (BORGES, 2005, p. 139).

Therefore, the right to self-determination consists of the power that all individuals have to decide what is best for themselves. Each subject has the freedom to give meaning to his own life, forming his own personality (SZANIAWSKI, 2005, p. 236). The construction of a free, fair and solidary society acquires true meaning when it meets the individual desires of its members. The understanding of freedom, justice and solidarity is intrinsically related to the personal realization of happiness. To achieve a society that is truly free, fair and solidary, it is the right of individuals to walk the path that leads to their own happiness (ARAÚJO, 2000, p. 100).

And here, not a standardized happiness as a single model imposed by a majority group. But happiness is understood as a variable state, which meets the diversity of values and aspirations of each subject, considered individually, as a way of expressing their peculiarities and singularities.

Thus, it is crucial to reflect on the importance of the protection of personality rights, not only as a defense mechanism, but as a fundamental pillar for the safeguarding of individuals in vulnerable situations, thus consolidating the principle of human dignity. This perspective reinforces the understanding that such rights are essential for the maintenance of people's moral and psychological integrity, ensuring that everyone is treated with the respect and value they deserve.

CONCLUSION

Throughout this article, it has been clear that the State must guarantee, based on each fundamental right, that individuals have ample conditions to exercise their individual rights and present a real chance of equal opportunities, reducing situations of vulnerability.

From the perspective of personality rights, exercised through private autonomy, allowing the person to act according to their conscience, with self-determination, with freedom to express themselves and guide their life and choices according to their conscience, having the guarantee of exploring their potential, maintaining their own beliefs, making independent decisions and freely disposing of their rights, The rights of the vulnerable were addressed.

The majority doctrine has pointed out as a general characteristic of personality rights, the unavailability of such rights, in order to later admit several hypotheses of availability of these same rights.

In view of the above, it is evident that the protection of the rights of vulnerable individuals is one of the essential foundations for the construction of an equitable and just society. In this context, the protection of personality rights is shown to be a fundamental legal tool for the preservation of the dignity and autonomy of the human being.

By ensuring the safeguarding of the most intimate and essential aspects of the individual, such as their physical, psychological, moral and social integrity, the legal system not only values individual freedom and the autonomous development of personality, but also establishes protection against any form of violation, abuse or discrimination that may compromise the well-being and integrity of the subjects. contributing to the reduction of situations of fragility and fostering greater equality and justice in social relations.

It is therefore concluded that the protection of personality rights plays a crucial role in the defense of the most vulnerable citizens, reinforcing the affirmation of human dignity and strengthening the foundations of a more just and inclusive society.

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