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THE FUNDAMENTAL AND DOCTRINAL BASIS OF PUBLICITY RIGHTS, ESPECIALLY THE RIGHT TO A NAME

PHD THESIS

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1. State of the art and the reasons for the topic

The question of the commercial value,[1] alienation and transferability of personality rights appears after the second World War in German legal literature.[2] The first approach becoming responses was the thesis of Horst-Peter Götting in 1995.[3] The German Supreme Court have had recognised the descendablity and transferability of various personality aspects in 1999, relying on Götting's theses.[4] After this new legal institute appeared in the case law, German scholars were about to research the problem-relevant aspects of this new right, thousands and thousands of dissertations have been written in this topic.[5] Due to the debates in legal literature there have been two significant opinions determining the nature of the personality and publicity rights. Due to the prevailing doctrine the ideal and material interests (personality and publicity rights) cannot be separated from each other; this is the so-called monism of personality interests.[6] A different viewpoint states that there shall be a descendible and transferable publicity right, which is independent from the personality right protecting non-pecuniary interests.[7] Based on the German jurisprudence, the Swiss legal literature had also had some approaches to recognise the publicity rights.[8]

The Hungarian legal literature also examines the solution of the German law, beside the US-American law, thus the majority of the lawyers state that the personality right ought to have commercial aspects.[9] The adaptation of the solutions of the German law was firstly suggested

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[1] Commercial value (*vagyoni érték*) means the transferability, the liquidation, the value in exchange of the personality rights, assets. Commercial interest (*vagyoni érdek*) is the extension of the interests to proprietary interests on a subjective right.

[2] HEITMANN, LUTZ: *Der Schutz der materiellen Interessen an der eigenen Persönlichkeitssphäre durch subjektiv-private Rechte – zugleich ein Beitrag zur Abgrenzung des allgemeinen Persönlichkeitsrecht*, Diss. Hamburg, 1963; KLIPPEL, DIETHELM: *Der zivilrechtliche Schutz des Namens. Eine historische und dogmatische Untersuchung*. Paderborn, 1985.

[3] GÖTTING, HORST-PETER: *Persönlichkeitsrechte als Vermögensrechte*. Paul Siebeck, Tübingen, 1995.

[4] NJW 2000, 2195 – Marlene Dietrich.

[5] For example BEUTER, CLAUDIA: *Die Kommerzialisierung des Persönlichkeitsrechts*. Dissertation, Konstanz, 2004; HARTL, MICHAEL: *Persönlichkeitsrechte als verkehrsfähige Güter*. Dissertation, Konstanz, 2004; SCHWEERS, CHRISTIAN: *Die vermögenswerten und ideellen Bestandteile des Persönlichkeitsrechts nach dem Tod des Trägers*. Dissertation, Köln, 2006; FRIEDRICH, KATRIN: *Internationaler Persönlichkeitsrechtsschutz bei unerlaubter Vermarktung*. München, CH Beck, 2003.

[6] GÖTTING, HORST-PETER: *Die Vererblichkeit der vermögenswerten Bestandteile des Persönlichkeitsrechts – ein Meilenstein in der Rechtsprechung des BGH*, NJW 2001, 585.

[7] BEUTHIEN, VOLKER: *Was ist vermögenswert, die Persönlichkeit oder ihr Image?* NJW 2003. 1220.

[8] SEEMANN, BRUNO: *Prominenz als Eigentum. Parallele Rechtsentwicklungen einer Vermarktung der Persönlichkeit im amerikanischen, deutschen und schweizerischen Persönlichkeitsschutz*. Nomos, Baden-Baden, 1996.

[9] GÖRÖG MÁRTA: *Néhány gondolat a Ptk. személyiségi jogi katalógusához*. In: Görög Márta – Hegedűs Andrea (szerk.): Lege duce, comite familia. Ünnepi tanulmányok Tóthné Fábián Eszter tiszteletére jogászi pályafutásának 60. évfordulójára. Pólay Elemér Alapítvány, Szeged, 2017. 141. HARKAI ISTVÁN: *A képmáshoz való jog és pénzben kifejezhető értéke a számítógépi programalkotásokban*. In: Báró-Farkas Margit Chiara – Kemény Zsanett (szerk.) A pénzügyi világ kihívásai a 21. században. Szeged: Pro Talentis Universitatis Alapítvány, 2018.; MENYHÁRD ATTILA: *Forgalomképes személyiség?* In: Menyhárd Attila - Gárdos-Orosz Fruzsina (szerk.): Személy és személyiség a jogban. Wolters Kluwer, Budapest, 2016. NAVRATYIL ZOLTÁN:

by *Márta Görög* in 2010.[10] Despite of the currency of this topic there has not been made any broad, comprehensive work, which could have answered the existence of commercial aspects of the personality right or the existence of a publicity right on a doctrinal basis. The legal literature tries to prove and confirm the existence of a commercial value, but mostly thinks that descendable and transferable personality assets cannot fit in the Hungarian way of protection of the personality.[11] The Ptk.[12] – based on the solutions of German case-law and jurisprudence – has partly recognised a commercial value, since it made possible to claim for the profit gained by the infringement. despite of this the commercial value of the personality rights has not occurred as a conceptionally new phenomenon. In fact this question has not been discussed at all.

Regarding the things above, I will handle it as a fact that the commercial value of some personality assets is a reality in all civil law countries, so in Hungary too. The Ptk. does not regulate the questions, and this happens to be an unconscious decision of the legislator, hence there is a legal gap in the regulation. The thesis aims to focus on the doctrinal questions arising in private law, such as the dualism or monism of the protection of material and ideal interests, who becomes the entitled person after the death of the right holder of personality right, applicable remedies and the duration of the right. These questions will be basically not approached from a publicity-based view. Instead of this I will build the system of the protection of the manifestation of the various personality rights, thus this can be much more integrated in the civil law system.

The thesis does not aim to copy the regulation and the solutions of the similar German legal institute, moreover tries to integrate the commercial value in the Hungarian legal system, based on the traditions of the Hungarian law, case law, and the opinions of the Hungarian lawyers. Since the topic is not discussed in detail, I was relying on other Hungarian features and build them in the thesis. For example, the broad research on the case law of the Hungarian

Gondolatok névjogról, szólásszabadságról. MTA Bölcsésztudományi Kutatóközpont, Budapest, 2015; STUMP KRISZTINA: *A személyhez fűződő jogok vagyoni vonatkozásai – új fejlemények*. Jogi Tanulmányok, 2014. 612.; SZEGHALMI VERONIKA: *A személyiség „értéke" és annak post-mortem továbbélése*. FORVM Szeged, Szeged, 2017.; SZTOJÁN KRISZTINA: *Bismarcktól Tiger Woodsig: a személyiség kereskedelmi értéke*. (https://arsboni.hu/bismarcktol-tiger-woodsig-szemelyiseg-kereskedelmi-erteke/); TAKÓ SÁNDOR: *Az emberi képmás filmalkotási és filmterjesztési célú felhasználásának személyiségi jogi vonatkozásai*. In: Görög Márta – Menyhárd Attila – Koltay András (szerk.): A személyiség és védelme. ELTE Eötvös, Budapest, 2017.

[10] GÖRÖG MÁRTA: *A személyhez fűződő jogok védelmét deklaráló generálklauzula*. In: Csöndes Mónika – Nemessány Zoltán (szerk.): Merre tart a magyar civilisztikai jogalkotás a XXI. század elején? Kódex, Pécs, 2010. 125.

[11] MENYHÁRD, 2016. 402. SZEGHALMI, 2017. 232.

[12] Ptk. – Hungarian Civil Code. Act Nr. V. of 2013 on the Civil Code.

Royal Curia,[13] the resurrection of the classification of the intangible assets, and the term of manifestation from the personality right legacy of *Elemért Balás P.* and *Károly Törő*.

The publicity-based and the manifestation-based protection of the personality rights does not occur in the legal literature. The US-American law is significant for its right to publicity as a proprietary right on the personality connected to one's fame. In the civil law system we also cannot find a manifestation based approach, not even in Germany, where the doctrinal basis of the protection of commercial interests on personality rights is the most flawless. *Götting* connects the occurrence of any commercial value on intangible assets to the transferability and descendablity of a right,[14] hence the manifestation-based protection of commercial personality assets cannot be found in the legal literature. With the manifestation these pecuniary assets are intellectual property right-alike, just like some approaches state this connection aswell.[15] The physical dynamics of the functioning of the right is more likely to support, hence the parting from the personality and the bestowed commercial or market value can easier be seen on the side of the cause of action.

2. Scope of the dissertation

Some personality aspects have commercial value due to the prevailing doctrine; hence, the research does not aim to prove that this material, pecuniary interest exists. My approach is to develop a test to measure and describe this value in legal terms. In Germany, there is absolutely no statutory regulation on the personality or publicity rights, even though there are thousands of dissertations, articles, monographies and a massive body of case law specifying the commercial aspects of the general personality right. Hence, the research aims to examine how this commercial aspects can be described in legal terms, how this can be specified regarding the general personality right.

If there is a commercial interest on the personality right, just because the German case law and the Hungarian prevailing doctrine says so, how can it described both on the sides of the cause of action and the remedies as a subjective right.

The research does not examine how the various kinds of personality rights can have this commercial value, material interests, how much a remuneration would be or how the estimation

[13] The name of the supreme court of Hungary until 1946: Hungarian Royal Curia (*Magyar Királyi Kúria*), until 2012: „Supremest Court" / Supreme Court (*Legfelsőbb Bíróság*), from 2012: Curia (*Kúria*).

[14] GÖTTING, 1995. 9-10.

[15] BEVERLY-SMITH – OHLY – LUCAS-SCHLOTTER: *Privacy, Property and Personality*, Cambridge University Press, 2005. 3.

of a fictive licence fee could happen.[16] The research also does not extends to the contracts on licensing, merchandising and transferring these rights. The scope of the commercial value of the personality rights does not cover rights on the human body, the alienation of body parts or organs, since only non-tangible assets, especially signs[17] will be analysed.

Among the personality rights, the right to a name will be examined closely, since the occurrence of a commercial value can be modelled on the name most properly and that there are the most various kinds of manifestation in case of the name in the Hungarian law. As the manifestation of the name can be considered the usage of one's name as a part of a company's name, a non-registered trade name, a domain name, a trademark or even the usage in connection with commercials. The reason for the various ways of manifestation of the name is its characteristics as a verbal indication; hence, this is a common point of the right to name with some other legal institutes. This makes it available for one's name to transform into an intellectual property or other transferable right. This is the reason why the right to the name can have a broader scope of commercial value and usage, than other immaterial personality rights.

The right to the name as a personality right on the other hand is not a single subjective right, it protects more assets, such as the name of the human beings, the company name, the non-registered trade names, even domain names as such. Hence, the right to a name protects verbal indications even in cases, as it has nothing to do with the identification of the rightholders personality. The right to name as a legal institute protects verbal indications even in cases in which the protected sign has nothing to do with the name of a person or of a firm. With this, the Hungarian case law protects other manifested transferable interests with commercial value, beside the manifestation of the name mentioned before. This is an other circumstance why I highlighted the right to a name.

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[16] A hypothetical licence fee (licence analogy, not payed remuneration): a fee, which should have been payed for the entitled person, if the wrongdoer would have asked for a permission regarding the commercial exploitation of the personality asset.

[17] The right of names and signs was used firstly by August Egger in the Swiss doctrine (EGGER, AUGUST: *Einleitung. Das Personen*. Zürich, Schultheß & Co, 1930. 246-248.), in Germany it was used by Otto von Gierke. From him implemented Alajos Bozóky in the Hungarian law (BOZÓKY ALAJOS: *A személyjogokról*. In: Fodor Ármin (szerk.): Magyar Magánjog I. Singer és Wolfner, Budapest, 1905. 464.), even though it was used by Anton Almási aswell (ALMÁSI ANTAL: *A személyiségi jog elhatárolása és tartalma*. Jogtudományi Közlöny 1927. 133. 135.). The right of names and signs is teh general definition fro the protection of verbal indications, it contains the trademark and tradename law, as well as the right to the name as an aspect of the personality right.

3. Methodology of the thesis

The legal literature of the time of the occurrence of the personality rights was highly important, since this was the time when the legal institute, the right was shaped, this was also the time it became a highly personal right, hence it became a inseparable from personality, cannot be resigned, transferred and which terminates with the death of the entitled person. From the time after the Second World War I did research on the commentaries of the Ptk. from 1959, the novel act of 1977, and the contemporary legal literature. The examination of the German bibliography was restricted to the commentaries, some articles and other publication of importance regarding the most significant topics of the subject.

I was trying to fully process the Hungarian case law, thus I was reading and using all the relevant ÍHs and BDTs connected to the protection of personality. I also processed the most important, mostly quoted BHs, which often occur in the commentaries and in compilations aswell. These has been also build in in the thesis. The corpus of the case law of the Royal Hungarian Curia was processed from the view of the historical development, since in this part I highlight the occurrence of the market value and the commercial exploitation in the jurisdiction. In the German case law I picked the leading cases in general, which declare some important ratio regarding the protection of personality, and some other judgements of lower courts, because of a different view in the legal argumentation. The German case law will be compared to the Hungarian, and of the Royal Curia. During the processing of the case law, I tried to be dynamic in a sense that I did not only tried to model the rules and the obiter dictum of the judges, but I was also regarding these critically, and compared it to the doctrinal rules.

The Hungarian case law and precedents have been furnished with a short name, given by myself, similar to German cases. The quotation number of the case follows this. These names are also used in the text of the thesis, since they shall help to recognise significant cases, and to help to remember the ratio of each case.

The thesis is based on the legal doctrine, since a statutory-based scaffold was impossible, since it does not exist in German law and barely exist in Hungarian law. That lea me to a doctrinal approach. The body of case law will not only be presented, but also processed, I comment the cases in general, and examine if in my doctrinal system the valuation of the case has the same outcome or not. The critical processing of the cases and jurisdiction I highly used the so-called *Anspruchsmethode,*[18] as well as the process of the statutory reduction by *László*

[18] FRITZSCHE, JÖRG: *Fälle zum BGB Allgemeiner Teil*. CH Beck, München, 5. Auflage, 2014.

Fürst, which also helped me to learn legal reasoning,[19] thus I did not involve the examination of prerequisites, which might be deemed as fulfilled at the point of the current state of the examination. The conception of *Charles Szladits* about the real and pseudo accumulation of right had a great impact on me; this will be shown in the thesis at many places.[20] The concept and the understanding of the general rules of the private law I was relying on the conception of *Charles Szladits, Kálmán Személyi*[21] and *Peter Bydlinski*.[22]

4. A brief presentation of the dissertation

The thesis is divided into three parts: the historical development (A), the doctrinal requirements of the commercial value (B), and the recognition of a publicity right, a commercial personality righ (C).

The historical development focuses on the German and Hungarian law (A). Firstly, the commercial value and the material interests will be examined in the German law and the dogmatic system of the protection of material interests of the general personality right in the German case law. After that the development of the protection of personality rights will be analysed in the Hungarian case law. (§§ 1-2. §). To place the material interests in the Hungarian legal system, there are two questions arising because of doctrinal reasons (B). Firstly whether the cause of action of the personality right is capable to protect material interests (§ 3.), secondly how some personality aspects can be parted from the inner core of personality (§ 4.). The partition from the personality will be presented on the right to a name (§ 5.). After the clearance of the doctrinal basis, the contours of a potential publicity right (commercial personality right) will be drawn (C). Firstly the rules of the Ptk. will be tested if they make any material interests possible or not (§ 6.). After this the legal prerequisites, the legal terms will be defined of a subjective right protecting commercial interests (§ 7.), if this new subjective right will be infringed or exploited unlawfully, the law shall provide adequate protection in form of pecuniary remedies (§ 8.).

[19] FÜRST LÁSZLÓ: *A magánjog szerkezete*. Grill, Budapest, 1934.
[20] SZLADITS KÁROLY: *A magyar magánjog vázlata I.* Grill, Budapest, 1933.
[21] SZEMÉLYI KÁLMÁN: *A névjog*. Franklin, Budapest, 1915.
[22] BYDLINSKI, PETER: *Grundzüge der juristischen Methodenlehre*. Facultas wuv, Wien, 2012.

5. The division of the thesis

A. Historical development

The thesis begins with the German law, because it will be the legal system, compared to and with the Hungarian in the following chapters, thus it seemed logical to clarify the rules and rulings of it. This makes possible to refer to these and to examine these in other parts of the thesis, if it is needed and relevant regarding the Hungarian regulation. During the processing of the subject, I tried to highlight the different characterists and features of the Hungarian and German law regarding the protection of personality rights e.g. the utmost importance of the case law and prejudice in Germany and the institute of specific personality rights, which we do not have in Hungary. *The examination of the German law appoints on one hand which are the discussed questions in the topic of the thesis, where opinions differ, on the other hand where and how a material or commercial interest can exist at all and where shall the protection of personality remain ideal.* Thus, these determine the dogmatical core and basis of the thesis, they serve as channel of further examination.

The research of the Hungarian legal history aims to unveil unclearities and to answer more questions. It was examined firstly, when and how the non-idealistic protection of personality rights and interests developed in the literature and jurisprudence, and, in connection with this, if the pre-war (World War II) authors the personality rights exclusively as non-commercial interests classified, or was there at least one opinion, which supported the partition of the personality right from the right holder's person. The different kind of personality rights were separately examined from this perspective. There are more institutions protecting the right to the name which were affected: the company name, the name of the wife, the general tort for name infringement – the right to the name as an aspect of the personality right was, thus, merging and arising from different cause of actions. The jurisprudence also affirmed the post mortem right called piety and the right to credit. In this part of the thesis, I also examine the different regulation regarding famous persons. The case law of the pre-war, capitalistic market economy-based and post-war communistic-socialistic planned economy based case law and rulings. this aimed, to show up, if the different legal and social environment induce different protection of material interests, if any.

The research about the historical background of the legal institute was primarily directed to prove the fact that the commercial characteristics of the personality rights are not new phenomena of the 21st century, but it was organically connected with the private law based

protection of personality rights during the 20th century. This was also an approach to legitimize the legal institute in the Hungarian legal system.

B. Doctrinal requirements of the commercial value

For the approbation of any commercial value it is a prerequisite that the statutory system of the protection of personality rights is not restricted to bestow and defend ideal and moral interests. It has had to be examined if the new civil code, which came into effect in 2014 supports any interpretation, which makes this available. In connection with this I was examining the subjective right, and the dispositions alike to a subjective right: the section about human dignity, private life, the right of self-determination as the general clause of the protection of personality. As the commercial value connects to some personality aspects automatically, the question to answer was, *how can it be reached in the protection of personality rights in the Hungarian law that the right of human dignity does not exclude in general the possibility of the transfer and inheritance of some personality rights.* This part examines in detail what is considered as the cause of action for the infringement of personality rights in general, what can be the interpretation of the human dignity in the rules of protection of personality, why cannot be used the broad definition of the Hungarian Constitutional Court of human dignity. After this the private life as one of the personality rights will be examined, especially its relation to the general clause and to other personality rights. This is followed by the functioning of the subjective right: whether there are listed, autonomous, separated subjective rights on each personality rights, or it is deemed more of a general, sole right's aspects. These will help to build a scaffold for the prerequisites of the personality right, which is required to find the position of the commercial interests within or beside of it.

To evaluate the commercial value on the level of the cause of action, it is necessary to break the dogma of personal-bounding of personality rights. It speaks against the inseparability that various aspects of personality rights are able to manifest, to partially resolve from the person and personality. *If an aspect of the personality right, a personality asset gains commercial value, it also distances itself from the inner core of personality. This object at law embarks to function as a kind of property right, as an intellectual property right with its manifestation, thus it ends to be in the scope of the personality right as a subjective right, at least partially.*

The manifestation of the personality aspects will be displayed on the right to the name. During my research it became more and more clear that an asset does not belong constantly to

one's round of personal interest (personality right), but it has dynamics in it. I was examining when the name becomes part of the personality and when does it come off from it. This was examined according to the concept and legacy of *Balás*. *It was demonstrated how the right to the name might be able to manifest: how and in what form the name and other verbal indications can manifested within the scope of the protection of personality.* From the aspect of the verification of the commercial value the manifestation has a significant role. The manifestation of the name has various ways. It can happen as a transformation into another protected subjective right, in the field if IP law, such as trade mark, or within the personality right such as trade name, domain name, or as a less personal bound company name. The name can be manifest *per se*, too, which has to do with its utilisation, exploitation, thus the manifestation of the name can happen in various ways and functions.

C. The commercial personality right as a publicity right

The codification of the Ptk. and its text in force will also be examined in connection with commercial value, especially that the text of the Ptk. partly builds on the German law, thus it partially ventures to protect material interests, too. It will be examined how the various sections connected to the ideal, moral or commercial interests in general support the protection of material interest, too, and if the rules of the subjective law as a pecuniary right may be shaped and declared by case law or it requires statutory regulation.

The manifestation of the various personality aspects does not only gives an answer how personality rights might be separated, but also determines the form of the new right coming into existence. The manifestation has various forms, though., to which the other significant feature of commercial value is connected: the commercial utilisation of the personality asset. The manifestation cannot only be a measurement for commercial value, it does not make the right to a pecuniary right per se, since the personality assets might be manifested, without having any connection with commerce or other pecuniary interests. From this point of view, the prerequisites can be easily set to specify commercially manifested personality assets into a homogenous mass. *May we have all perquisites of the mass, hence the legal facts connected to the commercially utilised personality assets are set, the cause of action (the subjective right) and the actions leading to the infringement of the subjective right might also be defined.*

The German case law is quite solid regarding the cases and the remedies of the infringement of the commercial aspects of the general personality right. I will examine in connection with this, which constellations might be complicated in the jurisdiction, as well as the rulings discussed by jurisprudence. After the presentation of the German law, the concept

and the probability of the codification of the Ptk. will be presented. As it has been shown before, the Ptk. protects the commercial interests on the side of the remedies, partially, thus the question to be examined was *if the system of the protection of personality is capable to protect the commercial interests extensively and effectively?*

6. New scientific outcomes

The manifestable personality assets are able to be part of the commerce, if thy become part of special sphere of the commercial personality right. The commercial personality right is a sphere of personality rights similar to the moral rights in copyright law, it merges material and ideal interests. While the general right of personality is a personal intangible right, the commercial personality right shall be an accessory pecuniary intangible right. It comes off from the general right of personality, if the additional requirements are fulfilled, and it becomes a special quality of the protection of the personality. This quality, the fact that the moral interests are merged with commodity-alike pecuniary interests makes it possible legally, that these personality assets are alienable and descendible and in case of their infringement the pecuniary remedies may be applied – hence the remedies of the personality rights are specified in this aspect. The mergence of moral and commercial interests can be basically described by the separation, by the term of manifestation as well as the utilisation of the personality assets for commercial, advertisement purposes, which falls within the scope of the subjective right.

The specification of the cause of action may not make the commercial personality right to a separate subjective right, but the separation of the applicable remedies certainly does. Since the general right of personality only protects ideal, moral interests, the commercial personality right shall protect the material (commercial, pecuniary) interests of its rightholder, hence this is the only right of the two, which could indicate a (pecuniary) damage or the surrender of any gained profit.

The scientific outcomes of the various chapters are:

§ 1

What are the unsure, discussed subject-matters of the publicity rights, what are the questions the courts had to answer during the recognition of the commercial aspects of the personality right in Germany?

The German case law has developed the personality right in some aspects into a descendible, transferable right, which is undividedly connected to the ideal interests. This right was recognised by the development of the case law and happened to be positioned inside the general personality right – also a subjective right of the jurisdiction. This legal analogy have not been affected the two aspect of personality rights already codified, the right to likeness and the right to name as autonomous subjective rights. This may exclude the thoughts of Gierke, since he said that "*the general right of personality shall be applied as far as specific personality rights have not been taken out of it*."[23] This was not the only time the BGH reached for the general personality right but also in cases in which the dispute could have been settled by applying one of the specific personality rights, and even in cases in which the commercial value clearly appeared in the for of such a specific personality right. Thus the court have not classified this not proprietary right as part of the right to name or likeness, but as the special form the the general personality right. In other words the rule of lex speciali derogat lex generali seems to work reversed in the German personality right system. The pecuniary interest regarding the two specific right was clarified by both doctrine and case law, which have not been indicated the application of the general personality right claim. This classification is more of a legal theoretical one.

It is to highlight that the German law grants the protection of the commercial aspects only in the framework of the general personality right, thus this right and its post mortem version have commercial aspects. The German doctrine and case law does also not part these pecuniary aspects from the general personality right, which originally protected only ideal and moral interests and with this solution, German law is still in the trouble due to the non-codification. The separation from the ideal interests could have indicated the purer clarification of the dogmatical system. That cannot be highlighted by this solution that the general personality right in its normal state only protects ideal, and moral interests, and only if special prerequisites are available, commercial interests, too.

[23] GIERKE, 1895. 704-705.

The general personality right protects ideal and commercial interests. These two aspects cannot be parted from each other, they build one single right, thus the general personality right is a monistic right. With the recognition of this right in the case law in 1999 it was evaluated that the commercial aspects of personality may be descended and transferred. The question of the in rem transferability of such aspects have not been clearly answered by the courts. The pecuniary interests are protected even after the death of the original right holder. This protection differs from the ideal ones. They are part of the legacy, and the heirs come into it. The commercial interests are protected until 10 years of the death of the original rightholder, the heirs can only dispose with them in the from of an exclusive right. The heirs also shall consider the expressed and supposed will of the deceased by doing so. Legal doctrine welcomes the application of the regulation of the copyright act regarding the gaps of the regulation of commercial aspects.

The German personality protection has a different framework of subjective rights than the Hungarian. German law knows more rights to protect ideal interests, the Hungarian only one. The German law enumerates the right to the name and the right to likeness as specific personality rights, which both play a quintessential role in the recognition of commercial interests even on international level. Despite this fact, the German case law do not grant commercial aspects for these subjective rights, but for the veg, non-statutory general personality right shall have more broader commercial aspects.

From the viewpoint of positioning the commercial value of personality rights, the German law gives us the origo, but the German courts rule under different social and legal factors. Some questions does not cause any problem in the legal system, since the Hungarian legal system does not differs between special and general personality right.

§ 2

Can it be proved that the commercial value and material interests on personality rights is not a new phenomena of the 21st century, but it was present in the early years of the 20th century, and it even helped to recognise the personality right as a subjective right?

The statutory regulation of the protection of personality rights was missing, since the private law, as a whole, has also not been codified. By contrast, in Germany they have been intentionally resigned to protect interests on the personality, there is no general protection regulated in the BGB.

Some aspects of the personality have been protected by existing legal institutes, cause of action such as marital law and liability for damages, or the legislator regulated some aspects in special acts. In case of the fame and defamation the act on the press (St.) and the act on the protection of reputation (Bv.). The two most important right from a commercial perspective, the right to a name and the right to likeness, by contrast to German law, was not regulated, hence there has been a giant regulatory gap left on the corpus of the personality rights.

In the German concept both name and likeness has been so-called specific personality rights, which have been statutory regulated. The interpretation of the Reichsgericht recognised only theses, statutory rights, and has protected the personality only in these aspects. Hence the contemporary case law was flaw and obsolete. The German legislator did not intervene, did not bestow a general personality right in the BGB. The Hungarian courts have filled the gaps of the regulation and in the beginning of the '30's it granted a general protection for the typical infringement situations. The Curia had applied the section 108 and 109 of the Mtj,[24] in cases of the right to a name, right to likeness and the right in memoriam. this made the Hungarian law more progressive, the cause for this might be that a Curia was more receptive to carry out the personal idea, which can also be detected in the interpretation of the body of case law for liability of moral damages (compensation).

The legislator deemed some specific legal regulations as efficient for the actionability of the right to the name. These legal institutes were protecting mostly moral interests, such as the marital name of the wife in family law and the infringement of author names as the infringement of the name.

The right to the name was also capable, merely because its function as a verbal indication, to designate goods, services and commercial firms, too. These cases have been specially regulated by the legislator in de Commerce Code and in the Trademark Act. Regarding the use of name in these cases, it is inevitable that the name not only designates the person, who was bearing it, but also those goods, services and firms which were also designated by using the same verbal indication. In these functions the name separated from the personality. It is interesting, though, that the name does not have a strong proprietary character (like things or obligations), it is primarily connected to industrial property, and intellectual property rights in a broader sense. With this separation of the name from personality, the name in these special functions may be able to be transferred, descended and to be part of the commerce – this unplaces the name clearly from its characteristic as a non-transferable, non-alienable

[24] Mtj.: *Magánjogi Törvényjavaslat*. Bill on the Civil Code of 1928. It has never became an act, although it has been applied by the courts almost in every aspect, since there was no other written act, regulation which could have been applied otherwise in private law cases, the fontes cognoscendi was highly blurry.

personality right. *Balás*, who deemed the personality right as a strictly ideal right, had understood this commercialisation, that in these cases the right to name does not underlie the so-called personality theory (*személyi szemlélet*), but it is driven by the material dynamics (*dologi dinamika*). Thus, these cases may be solved through the Commerce Code, the Trademark Act or the Act against the Unfair Competition, since the personality aspects are chiefly absorbed.[25]

With the recognition of the right to a name did the Royal curia not only recognised a subjective right, but an even more complex right. The right to the name connects to the bearing of a name, to an ideal interest, but it is also relates to other verbal indications, which may be altered and limited by the moral interests of person names. The name is an asset to improve the market value, the desirability and the commercial value of goods, products and services, which may be opposite to the original function of the names of persons, hence it is a personality right. Despite this bound to personality, the old doctrine and case law allowed the exploitation and usage of the name in a intellectual property manner, which may lead us and help us to understand the problematics of the commercial value of personality rights in general.

The protection of the likeness have been separated from the copyright regulation as the case law deemed the consent of the depicted person as the exercise of the personality right in the framework of the Mtj. An unauthorised appropriation may not made an action for omission and compensation available, but also made the wrongdoer liable for the material damage cause according to the Szjt. of 1921.[26]

Meanwhile the protection during the socialist era was only limited to pure moral and ideal interests, in the jurisdiction of the Royal Curia, especially in the case of name and likeness was this only one direction of the protection beside the infringement of these legal objects in connection with commercial competition and ware production. It does not only highlight that the personality rights may have commercial value, since their transfer can be expressed in money term on a regular basis, but also that this tendency was emerging during the 20's and 30's in the case law as a parallel, organic part of the personality right in the customary law. This development has been interrupted by the socialist private law, which may not made to develop the dogmatic regarding the commercial value, since it lacked the regulation connected to it.

[25] BALÁS, 1941. 646, 648. 652, 655, 656.
[26] Act Nr. LIV. of 1921 on Copyright Law.

§ 3

How can it be achieved in the protection of personality in the Hungarian law that the right of human dignity does not exclude in general the possibility of the transfer and inheritance of some personality rights?

Regarding the tension between the human dignity and the general clause of personality rights, it is to highlight that the § 2:42. para. (1) grants the broader, the more general protection for the personal relations, thus it is to be considered as the general clause and the cause of action. § 2:42. para. (2) sent. 2. does define anything, thus it much lesser, it could be left out from the Code, since the section mentioned above could fulfil this function much more effectively. In the relation between the self-determination right and human dignity is to highlight that the human dignity according to § 2:42 para. (2) sent. 1. is the additional value and quality for the personality right of humans. Human dignity serves as the minimum measurement of the personality rights of natural persons, which defeats the rights and interests of others every time; if it is infringed, no measurement of interests shall be realised. If we accept this role of human dignity, the § 2:44 and § 2:42. para. (2) sent. 1. can have the same definition of human dignity as a non-limitable right.

The scope of the protection of the right to private life does not encompass the infringement of the not specified personality rights, since if it would, it would merely substitute the general clause itself. In my opinion the infringement of the private life is primarily given in cases in which the personality sphere is infringed in a broader sense, thus more aspects of it have been violated. The right to private life encompasses those facts and information, which may be considered due to the general opinion as part of personal relations and from which others can be excluded, one can dispose with them and share them with others. In cases in which these data or information appears in the form of another personality right (for example in the form of a photograph containing the likeness of the person), thus these enjoy priority if no other additional element is given. The Act about the right to private life describes this additional element as the infringement of other specific happen to be violated in connection with the private life,[27] this can serve as a sufficient distinction.

The personality right is a unified subjective right, which grants the self-determination and development of the person through the so-called self-determination right. The self-determination primarily concentrates on the moral and non-pecuniary relations and interests of the person, but it also makes possible that personality-related material interests are not outside

[27] 2018. évi LIII. tv. 2. § (1) bek.

the scope of the general clause of § 2:42. para. (1). The approach of a unified personality right also indicates that any recognition of the commercial value of some specific personality rights must also happen in an abstract way, and shall not be limited to some personality aspect-right. The Hungarian legal tradition unanimously support the abstract general clause in the private law, thus the protection of commercial interests shall also happen abstractly, otherwise separate rights of name and likeness should be constructed, which seems to be absolutely foreign for Hungarian law.

§ 4

How can it be described in legal terms that a personality asset, a personality right gains commercial value and it parts from the personal sphere of the personality?

In the dogmatical system of the private law personality rights are subjective rights, which have absolute (erga omnes) protection on one hand, on the other hand it is a personal right, thus the function of it lies in the protection of ideal, moral interests of a person as such. Overall, we can say that the personality right is an absolute personal right. In connection with its personal characteristics, both the old Hungarian private law and the socialist private law stated that these rights were non-pecuniary rights. This prevails in the legal system of today, too. Neither the jurisprudence, nor the case law states clearly that the personality right might function as a pecuniary right, depending of its usage, even though it does not fully parts from the personality.

Beside the classification as a non-pecuniary right, personality rights were also classified as personal immaterial rights during the historical development. In the early 20th century the private law was not only protecting the material, pecuniary relations of one man to another, but new legal assets have been recognised. These assets were of non-tangible nature. This recognition required on one hand that there are non-physical, immaterial assets, on the other hand, that non-pecuniary, moral interests of another person can be also infringed, and a claim might arise from this, too. This process was the appearance of the personal idea (*személyi eszme*). The personal idea firstly appeared in the statutory regulation through the copyright and industry related rights. After this, we can see how the protection of personality appeared in the bills of civil codes. The personality rights as non-tangible, immaterial assets are personal immaterial assets, thus they are inseparable from the person, and hence they cannot be subject of inheritance or cannot be transferred with a contract.

If an asset parts from the inner core of the personality right, thus it leaves the sphere of the subjective right even and it becomes some sort of a pecuniary (immaterial) right, which can be descended and transferred.

Some assets among the personal intangible assets may be able to become an accessory intangible asset, hence to a right, which might be transferred and inherited with the condition that the asset is connected to the personality henceforward. This manifestation-based transformation makes it available, understandable on a doctrinal basis how the personality rights can be parted from the person. The theoretical possibility of the partition is given.

The research was examining after this, if which personality rights are capable to manifest because of their non-tangible characteristics, and become an accessory intangible assets over the theoretical possibilities of any commercial value. These rights will be called in this thesis as manifestable personality assets (*tárgyiasítható személyiségi jegyek*), and are divided into two. Assets of the first category serve the protection of one's external appearance, such as the name, likeness; the other category contains assets, which consists features and attributes of the personality as information, such as the lifepicture (*életkép*), personal secret, and other aspects of the right to private life. The right to a name was highlighted among the manifestable personality assets, since its feature as a verbal indication, which makes this asset to manifest on various ways.

§ 5

How and in what form can the name and other verbal indications be manifested in connection with the protection of personality?

The manifestation of the name might happen on various ways. On one hand, it is the manifestation in the framework of another legal institute, such as in a form of a trademark, or the manifestation inside the personality sphere, in another legal institute. The manifestation inside the personality rights have various ways, such as a company name, trade name and domain name. During the examination of these rights, it has to be divided if the verbal indication characteristics of the specific right is based on a previous, priority right, such as the personality right, the right to a name or a pseudonym. The manifestation of the name can be happen, similar to the likeness, sui generis. With the manifestation sui generis a new right is born, the pecuniary right to the name, which contains all utilisation of the name for advertisement. In the case of endorsement of products and services with one's name, the name functions as a trade sign, thus

it is protected as a trade name. Hence, the applicability of the manifestation of the name sui generis is much narrower than in case of the right to likeness, since the likeness cannot be a trade sign, and cannot be protected as a trade name, so all these cases are regarded as the manifestation sui generis of one's likeness.

The manifestation of the name as a company name makes it a company name aswell. May the company name a made up word, indication, it shall be free by the barrier of one's personality rights. If the company name contains the name of a person, the personality right of on those names may be deemed as a limit of the appropriation and its usage. Such a barrier can be, if the company wants to endorse its name to found another company.

The name can manifest as a domain name aswell. In this case, a new, different personality right comes to existence, which may also give exclusive so-called absolute right to its holder. The domain name is not the name of the entitled person, it is not company name either, nor a trade mark. The domain name is also not a trade sign or trade name automatically, even though it may acquire such a quality, such as it can be registered as a company name or trademark. These cases indicate new rights, though. The domain name does not have the quality of trade name, it does not exclusively protect the right holders commercial, economical interests, its remedies also protect non-commercial, moral interests, and grant an exclusive right for these aswell.

The dogmatical structure of the right to a name in the personality right system previously detailed also leads to an other consequence. The scope of interests which may connect to the personality are broad, it is not limited to the sensibility and to the moral (non-pecuniary) interests of the person, thus as personality rights there are not strongly connected objects at law, for example the tradename, is also granted. This also indicates the conclusion that the constitutional right of human dignity covers only an aspect of the protection of personality in private law and that the private cause of action shall be the right to self-determination of § 2:42. On the other hand, the Hungarian personality right similar to the Swiss and Liechtensteinian protects the personal relations of the individuals. The personal relations encompass all, primarily ideal interests and objects at law, which may be generally regarded as an asset of the individual in the form of an absolute right. The blending of the ideal interests with material ones can also be seen on the example of the manifestation of the right on names, where the ideal interests are not absorbed. The tension is here the most intense regarding the commercial value, which is indicated by the classification and transferability of these rights. Due to the classification of the immaterial goods, the personality right is a non-alienable, non-descendible immaterial right, whereas the immaterial goods, which can be appropriated by the society or by

the industry, happen to be intellectual property rights. The blend of the material and non-material interest through the manifestation, especially the new subjective right with emerges through this blend, and the intensity of the surrogate of the personality right lead to great problems of classification, not to forget that the protection of commercial interests shall not overshadow the protection of the person.

The objects and interests at law encompassed by the personality protection within private law is much broader in Hungarian law as in German law, we could also say that it is other. It could have been seen, that the protection of the name and likeness could have been widened to encompass material interests before the general personality right was recognised, it was also visioned by the legislator that these right protect commercial interests, too – although not in such a broad sense. The big change have been invoked by the general personality right constructed as a mixture of the human dignity and self-determination, on one hand. This had given a strong moral, non-pecuniary flavour in the development of the personality right regarding its cause of action and the remedies. This was even fortified by the alteration of the Trademark Act in 1995 as a passing off tort was constructed for the infringement of the commercial verbal indications in general, since it tightened the application of the right to the name of § 12 BGB and demolished its analogical application. Hence those material interests which are protected within the trademark and –name law have been withdrawn from the personality rights in this sense and the § 12 BGB limited merely to the ideal infringements of names chiefly. The commercial aspects of personality rights have only been recognised after these changes, thus their application and scope was also determined by a much more ideal personality protection. This also meant that the BGH have not been able to use it as an argument that the protection of the right to the name due to § 12 BGB is broader and the material interests within the personality rights have various kinds.

The Hungarian law is different, since the indications, name rights listed before are present and protected within the personality right and not separately. The Swiss law has a similar approach; it does not recognise the commercial interests at all, though. The abundance of protected legal objects indicate the increase of the fashion of manifestation, thus the mode of their material interests and commercial appropriation, too. This also causes the more various ways in which ideal and material interests may collide, and that the protection of material interests on a German way may not be upheld in the Hungarian legal system, it shall be secured by other way and means. The manifestation-based protection of material personality interests serves this sufficient, yet.

§ 6

Is it possible to interpret the rules of the Ptk. so that any commercial interests on the personality right can be recognised or the legislator shall act?

What are the consequences to treat commercial interests like if they were pure ideal, moral interests in the Ptk. as well as in the jurisdiction?

The legislator has recognised the commercial value of the personality right as the transfer of the profit gained by the conduct was codified. This recognition happened in a fragmented system, though. The commercial value was only recognised from the side of remedies. The aim of the legislator was it clearly to protect the commercial interests of personality rights effectively. The partial recognition has leaded to some problems, since the pecuniary interest was not evaluated on the side of the cause of action, the relation between the human dignity and the commercial value has not been set, just like the scope of the descendability, the time of protection and the transferability. Despite these regulation gaps and failures, the commercial value has appeared on the level of statutory law, thus it must be evaluated systematically by the courts; the commercial interests may not be regarded as moral interests.

The judge shall teleologically reduce the scope of protection of the moral interests, which may not be an easy task, since they mix with commercial interests and these are not mentioned by the Code explicitly. The partial aspects of the personality right are transferable goods, thus they can be alienated, descented and they can be leased. If the case law does not evaluate this commercial interest, it may "misapply" the legal regulation. The ideal aspects of personality right cannot be descended, they decay with the death of the rightholder, and they cannot be parted from the personality. Several problems emerge by treating material aspects as immaterial. Problematic is that the ideal and the alleged material interests are protected by the same section of the Code [Ptk. 2:42. § (1) bek.], thus the commercial interests can only be evaluated by the judges themselves. This may be eased by a manifestation test applied by the courts.

The commercial value does not only appear on the level of the Code regarding the remedies but also in the aim of the Code and in the will of the legislator, although it remains vague. The case law also evaluates the commercial value, since it does not rule out claims directed for a licence fee in the framework of liability for damages. This does not rely on the systematic recognition of material interests or on the will of the legislator, but develops autonomously in the case law.

The core of the problem is that both the case law and the doctrine is proceeding in the same direction, which is appointed by the Civil Code, although these do not seem to be harmonised intentiously. The system of the code is flaw, and since it has static norms, it is the task of the courts to use both textual and teleological interpretation to merge these with the legal doctrine and take side regarding the acquisition, loss and content of a proprietary personality right. The courts should examine the right to piety and its relation to material interests, the scope of protection regarding its duration and the possibility of the in rem transfer of personality assets. The core methods are the progressive tools of legal argumentation: the analogy, the general principles of law and the teleological reduction. This seems to be a huge burden for the courts, since the legal institute has no literature, and seems to be a whole new area of private law, on the other hand the Civil Code is also not consequent regarding commercial interests. regarding the application of the law, the recognition and the evaluation of material interests seems to be an obligation, thus the judges shall not wait until the legislator intervenes, they should find the just solution. They should, under no circumstance apply the rules of the non-pecuniary interests, if pecuniary interests are at stake. Most questions should be answered by the legislator, primarily the dogmatical system of the acquisition of the right, its content and the loss of it.

§ 7

If the personality assets which may be commercially appropriated can be gathered, and the prerequisites of the pecuniary value can be set, thus the subjective right and the remedies connected to it can also be described.

The previously presented manifestation was the definition to describe the connection of various personality rights with the physical, material would. It can solely not capable to measure the commercial value of personality rights. The various personality assets do not indicate a commercial interest automatically after their manifestation, thus it is only a prerequisite for such an interest. through the manifestation the personality assets separate from the inner core of personality, and this partial separation is the basis to recognise alienable, transferable and descendable personality goods and rights.

The possibility of such personality assets make it also unclear, whether the rightholder has legal disposition and a legal interest over them, so that a subjective right still exists on the object at law. This is relevant for both informational and appearance assets. In case of the general personality right such a legal interest is automatically given, since the right cannot be

separated from its holder, in the case of manifestable personality assets is not so clear. The question is whether the manifestation has infringed his interest or not.

To recognise a commercial value, it seems that the person is well-known or if he has publicity, does not play a chief role. The manifestation of personality assets and the commercial value is also given in cases, if such publicity was not concerned regarding the infringed person. The unauthorised manifestation of the personality right still indicates a commercial value. This is mostly relevant in cases in which trough the manifestation the personality asset will be protected in the framework of another legal institute (such as trademark, trade name, company name or domain name), but also in the cases of the manifestation sui generis. The publicity and the fact whether the person was well-known, or if the person has a significant "image" comes only a role regarding the remedies. The remuneration which has not been payed by the wrongdoer and the enrichment in general may be increased by the judge if such a publicity was given.

Commercial value is only given, if the personality asset has been appropriated and manifested in a commercial manner. In this regard the possibility of the disposition of the rightholder is a prerequisite, the commercial appropriation requires a qualified legal interest. This interest shall be a material (commercial) one, this makes the personality asset to a property right. The commercial appropriation can be related to the manifestation of these assets in the commerce, thus the rightholder have it in his disposition to appropriate exclusively his personality assets for the cause of advertising, to be related to goods and services through the personality assets, to use them as a trade sign or to exploit the newsworthiness of them.

For the recognition of a commercial personality right it is required that the manifestation of various assets is evaluated. This manifestation is not a full one, only partial, since the commercially appropriated assets is still overshadowed by the personal (non-pecuniary, dignitary) interests of the original rightholder, since after the manifestation, third parties still relate to the person through the asset, thus he still can have legal interest on them.

With the distinction and recognition of a commercial personality right several questions still remain unanswered. The commercial personality right arises from the general personality right due to the qualified appropriation and to additional elements, thus the acquisition of it is a derivative and not an original one. This derivative acquisition makes it possible to qualify the manifestation as partial, and therefor to grant a right and control of the original right holder over the unauthorised appropriation of his assets by others. The application of the general personality right has a subsidiary role during the application of subjective rights, since the commercial personality right is special. It also seems to be closed to the intellectual property

rights, since it can be qualified as a non-autonomous proprietary immaterial good. This also shows that the personality assets, and the sphere of commercial personality goods distance themselves from the inner core of personality and become transferable and descendible.

The applicable Hungarian law does not recognise the descendablity of material interests of personality rights. In the German law it is 10 years post mortem. The time of the protection in the various states of the United States reaches from 10 to 100 years. In my opinion a time of 20 years post mortem should be efficient, on the other hand the legislator shall evaluate, for how long is a disposition granted for the heir on personality assets, or that such assets shall become common domain, which can be appropriated by anybody without violating any persons' rights.

§ 8

Is the Hungarian remedy system of the personality rights to grant an extensive and effective protection for material, commercial interests?

Regarding the remedies, the commercial value of personality rights is shown in the applicability of pecuniary (proprietary) remedies, such as the liability for damages, the unjust enrichment claim; the compensation (liability for non-pecuniary damages) is also a pecuniary remedy, although nor a proprietary one. The Ptk. makes it possible to file claims for damages and for unjust enrichment. If the Act would not entail these in the part about personality rights, they would also be applicable thanks to the abstraction of the Civil Code, thus the claim arising out of § 6:519. and § 6:579 my be directly applicable. The pecuniary remedies may be in effect both ways. The problem is that the personality right in statutory law protects ideal interests generally, which do not indicate the application of these proprietary redresses. The Civil Code does not separate those infringement and exploitations, which would lead to their application. This also means the automatical blending of moral and pecuniary interests.

Due to the prevailing opinion the liability for damages may only be a successful remedy, if it covers damages arising as consequent of the conduct. This is so, because the personality rights appear in the system of the Code as non-pecuniary rights. The prerequisite to allow exploitation-damages is to recognise that the infringement of personality assets may cause pecuniary damage in itself, which appears basically in the form of an obligation to pay a fictive licence fee for exploiting one personality asset. During the codification of the Code there was no such an opinion, which wanted or mentioned such a solution. This also means that the pecuniary value regarding the liability for damages was not evaluated, although it also did not

ruled it out. The case law have tended to award the payment of damages in the form of a fee for the previously non given consent. The problem here is more likely, that in similar cases the plaintiffs do not claim for such damages, since they do not know they could.

Regarding the unjust enrichment claim, due to the teleological reduction method, it clearly serves to redress commercial exploitation of personality aspects. This aim is logically encompassed *inter vivos*. After the right holder of the personality rights, his heirs are entitled to file the unjust enrichment claim, which have infringed the memory of the deceased (piety). The stand of the Code is correct that the heirs are entitled to suit such a claim, since it is a claim of proprietary art. Regarding the conduct, the moral and the pecuniary interests are mixed, since the requirement of the claim is the infringement of the memory of the deceased. The appropriation of the right to piety always and exclusively serves the protection of moral interests after the death, hence it shall not play any role for the application of proprietary claims. The other problem regarding this rule is that the right holder, who gained an in rem right to use and to exploit a personality aspect may not be able to file a claim on his own. The loss of the actionality converts the in rem right into a contractuary one. It would have been more upright to leave out the section of § 2:50 (2) from the Code.

The system of remedies in the Civil Code is not consequent thereof. The commercial value, the application of pecuniary remedies is only granted in the case of unjust enrichment and only inter vivos. The inheritance of the unjust enrichment claim is dogmatically incorrect under the Code since such a claim is granted as a subsequent of the piety. A claim for the liability of damages may be granted by the Code, too, although the payment of the damages arising from the unauthorised commercial exploitation of personality rights was not mentioned during the codification, thus these were not highlighted or separated from the so called consequence damages arising from the infringement of ideal interests.

The regulation of subjective rights in the statutory law happen trough a so called autonomous legal norm. Such a norm has two parts: the cause of action and the remedies. The system of the Code does not separate the remedies only applicable if a material interest is infringed, thus the protection overlaps with the moral distress. If the case law would separate the ideal and material interests within the personality right, that also makes clear when such claim can arise, in this case the Code must not be altered. Since the Code is a written act of law, I think it is more correct to describe those cases in general, which may indicate the pecuniary remedies. It can be achieved with this that the legislator would evaluate in which cases can be filed a claim for unjust enrichment or for the liability of damages. I think that the recognition of a pecuniary personality right shall serve as a cause of action, to which these remedies may

be attached. This would create an autonomous subjective right, which would be more special than the general personality right. These sphere of pecuniary personality right would not limit to the commercial interests only, since the moral interests are still protected. The case law shows that in most cases both material and immaterial rights within the personality are infringed. It would also cause no problem to acknowledge the infringement of both pecuniary and general personality right, and apply the remedies of these separately (so called dualism of personality rights). Thus it would also not cause any problem in the jurisdiction that beside the general personality right protecting immaterial interest a commercial personality right would be created.

The liability for damages claim should be more precisely described regarding material interests, since it can also be applied in cases of the infringement of ideal interests. Regarding this the legislator should evaluate a fictive licence fee *lucrum cessans*, which would make it clear that the infringement of pecuniary interests indicate material damage.

7. Publications in the subject

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SCHULTZ MÁRTON: *A használati jellegű vállalat- és árujelzők kodifikációja Németországban. Mi ebből a tanulság a magyar jog szempontjából?*

SCHULTZ MÁRTON: *Elismeri-e a Ptk. a személyiségi jogok vagyoni értékét?*

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