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THE CONTRADICTIONS OF HUMAN RIGHTS DEFINITION IN THE RUSSIAN CIVIL LAW

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Abstract

The urgency of the study is caused by the increasing role of social and economic Human Rights legislation in the post-industrial information society. The purpose of the article is to identify the features of the legal regulation of intangible values and non-property rights of the individual in Russian legislation, in particular in the Russian Civil Code. Based on the demands of the modern stage of Russian economy development, special attention is paid to the consideration of Human Rights, related to property, such as human dignity, business reputation, copyright and image rights. The leading method for the study of this problem is the analysis of Russian and international normative and legal acts and judicial practice on the protection of non-property rights. The study revealed that the concepts of Human Rights and intangible values in Russian legislation are sufficiently conditional and interchangeable. As basic intangible values, the law describes objects that a person does not have the right to dispose of at his or her discretion or this right is restricted. These definitions are also opaque in international regulations, that lead to contradicting jurisprudence. The materials of the article might be useful for theoretical research on comparative law, in the development of legal acts, regulating intangible values and non-property rights.

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Keywords: Human rights, Russian civil code, intangible values, human dignity, business reputation.



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1. Introduction

Human Rights have always been priority, fundamental to the state and the society at any stage of History. The most branches of public law contain guarantees of these rights and means of their protection (Amagyrov & Tsyrempilova, 2016). Indeed, personal non-property rights are declared by the Constitution of the Russian Federation. Most international legal acts relevant to the foundation of humanitarian law and the principles of the world order also contain a description and guarantees of personal non-property rights.

However, as Valentini (2017) and Sun (2019) note, international legal instruments do not clearly define intangible values and personal non-property rights, which in the tradition of international humanitarian law have received a general name of economic and social Human Rights. There is no such definition in the main documents of public law of the Russian Federation either. Perhaps for public law, this fact is not of great importance, because from the point of view of law enforcement, Human Rights are obvious, directly derived from their primacy and inseparability from person.

But the current trends in economic development create specifics that legislators and law enforcement officials cannot ignore. The destruction of goods price in the modern Russian economy is a result of the structure of needs modification, the complication of consumption processes and the increasing dependence of production and consumption on non-material components (Lebedev, 2011). In today's world, the value of a product, especially information content, is determined by the personal factors of the producer (creator) and the consumer (audience). This entails a gap between cost and price, defining the latter as reflecting the significance of a personal component or product or marketing strategy. That is why the intangible values and personal non-property rights become not only the object of protection of private law, but also the objects of production and consumption.

2. Problem Statement

This raises the question of defining the legal nature of the concepts of "intangible value" and "non-property rights" in the Russian law system. The Civil Code of the Russian Federation (Civil Code of the RF, 2019) has no strict definition of these legal institutes. So we could reveal their major features studying their existence as the objects of civil turnover and the objects of civil law regulation,

3. Research Questions

Given the gap in the existing law definitions of intangible values and non-property rights and the needs of developing economy, these questions should be answered:

- What is the concept of economic and social Human Rights in the International and Russian law systems;
- What are the main features of intangible values and non-property rights as objects of civil law.

4. Purpose of the Study

The objectives of the study are:

- To analyze the Human Rights concept of in Universal Declaration of Human Rights (UDHR) of 1948, other international treaties and the Constitution of the Russian Federation;

- To examine the chapters of Russian Civil Code containing definitions or descriptions of intangible values and non-property rights.

5. Research Methods

Our leading methods come from qualitative approach. A qualitative attitude is based on theoretical analysis of the conceptual questions. We examined the substantial points of Human Rights concept in Universal declaration of human rights of 1948 (United Nations, 1948), other international treaties and the Constitution of the RF. We also looked into the Human Rights regulation in the Russian Civil Law, and the results of their protection in court.

6. Findings

The UDHR states in its preamble that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (United Nations, 1948, 5). Moreover, both the International covenant on economic, social and cultural rights and the International covenant on civil and political rights (1976) proclaim in their preambles that human rights “derive from the inherent dignity of the human person.”

So we could agree with Valentini (2017) and Sun (2019) that the “dignity” concept is the leading in the Human Rights definition. It means freedom and equality for all people, despite their nation, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Declaration and the Covenants use the term “inherent dignity”, which emphasize predominant, natural core of these concept. According to the UDHR and Covenants we could resume, that inherent dignity is a standard for other Human Rights, even the right to live.

But Valentini (2017) considered the notion of inherent dignity to be opaque and misleading. P.C. Chang, one of the authors of the Universal Declaration of Human Rights, was guided Confucian philosophy meaning of inherent dignity while writing the draft of this most important document (Sun, 2019). Different nations and cultures fulfill the term with different meanings. This opinion is shared by many explorers in comparative law (La Spina, 2019).

As for the Constitution of the Russian Federation, it contains the demand to protect dignity in Article 21 and it has no “inherent” adjective. According to the article, dignity is the right not to be subjected to torture, violence or other cruel or degrading treatment or punishment. It is the right to save self-respect.

Valentini (2017) proposes to use two terms - status dignity, which involves distinctive normative demands and inherent dignity as the initial property of individuals, which justifies ascribing a certain status to them. We could consider this model as more helpful for defining Human Rights in the civil law regulation as the ones based on status dignity of a person.

6.1. Classification of intangible values and non-property rights

The Civil Code of the Russian Federation is the main source of regulation of intangible values and non-property rights for law enforcement. It defines the list of these objects of legal regulation in Article 150, entitled “Intangible Values.”

But the title of the article is not quite adequate to its essence, because the list of intangible values includes personal non-property rights, without separating the latter from the values (Bakayeva, 2016). Mixing of these objects may be misleading, and the article needs further elaboration.

From the text of the article it becomes clear that an intangible value or non-material right may arise from birth or by virtue of the law. So we can divide these values (rights) into levels, of which the first, highest in the hierarchy of intangible values (rights) is the right to life and health. They are objective, independent of legislative regulation.

The Constitution of the Russian Federation also gives priority to the right to personal inviolability, dignity, honour and freedom, privacy, freedom of movement, freedom to choose a place of residence and the right to information.

Another classification proposes to divide all intangible values into two types. The first ones are inseparable from the person, personalized, cannot be transferred either physically or by virtue of the law (right to life, health). They are protected but not regulated by the Civil Code while outside civil turnover.

The second group are values and rights that can be transferred, alienated, that is, be either fully or partially negotiable. These are values and rights such as "privacy", "appearance of the citizen", and so on. They are both protected and regulated by civil law. This division could easily be combined with the inherent and status dignity concept, and the first group of rights could be named based on inherent dignity, and the second based on status dignity.

6.2. Intangible values and non-property rights as the objects of civil law regulation

Kratenko (2008) states that the possibility of affirmative action on the disposal of such values or rights is regulated by law only for a number of relations.

For example, it's a donation relationship. We doubt that it is theoretically possible to define the meaning of the donor's reimbursable remuneration, like the reimbursement of the transferred organ or tissues. It is possible to talk about compensation to the donor of physical inconvenience related to medical intervention. Therefore, this type of disposal of his health cannot be called alienation for remuneration or even more so by a sale transaction.

Questions are also raised about the competence of a citizen to other personal non-property rights. Euthanasia is prohibited in Russia, but whether this prohibition is unconstitutional because it violates the right of a citizen to life.

The problem of the relationship between the concepts of intangible value and non-material right can be considered on the example of the external appearance of a man. The Civil Code regulates only the right to image, although the object to which the legal relationship is directed is the man's external appearance. Until 2006, the right to image was regulated by copyright law, however, after the inclusion of article 152.1 in Chapter 8 of the Civil Code of the Russian Federation "Intangible Values and Their Protection", the position of legislators who refer to the image of a citizen as personal non-property value became more clear.

Under this article, the image of a citizen can be used only with his or her consent. This is confirmed by the materials of juridical practice. For example, the Decision No. 2-1925/2019 2-1925/2019 ~ M-1443/2019 M-1443/2019 of May 22, 2019 on case No. 2-1925/2019 Lenin regional court of Ulyanovsk.

The case was considered on the claim of Malova I.A. to the Investigative Committee of the RF, the Investigative Department of the Investigative Committee of the RF on the Ulyanovsk Region, the Limited Liability Company "Melekesa Press" for compensation for moral damage.

In the printed publication, the founder of which was LLC "Melekesa Press" and on the website of this printed publication was placed a photo of Malova's father, who died in the result of an accident during sports activities. The photograph was taken by the photographer of the Investigative Committee of the Ulyanovsk region during the investigation to qualify the incident. The photographer handed these photos to the publication, although his duties did not include this. As an excuse, he noted that he did not assume that the photographs would be published.

The plaintiff was the daughter of the deceased, and the right to consent to publish the image passed to her in succession. In her turn, Malova did not give her consent to the publication of the mentioned photo. In the claim, the plaintiff stated that the illegal actions of the defendants caused her moral suffering, in connection with which Malova I.A. requested to recover from Investigative Committee of the RF, the Investigative Department of the Investigative Committee of the RF on the Ulyanovsk Region, the LLC "Melekesa Press" the compensation of moral damage.

The representative of LLC "Melekesa Press" claimed that the publication of the photo was published in the process of carrying out the public duty to inform citizens on issues of public interest. In this case public interest was expressed in a warning of the elderly members of society to taking into account the physical capacities and the state of health while occupation by physical culture and sport.

The court recognized Malova 's right to compensation for moral damage, without finding the defendant 's arguments satisfactory. The court decision stated that human and civil rights and freedoms were directly applicable. The Constitution of the Russian Federation (1993), guarantees the right freely to seek, receive, transmit, produce and disseminate information in any lawful manner (Art. 29, part 4) establishes the right of everyone to privacy, personal and family secrets, protection of his honour and good name (Art. 23, part 1) and does not permit the collection, storage, use and dissemination of information about a person 's private life without his consent (art. 24, part 1).

Also by the Federal law of 27.07.2006 No. 152-FZ "About personal data" the photo of the citizen belongs to objects personal data and cannot be published without his consent. The legal entity has only one non-property right, protected by civil law (Civil code of the RF, 2019). This is the right to business reputation. In other words, it is the right to restrict any false information which can harm the image of the producer. But it is difficult to calculate the real and future losses of the producer, who's business reputation was violated.

Close relationship of honour, dignity and business reputation as intangible values make it possible to consider jointly the standards provided to them by public protection law. Infringement of any of these intangible values actually mean encroaching on the other two (Ponomarenkov, Kalashnikova, Korobkova, Petrogradskaya, & Karev, 2018).

The ideal character of intangible values and non-property rights is quite obvious. It is also obvious that in certain situations their non-property character determines property relations, such as the right of authorship, which gives the person whose creative work the work is created the right to dispose of them and therefore to profit. It is especially important after Russia's accession in WTO (Gnevko, Shahina, &

Kirsanov, 2016). The sphere of service industries is rather young and therefore underrepresented in Russian legislation.

Medvedev (also stressed the need to ensure the attractiveness of the Russian jurisdiction for businesses (Medvedev, 2016). Foreign investors are interested in predictable conditions of creating or using goods, intellectual property as well. Sometimes it is quite difficult to separate the right of the author to indicate his name as the creator of the work from exclusive rights - rights to use, reproduce, copy the work.

Let's take a case, examined in the Review of judicial practice in cases involving the settlement of intellectual rights disputes (from 23 September 2015). The Supreme Court found no violation of personal non-property rights, although the courts of first instance recognized and determined to compensate the author for moral damage. The core of the case was that the defendants violated the author's intellectual rights to works created by him, distributing a collection containing works in which the works of the plaintiff are partially copied. The court decision, which was left unchanged by the appeal decision, partially satisfied the claims, in favor of the author the defendants were compensated for the misuse of the works, as well as compensation for moral damage.

The Supreme Court annulled the previous court decisions, considered that the disposal of the author's work without his consent was a violation of his exclusive rights and the damage caused was not compensable as moral damage recovering, since the courts of first instance did not specify what personal non-property right had been violated.

However, the fact that the publishers not only distributed a collection in which the works of the author were used, but also the fact that the actual creator of the works was not so marked, indicates a violation of the rights of the citizen to authorship of the work, which refers to personal non-property rights.

7. Conclusion

It should be concluded that the concept of "intangible values" is collective, includes a wide group of objects of legal regulation, part of which can be attributed to personal, objective and therefore primary rights, and part to values and rights guaranteed by the State and for which there may be different legal approaches in different States. With regard to the definitions of "intangible values" and "non-property right", they are easy to relate, as the good is an intangible object and the right is a legally established right of the owner of the object.

However, these definitions are often used as synonyms in both the scientific literature and in legal and enforcement instruments. Considering the legal nature of intangible values and non- property rights is sufficient to effectively address emerging conflicts. In the sphere of intellectual property rights, there is a danger of perception of objects of exclusive rights of authors of the work and rights of copyright. The right to be recognized as the author of a work is fundamental to the emergence of exclusive rights, it is closely connected with them, and is therefore a priority from the point of view of legal protection and legal protection.

Russian legislation refers to intangible values and rights of a legal entity only to business reputation, in fact, these objects can include a brand name, rights to a trademark, a service mark, the right to trade secrets and the secret of production. This requires further elaboration of the Civil Code and the inclusion

of a more detailed definition of intangible goods and non-material rights, including with respect to rights holders.

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