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The Faces of Self in the Public Mirror

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THE FACES OF SELF IN THE PUBLIC MIRROR

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Abstract

Which is the meaning of the right to own image of a person in the present day “image society”? How much is still private and how the legal protection is assured? How to keep the balance between the desire of privacy and the right to free information based on public (or private) interest? These are only few questions that I intend to answer from a human rights perspective.

Keywords:
right to image, private life, human dignity, virtual self, reputation, identity in public/private space.

JEL: Human Rights

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INTRODUCTION

The appearance, the self-image, the impression one makes are of interest for the modern individual and contribute to building one’s own identity. Knowledge, the motivation of actions, communication and interpersonal relationships are influenced by the self or many selves of the identity.

The person’s possibility of self-definition in the public life was established in legal terms as the right to image. Everyone’s right of being perceived with the appearance that one chooses ensures the base for the respect of the personality. The violation of the right to image – by others or by the press - allows the injured to obtain compensations. In court it is claimed the loss of "control" over self-image, which is more than the actual alteration of the image by the undesirable made impression.

Reputation, intrinsically linked to self-image, represents the manner a person is known in public life. Caring about the other's perception of one’s own person, the verbally or non-verbally manner of expression, the dress code are carefully managed in view of creating the desired social, professional and personal statuses. An unfavourable description in the press may affect both the image, as a present construction, and the reputation as a construction in time.

The memories, private life, health, bodily expression, individual relationships are private aspects. For public figures, the images captured outside the public life and role, "stolen" and reproduced, data concerning the entourage or the manifestation in a certain circumstance produce frustration, humiliation, and emotional trauma related to the violation of dignity.

The European Court in Strasbourg stated the right of every person, even if known to the general public, to benefit of a "legitimate" hope for protection and respect of private life.

The phrase "private life" has exceeded nowadays the initial limits imposed by the family life and the respect owed to domicile, correspondence and expanded to the person’s body, emotions and any personal aspects that get in public life without one’s permission or deformed. To these there are added the private aspects publicly disclosed by the persons seeking to compose for themselves a public or a public-accessible identity.

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5 Ibidem, p. 398
6 It is known the case of the Mitterand family faced with the revealing, by the personal physician of the former President, of details of his terminal illness (Societe Plon v. France Case, 2004)
I have considered in this paper a few of these types of self and their forms of expression in the public sphere. How we perceive ourselves and how we want to be perceived by others, which are the major challenges of our times concerning identity are some proposed topics for meditation.

I. SELF AS ALTERITY

Given the conditions of globalization, the multiple relocations, people are always on the move creating bridges between cultures, people and mentalities. The foreigner and the foreignness have always been regarded with reluctance, having attached the concepts of barbaric, barbarism. If one agrees with the idea of Spengler that the characteristic of a culture which ensures its dynamic is the "soul"\(^7\), it means that the appearance of the foreigner requires identity redefinition and reconstruction. This applies both at individual and at community level. The negative aspect of the feeling of alienation is doubled by the benefit that ensues from the necessity of change, of starting a dialogue about differences (of culture, gender, class etc.)\(^8\). The foreigner changes the mental structures regarding the knowledge of the world and of the other\(^9\).

At individual level the foreigner, caught between two worlds, lives two forms of interiority that lead to two types of behaviour: that of the culture of origin (which means assuming the condition of foreigner) and that adapted to the new society and culture in which one lives (which attracts a certain alienation from oneself).

Europe, the meeting space of diversities, recommends the tolerant attitude of multiculturalism, the recognition of the right to expression of each culture and not the privileging of a particular one (usually that of the majority). However, critical voices are raised against the idea of toleration of the foreigner if by tolerance is cultivated the indifference that leads to missing the real encounter with the other\(^10\). Between of self-alienation and in self-alienation one can place the cultural dialogue as a "third discourse" proposed by Adrian Marino. The desire to interact in order "to renegotiate, each time, the self-image"\(^11\) leads to transculturation.

From a legal point of view things are more complicated when "meeting the other." An example is the conflict generated by the burka of the Muslim

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\(^7\) "Alterity as the Essence of Barbarism", in the *Dialectical Relationship "We and Others", Noi, Nu!*... *Review*, September 2010.

\(^8\) Ibidem

\(^9\) Ibidem

\(^10\) Cristina-Elena Ciuntuc Andriută, “Aspects of Migration from the Perspective of the Scholar Adrian Marino”, *The Sphere of Policy*, p. 166.

\(^11\) Ibidem, p.166.
women in France. Without being public figures, these (foreign) women generated in the cultural space of adoption, in addition to extensive discussions, conflicts with the authorities. Police representatives complained about the impossibility to identify the person (the photos on the identity cards being also "covered") and to possibly offer preventive protection of the person. One talked about "the dissimulation of the face" as affecting public order, morality or dignity, about depersonalization and denial of humanity of a person. On the other weighting platform of the balance, individual liberty and freedom of action in religious matters seem to have weighed less.

II. VIRTUAL SELF

The Internet cancels any difference between states, communities, individuals, making the inter-human communication easy and immediate. Anyone can find advice for any kind of problem using the key-words. Moreover, there are popular the fortunate electronic dates finalized with marriages or at least engagements between people coming from thousands of kilometres away, from different places of the world or … leaving in the same building, of different races, cultures and religions.

Hours, days, months and years of sitting in front of the screen of the personal computer, information, communication, connection to world, to a virtual community, the human, being is, in fact alone. The “cyber-existence” implies estrangement of the real world, desocialization, and even deresponsabilization.

We witness “the creation upon command” of a new type of individual according to the electronic templates: the young girls are encouraged to be too skinny (reason for which they become anorexic) in order to be successful in their models, international models careers, following prescribed receipts or at least to be successful in comfortable marriages. We all know the "sketch" created by the social networks and encouraged by all media, and, unfortunately, the chemical industry, technology and money allow for the achieving of this "ideal", thus we meet it multiplied, almost everywhere. The syndrome of "eternal youth" is also present, we cannot distinguish between biological ages, the segment of the aging population is missing from the projects of garment

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13 Idem, p. 421.
manufacturers, the diets and recommendations for dietary supplements and vitamins in the pages of magazines and websites, the ads are ubiquitous temptations of beauty and immortality.

The young boys have examples from the sport world, especially football. Only a few have the chance to exercise the right of thinking, expression, to be different and to manifest per se. And, often, it becomes an act of courage, the "risk" of not being in trend being also doubled by marginalization.

The success of the Internet is given, on the other hand, by the idea of anonymity that facilitates communication, dialogue and the ad-hoc creation of an (or few) identity(ies) that meets the wishes of the virtual interlocutors. At the "shelter" of a nick-name, the self is constructed by taking in data, manners, ideas (as mentioned above), but also by contributing to the dialogue that intends to be freed from the constraints of that "face to face". The uncensored posture and language represent added confidence to the person who is (re)constructing him/herself continuously.

However, the self-image created this way is liable to prejudice. The published photos and personal details, the expressed tastes and desires, can be used for various purposes, can be displayed without the consent of the person. This "Big Brother" is everywhere and with everyone's approval, up to a point. Fakes, frauds, thefts and sexual assaults on women (after easy identification of the domicile) are subject of quite frequent complains.

It is however paradoxical that a trend of self-limitation is emerging. The desire for success, for building a solid identity and reputation goes up to requiring the deletion of the..."digital" past. A law very recently passed in California states the "right of oblivion", in that it states the possibility of deletion of data by teenagers from some social networks and websites aimed at minors or, simply, upon request, their anonymisation. The "eraser" law is based on studies showing that the private information released to the "public" over the Internet are reviewed by admission committees in high schools and universities or by future employers who can this way easily contour the profile of the candidates (to their disadvantage). Basically, a new self that destroys the previous one, for the same purpose of self-construction.

How can private life be protected given the fact that the personal data of the Internet users can disclose their profile, hobbies, frequented places and even future travels, relationships with other people etc.? And how can it be


ensured the balance between the defence programs of states and the right to privacy that depends on a single "click"\(^{16}\).

**III. SELF AS BODY**

As shown, including the person's body into the notion of private life draws the possibility of sanctioning any deeds which, without the consent of the person, are disclosed as such or distorted.

The well-known historian of religion Ioan Petru Culianu perceived the body as "an extension of the mind and, at the same time, as a mind game. The mind transforms the body into a complex metaphor"\(^{17}\). Taking over John Smith's formula that "the soul ... is full of body", the Romanian philosopher sees in the body an extension of the mind for the purpose of the interpretation and use of "the physical support of the being"\(^{18}\). And the interpretations of the body never cease to surprise us, as they did over time.

**III.1. The commercialized body and conflicts between "self-images"**

Procreation is a right that can be claimed or a "choice" (concerning timing, the presence or absence of a partner etc.).

Surrogate motherhood, initially considered as a violation of nature, has become gradually a socio-legal fact. It refers to women who sell their reproductive capacity, "borrowing" the image of mothers. If initially this service was reserved to infertile heterosexual couples, the surrogate later became a formula for same-sex couples or for single men, involving numerous and complex ethical and legal issues\(^ {19}\). The most serious, in terms of respect for identity, self-image and dignity, is the one placed at the intersection of two fundamental rights by preserving the anonymity of the gametes donors: the mother's right "of oblivion", in the sense of preserving the anonymity of the donor, and the child's right (now adult) to build his/her own identity by solving the mystery of his/her birth\(^ {20}\). This is already a problem exceeding the private sphere through its importance and through the impact on the familial and


\(^{18}\) Ibidem, p.144.


parental model it requires coherent public policies. The legislative differences between states on abandoning the rule of the donors’ anonymity, lead either to the drastic reduction of their number, or to a phenomenon of "migration" to countries that still provide anonymity.21

III.2. The modified body and the (regained) self-image

Transsexualism, as a psychic sense of belonging to the opposite sex, is also a problem concerning a person's identity. The inability to adapt to the appearance of the declared sex and the manifestation in accordance with the mental representation of one’s own ego is sometimes dramatic. Especially when the sex change operations are based solely on the authority of medicine and the doctor and not on the will of law, which would allow this kind of interventions and foresee the whole array of consequences. It refers to the changing of the data regarding the sex and name in the civil status documents of the person, which for many countries is unacceptable. Although there is no common approach of the European countries to this problem, it should be noted that the trend is not one of encouraging transsexuals, but of recognizing the new sexual identity.

One of the most famous cases before the ECHR was Christine Goodwin v. The United Kingdom (Judgment of 11 July 2002), who, after the surgery, could not retire at the age of 60 years (provided for women) because in the civil status documents she was registered as a male. The Court held that the essence of the European Convention is the respect for human dignity, which for transsexuals means also the free physical and mental development and security in the real sense, and not being stuck in an intermediate and unsatisfactory zone. The refusal to recognize the (major) change occurred in a person's identity also involves public aspects of the private life.22

By definition transsexualism was linked to a person's individual choice. If the option is the consequence of the choice made by a third party, things can be fatal. It's highly publicized the case of a Belgian who understood his parents’ refusal to accept him as the girl he was born, as "assuming" the desire to become a man. After several successive operations, physical suffering became unbearable and culminated with the acceptance of his request for euthanasia (legalized in Belgium since 2002).23

23 www.medifax.ro/externe-un-belgian-a-fost-eutanasiat-dupa-o-operatie-de-schimbare-de-sex
October 2nd, 2013

In the same field, the law opens a new path. This time for the people who will choose to identify themselves as having "indeterminate" sex. Recently, Germany adopted the law of "the third sex" which allows a person, whose sex was not differentiated at birth, to later decide whether to be male or female, or to build one’s identity on this genetic ambiguity. For now, parents are the ones who initially choose for the child, placing it in a distinct category. Thus it is recorded for the first time in a European country, the introduction of the "X" category on civil status and identity documents (after the Australian model that allowed issuing passports with the option of the third sex\textsuperscript{24}). It is hard to predict how things will evolve in this area. The fact is that we are facing the possibility of an affirmation of a self that can generate important consequences for some traditional institutions of law (marriage, adoption, civil status etc.).

III.3 The body as (re)construction

Subjected to a true "dictatorship of the image", the person cannot evade the exterior requirements of the self. Adaptation to society and the condition of acceptance involve a certain behaviour and especially a certain image. If until now the public persons were the ones complaining about the invasion of privacy, today we can say that public life invades the private sphere. Withdrawal, isolation means non-acceptance and disappearance.

Self-consciousness and identity are built around the common criteria imposed by the "industry" of image. The physical aspect, which I have already considered, comes first. The (financial) access to cosmetics and plastic surgery is publicly announced. There are no reservations in displaying the latest physical "retouches", discretion no longer being a quality of the ego. The reality-shows presenting step by step the transformation of the "ugly duckling" into the "white swan" are broadcast in prime time and strengthen the spectators’ desire to subject their own bodies to interventions at all cost... Although plastic surgery can later be serious reasons for divorce (the widely publicized case of a Chinese man who learned after marriage, at the birth of his extremely ugly child, that his beautiful wife had no less than 20 surgical interventions in order to be seductive, and who divorced her and claimed "deception" damages\textsuperscript{25}).

The physical image is supported by the assets one owns: real estate, cars. There are also the success-stories about spectacular changes of existential paradigm thanks to the image. I do not mean pop or movie stars, journalists and writers, but the young men and women who make no effort except looking

\textsuperscript{24} Australian Passports to have third gender option, \textit{The Guardian}, Thursday 15 September 2013.  
\textsuperscript{25} The Huffington Post, UK, „Chinese Man Jian Feng Divorces and Sues Wife for Being Ugly before Plastic Surgery”, reports this case that had been tried by a court in northern China. The husband received damages amounting to approx. £ 75,000.  
http://www.huffingtonpost.co.uk/2012/10/29/chinese-man-divorce-ugly-wife
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good in order to be covered by media. New jobs such as that of "(male or female) assistant of a TV host" suppose a purely decorative appearance, but extremely appealing as status. There are included in the same category the very beautiful women who, like some modern Cinderella, become the fiancées or wives of some coveted and extremely wealthy former Princes Charming...

IV. INSTEAD OF CONCLUSION. SELF AS LIBERTY

The freedom of a person to choose one or more ways to express his/her identity may be limited only by the prejudice of the right of another. And this, as we have shown, happens increasingly frequent. The intersections between cultures, people and rights are multiple.

The problem is that the fragmentation into small pieces of the person and of the identity may be a risk for the re-composition of the real image. It seems that the self's show in the public square restart every day under the baton of new trends. Reducing the world to the size of "the planetary village" has led to the uniformity of behaviour, aspirations, to the change of the way of being, to the creation of human "moulds" and not individualities. But what is even more serious is the permanent claim for new rights to "confirm" personal choices. And this is no longer a private matter, a matter of "image", but one of general interest.

BIBLIOGRAPHY:


Robert, J., Duffar, J., Droits de l'homme et libertés fondamentales, 6e éd., Montchrestien, 1996

“Alterity as the Essence of Barbarism”, in the “Dialectical Relationship "We and Others””, Noi, Nu!... Review, September 2010

Ciuntuc Andriuță, Cristina-Elena, Aspects of Migration from the Perspective of the Scholar Adrian Marino, The Sphere of Policy, 2011


Gallagher, Ryan, Software that tracks people on social media created by defence firm, February 10th, 2013, www.theguardian.com/world/2013/feb/10/software-tracks-social-media-defence


