

INADEQUATE REGULATION OF PERSONAL IDENTITY. VIOLATION OF SELF-DETERMINATION RIGHT?¹

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1 INTRODUCTION

The dignity of the person, their protection and respect, is a fundamental principle on which the positive legal systems of the western area, expressed in universal, international and domestic texts are based.

Significant is the declaration of Article 10.1 of the Spanish Constitution (1978), which reads:

1. The human dignity, the inviolable and inherent rights, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.
2. The principles relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.

These instruments and letters of international human rights mentioned include the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966), the *Convention on the Rights of the Child adopted by the General Assembly UN* (1989), the *Charter of fundamental rights of the European Union*, the *International UN Convention on the rights of Persons with Disabilities* and its *Optional Protocol* (2006) or *Yogyakarta principles on the application of international human rights law to issues of sexual orientation and gender identity* (2007), citing the most significant. In the Spanish context, in addition to the Constitution and other national texts the Act Organic 1/1996, of legal protection of minors, recently updated.

In these texts, with more or less explicitation, the individual's right to recognition and protection of their legal personality is recognized (art. 6 of the Universal Declaration of Human Rights, art. 12 of the International Convention UN Convention on the Rights of Persons with Disabilities). A legal personality in which the right of a person to his identity, although apparently is a specification of a more general principle, becomes essential, because from it, the person is known and integrated in the society is and how part of the law.

The identity includes recognition of a name, maintenance and vicissitudes (right to a name) - the admission of knowledge of one's origins (research actions parenthood) - the respect and protection in setting personal conditions itself (sex - gender) as the most important manifestations.

Nevertheless, the positive regulation that is made by national laws is not uniform or complete, to the point that the absence of rule involves a clear violation of the right of self-determination of the person, especially with regard to minors. Violation which means serious injury to a fundamental right of the person: self-determination.

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2 METHODOLOGY

The manifestations of the identity of the person, with special emphasis on the situation of minors are the object of study in this communication.

This contribution takes as its starting point the legal texts, both national and international in which the law and its development are contained. From the exegesis of the rules we proceed to determine its scope and analysis of its exercise in practical reality. To this end, in addition to the analysis of the doctrine, are taken into account the pronouncements of judgments (sentences).

The purpose to be achieved is to determine the deficiencies, dysfunctions and legal gaps in the rules and the consequences for the person involving in the scope of their inherent rights.

3 DISCUSION

A concern of the person, from birth to the moment dies is the identity of itself; that is, on the one hand fixing and assume all that constitutes his own essence, his only and unrepeatable individuality and contributes to form self-consciousness, what is called the “auto full description”; otherwise, achieving recognition from others as a member of the social group that is as it integrated itself without reproach individual because his only be consistent with the values and practices that support. They are two manifestations, so, of identity: individual and relationship, two sides of the same coin.

The recognition and protection of the identity of the person in national legal texts is tardy. Although, promptly, the right of every human being to “recognition of legal personality” (art. 6 of the Universal Declaration of Human Rights, 1948), declaration under which the identity is understood is stated; It will have to wait a few more years to find a specific and direct identity and attributes mention, but today there is still a way to go.

Later, the Convention on the Rights of the Child (1989) mentions the identity to minors of Article 8 states that: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.” (paragraph 1). To which he adds “Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.” (paragraph 2). However, it is not defined or determined exactly what and what elements of identity, so that positive forecasts are insufficient.

Will be later when, based on the principle of equality and non-discrimination starts talking about the identity of individual or private sphere and when its concrete manifestations are developed: the right to a name, the right to know the origin, and sexual identity and gender identity.

Personal identity involves several areas directly related to self-determination that are undergoing discussion in this paper.

- a) The data affecting the identification of the person: name and surname, attribution, maintenance and changes.
- b) Sex and sex change.
- c) Research actions in the search of the parents (filiation, adoption, assisted reproduction).

The article 50.1 Act 20/2011 of the Spanish Civil Registry determines that “Everyone has the right to a name from birth.”

Indicates the Judgment TEDH (07. January.2008, *Daroczy against Hungary*) that: “Although it is true that States have a wide discretion in relation to the regulation of names, they cannot ignore the importance of the private life of individuals; the names are central elements in the identification and definition of each [...]”

We read in Article 7 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly that:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

The issues are subjected to debate and will be developed in this work:

1. The right to the identity of the person:
 - 1.1. Configuration
 - 1.2. Areas
2. The right to a name
3. The right to research the origins
 - 3.1. Natural filiation
 - 3.2. Adoption
 - 3.3. Assisted reproduction
4. Sexual identity
 - 4.1 Characterization
 - 4.2 Discordance: transsexuality, intersexuality.
 - 4.3. Sexual orientation
5. Further identification data

4 CONCLUSIONS

In general, in the Spanish civil systems, with greater or lesser extent, it recognizes the right to the identity of the person, but regulation is fragmented, inadequate, and even so it affects minors, discriminatory.

A serious violation of the right of self-determination of the individual, in particular in relation to the minor is detected.

Despite the progress made that have taken place, the rules do not guarantee the full protection of the dignity of the person regarding his identity.

Also not, registration of personal data in public registers (civil registry) is appropriate because, in this area does not accommodate the reality and dignity of the person is protected.

The proposal is to eliminate the sex data on registration.

As affects the research activities of filiation, generally should reframe actions of filiation by nature (biological), in particular affecting motherhood.

One of the most serious problems concerns the surrogate motherhood, as it affects the identity of the person born.

Knowledge of the origins in the adoption should be developed, especially the ways and means through which exercise.

It should reconsider, where appropriate, anonymity in assisted reproduction heterologous.

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