

External Protection of Personality

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ABSTRACT

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The right to personality is an absolute and exclusive right, which is firmly attached to the person, cannot be transferred or waived to others; it is considered as part of the right to defense and does not time-barred but the receivable arising from the attack on the right of personality may be subject to a statute of limitations. Articles 23-25 of the Turkish Civil Code regulate the legal rules that protect personality. The protection of personality refers to the protection of the physical and moral integrity of a person both internally and externally. Internal protection can be described as protecting oneself, while external protection refers to protection against illegal attacks by third parties. For the external protection of personality, a judge can be asked to prevent an attack, stop an attack, and/or determine the effects of an attack. Compensation lawsuits can also be filed for the material and non-material compensation of a person who has been subject to an illegal attack.

Kişiliğin Dışa Karşı Korunması

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Kişilik hakkı, mutlak ve inhisari bir hak olup, kişiye sıkı sıkıya bağlıdır, başkalarına devredilemez veya feragat edilemez; savunma hakkının bir parçası olarak kabul edilir ve zaman aşımına uğramaz, ancak kişilik hakkına saldırıdan kaynaklanan alacak zaman aşımına tabi olabilir. Türk Medeni Kanunu'nun 23 - 25. maddeleri kişiliği koruyan genel hukuki kuralları düzenlemektedir. Kişiliğin korunması, kişinin maddi ve manevi bütünlüğünün içe ve dışa karşı korunması olarak ifade edilmektedir. İçe karşı korunma, kişiyi kendinden korumak olarak ifade edilebilirken, dışa karşı koruma ise üçüncü kişiler tarafından yapılan hukuka aykırı saldırılardan korunmayı ifade etmektedir. Kişiliğin dışa karşı korunması için hâkimden saldırının önlenmesi, saldırıya son verilmesi ve etkilerinin tespit edilmesi istenebilmektedir. Ayrıca, hukuka aykırı bir saldırıya maruz kalmış kişi, gerekli şartların varlığı halinde maddi ve manevi olarak tatmin olabilmek için tazminat davaları açabilmektedir.

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INTRODUCTION

Law can be defined as the sum of the rules established to regulate the relations between people, clarifying the rights and obligations that exist between people and must be maintained. According to the Turkish Civil Code (TCC), the concepts of “person” and “legal capacity” can be used interchangeably. This is because, in addition to personhood, legal capacity includes rights as well as obligations, and it is not possible to separate these concepts¹. In accordance with Art. 8 of the TCC, a person can be defined as an entity capable of possessing rights and obligations, or, in other words, an entity that can have rights and obligations. It should be noted here that there are two aspects to the concept of “person,” since this concept entails a being that can have both rights and obligations. In this respect, the concept of “capacity to act” should not be confused with the two aspects of the concept of “personality.” In accordance with Art. 9 of the TCC, it is regulated as follows: “A person who has the capacity to act can acquire rights and incur obligations through his/her own actions.” It should also be noted that the issue of “having obligations,” which is one of the aspects of the concept of “person,” is not included in “capacity to act.”

Since legal systems are organised on the basis of persons, the concept of “person” can be expressed as an essential element of law in a general framework without differentiating between private and public law. This is because it is possible for a person and a personality, which are concepts of significant importance, to encounter legal problems during social life, and these problems must be overcome.

The concepts of “person” and “personality,” the protection of personality, internal protection and external protection of personality as types of protection, and the lawsuits that may provide external protection constitute the core topics of this study and they will be discussed here within the scope of the TCC.

I. CONCEPTS

A person has material and non-material integrity². The concept of “personality,” on the other hand, arises from the inclusion of rights and the capacity to act in line with the concept of “person,” and any harm to any part of this integrity leads to harm to the personality. Protecting personality rights is based on the idea that everyone wants to live in freedom, fearlessness, and

¹ Akipek, Jale G. / Akıntürk, Turgut / Ateş, Derya, *Türk Medeni Hukuku Başlangıç Hükümleri Kişiler Hukuku*, 13th Ed., Beta, İstanbul, 2016, p. 339; Helvacı, Serap / Erlüle, Fulya, *Medeni Hukuk*, 9th Ed, Legal Yayıncılık, İstanbul, 2023, p. 27; Öztan, Bilge / Gürpınar, Damla, *Medeni Hukuk'un Temel Kavramları*, 47th Ed., Yetkin, 2022, p. 236; Hafızoğulları, Zeki., “İnsan Hakkı Olarak Kişilik Hakları ve Kişilik Haklarının Konunması”, *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 46(1), p. 4.

² “Real Persons Are Merely Human Beings. A Person Loses His or Her Capacity to Be a Person Before the Law Only Through Death,” Akipek/Akıntürk/Ateş, p. 237; Oğuzman, M. Kemal / Seliçi, Özer / Oktay Özdemir, Saibe. *Kişiler Hukuku*, 9th Ed., Filiz Kitapevi, İstanbul, 2009, p. 2; Dural, Mustafa / Öğüz, Tufan. *Türk Özel Hukuku Cilt II Kişiler Hukuku*, 16th Ed., Filiz Kitapevi, İstanbul, 2015, p. 6; Helvacı, Serap. *Gerçek Kişiler*, 4th Ed., Legal Yayıncılık, İstanbul, 2012, P. 19; Öztan, Bilge. *Medeni Hukuk'un Temel Kavramları*, 40th Ed., Turhan Kitapevi, Ankara, 2015, p. 221; Yılmaz, Süleyman, *Kişiler Hukuku*, 1st Ed, Yetkin, Ankara, 2023, p. 285; Akçaal, Mehmet, *Medeni Hukuk*, 1st Ed, Yetkin, Ankara, 2022, p. 70; Nomer, Huluk Nami / Akbulut, Pakize Ezgi, *Medeni Hukuka Giriş*, 8th Ed, Filiz Kitapevi, İstanbul, 2023, p. 76; Yılmaz, Oğuz Gökhan, “Kişilik Hakkı Kavramı ve Medeni Kanun Kapsamında Kişiliğin Korunması”, *Türkiye Noterler Birliği Hukuk Dergisi*, 7(1), p. 142.

security and that relevant concerns should be addressed to ensure these aims. Although living in society has certain duties and responsibilities for individuals, it is seen as the most natural desire to demand legal protection in return. Personality needs to be protected by legal systems against external and internal attacks. These protection methods are for the legal systems to decide. The Turkish legal system has determined different methods for the protection of personality against internal and external attacks.

The internal protection of personality is based on the idea that legal systems do not allow legal actions to be taken against factors that would destroy his/her material or non-material integrity. According to Art. 23 of the TCC: “No one may renounce his/her rights and capacity to act, even partially. No one may renounce his/her freedoms or limit them contrary to law or morality. Upon written consent, it is possible to take, vaccinate, and transplant biological substances of human origin. However, the person who has undertaken the obligation to provide biological substances cannot be asked to fulfill his/her obligation; material and non-material compensation cannot be demanded.”

Personality rights may be attacked unlawfully (Art. 24 of the TCC) by others on either a fault-based or non-fault-based basis³. These attacks may be carried out without the consent of the person and despite the efforts of the person to protect his/her personality. In other words, “the protection of personality against attacks by third parties through their actions and behaviors that do not constitute legal transactions”⁴ is legally referred to as the external protection of personality rights⁵.

Attacks on personality rights may be considered as a burden of living in society, but everyone is free to live in freedom, fearlessness, and security and to want to address concerns in order to ensure those goals. It is natural that the first thing that comes to mind in considerations of attacks on personality rights is the criminal code of the relevant country. The question to be asked here is whether attacks on personality can always be considered as a crime under the Turkish Criminal Code. According to the Turkish Criminal Code, unlawfulness and injustice do not mean the same thing and unlawfulness may occur even if no crime is committed⁶. Under the Turkish Criminal Code, fault is required for punishment,⁷ but fault is not always required for external harm to the personality⁸. Attacks on personality rights that cannot be considered as crimes under the Turkish Criminal Code are addressed by relevant articles of the TCC and by doing so, legal peace and security are sought to be protected.

³ Akipek/Akıntürk/Ateş, p. 379.

⁴ Helvacı, p. 134; Hatemi, Hüseyin. *Gerçek Kişiler Hukuku (Kısa Ders Kitabı)*, 1st ed., Vedat Kitapçılık, İstanbul, 2005, p. 65; Akıntürk, Turgut / Ateş Kahraman, Derya. *Medenî Hukuk*, 20th ed., Beta, İstanbul, 2014, p. 151; Öztan, p. 283; Gençcan, Ömer Uğur, *4721 Sayılı Türk Medenî Kanunu Yorumu*, 1st ed., Yetkin, Ankara, 2015, p. 258.

⁵ Helvacı, p. 135.

⁶ Akbulut, Berrin, *Ceza Hukuku Genel Hükümler*, 5th ed., Adalet Yayınevi, Ankara, 2018, p. 221; Özgenç, İzzet, *Türk Ceza Hukuku Özel Hükümler*, 19th Ed., Seçkin, Ankara, 2023, p. 176.

⁷ Akbulut, p. 524.

⁸ Akipek/Akıntürk/Ateş, p. 380; Başoğlu, Başak, “Sözleşme Dışı Kusursuz Sorumluluk Hukuku Ve Özellikle Tehlike Sorumluluğuna İlişkin Değerlendirmeler”, *İnönü Üniversitesi Hukuk Fakültesi Dergisi*, 6(2), 2016, p. 33.

II. PROVISIONS OF THE CIVIL CODE ON EXTERNAL PROTECTION

The external protection of personality rights is stipulated in Arts. 24 and 25 of the TCC.

The first of these articles comprises two paragraphs. To provide a general definition, the principle is stated as follows:

“Anyone whose personal rights are unlawfully attacked may ask the judge for protection against the attackers. Unless justified by the consent of the person whose personality rights are harmed, a superior private or public interest, or the exercise of the authority granted by law, every attack on personality rights is unlawful.”

The second of these articles comprises five paragraphs and begins as follows:

“The plaintiff may request the judge to prevent the threat of attack, to ensure the cessation of the ongoing attack, and to determine the illegality of the attack whose effects continue even if it has ceased. The plaintiff may also request that the correction or decision be notified to third parties or published. The plaintiff reserves the right to claim material and non-material compensation as well as the right to request that the profits obtained due to the unlawful attack be given to him/her in accordance with the provisions on unauthorized acts without an attorney. The claim for non-material compensation cannot be delegated unless it has been accepted by the other party; it cannot be passed on to the heirs unless it has been asserted by the heir. The plaintiff may file a lawsuit for the protection of his/her personal rights before the court of his/her own domicile or the court of the defendant’s domicile.”

In order to protect personality rights, it is necessary to put an end to unlawful attacks that exist or are likely to exist, as well as to provide solutions to the material and non-material damages that the personality may suffer as a result of these attacks. With the aforementioned articles, the TCC both defines personality rights and protects the personality by addressing lawsuits for claiming compensation of material and non-material damages. An important point to be noted here is that the systematics of the law uses the term “consent of the person”⁹ and explicitly provides external protection of the personality¹⁰.

III. SCOPE OF EXTERNAL PROTECTION

In accordance with the TCC and within the scope of the abovementioned provisions, it is necessary to prevent harm to the personality as a result of attacks or to remedy that harm materially and non-materially. This necessity naturally gives the person whose personality is attacked a right of claim. Personality is classified as “the values related to the person herself/himself, such as freedom, honor, dignity, reputation, and privacy”¹¹. Since there is no clear definition or enumeration in the legal doctrine, classifications can be multiplied according to the contents of concrete cases and the emergence of many things that may be violated in the context of advancing living standards, and the judge is given wide authority¹².

⁹ For a contrary view, see Hatemi, pp. 60-61.

¹⁰ Akipek/Akıntürk/Ateş, p. 382; Özeydin, Özlem, “Sosyal Medya Aracılığıyla Kişilik Haklarının İhlali”, *Fasikül Hukuk Dergisi*, 11(111), p. 512.

¹¹ Helvacı, p. 97 ff.; Akipek/Akıntürk/Ateş, p. 383; Akıntürk/Ateş, p. 147; Öztan, p. 274.

¹² Dural/Öğüz, p. 101; Serozan, Rona, “Kişilik Hakkının Korunmasıyla İlgili Bazı Düşünceler”, *İstanbul*

An attack on personality consists of three factors: the targeting of the personal values of the person, positive or negative human behaviors, and violation of the personality in a way that damages protected personality values¹³. Thus, the values that constitute the personality, or, in other words, material/non-material integrity as well as economic integrity and the privacy zone, as a combination of the previous integrities, are damaged and need to be protected¹⁴.

A. Attacks on Material Integrity

The first thing that comes to mind when we consider material integrity is the life of the person, but the physical integrity and personal assets of the person should not be neglected. Since material integrity is an extremely important issue, it has been taken under protection by the Constitution of the Republic of Türkiye and special articles have been defined in the Turkish Criminal Code accordingly. If we cannot protect a person's life, it is not possible to adopt any further means of protection. Our priority is to protect life, and then we are required to protect the integrity of the body, which is material integrity, including "voice and facial beauty"¹⁵¹⁶. The point to be considered here is that attacks on material integrity may constitute crimes according to the Turkish Criminal Code, and so it is necessary to act according to Art. 25 of the TCC.

B. Attacks on Non-material Integrity

A person possesses both material and non-material integrity. For this reason, it is as important to prevent attacks materially as it is to prevent non-material attacks, because when one removes the material or non-material characteristics from a person, one cannot talk about a person. It is accordingly necessary to protect the reputation, dignity, honor, religion, emotions, memories, and all other values that cannot be counted in limited number, which are considered as constituting non-material integrity, from external attacks¹⁷. Due to the fact that they are not enumerated in a limited manner, the judge should determine which particular features constitute non-material integrity according to the characteristics of the concrete case by using his/her discretionary power in accordance with Art. 4 of the TCC. The point to be considered here is that it may be easier to see or estimate the severity of the damage to material integrity from the outside than to see or estimate the severity of the damage to non-material integrity from the outside. For this reason, evaluations should be made carefully in terms of non-material integrity.

1. Honor and Dignity

Honor and dignity can be expressed in common terms as the value that society gives to others¹⁸. This value can be obtained in both ordinary life and professional life. It is possible that this obtained value may be damaged in ordinary life, the damage may bring problems for the person in both his/her ordinary life and his/her professional life, and this may harm him/her in

Üniversitesi Mukayeseli Hukuk Araştırmaları Dergisi, c. 11(14), 2011, p. 99.

¹³ Akıntürk/Ateş, p. 147; Helvacı, p. 93.

¹⁴ Helvacı, p. 131; Akıntürk/Ateş, p. 148.

¹⁵ 4.HD. 27.3.1979, 13013/4136; *Tedavi Giderlerinin Karşılınması*, <https://ertekinhukuk.com.tr/tedavi-giderlerinin-kapsami> (A.D. 11.01.2023).

¹⁶ Akipek/Akıntürk/Ateş, p. 385; Helvacı, pp. 126-127.

¹⁷ Oğuzman/Seliçi/Oktay-Özdemir, p. 135; Akipek/Akıntürk/Ateş, p. 385.

¹⁸ Honor: "The personal value on which the respect shown to someone by others is based" and Dignity: "Value, prestige, reputation," Türk Dil Kurumu, sozluk.gov.tr (A.D. 11.01.2023); Dural/Öğüz, p. 127.

a non-material way. The person has the right to request the protection of all kinds of honor and dignity within the scope of his/her non-material integrity¹⁹.

Within the scope of the protection of non-material integrity, attacks against honor and dignity may be carried out in multifaceted and unexpected manners, since non-material integrity is an abstract concept, and the circumstances that may cause damage cannot be enumerated in a limited manner. For instance, a person's honor or dignity can be attacked by slander, or it can be claimed that a person is engaged in undignified behavior in the sense of false denunciation. The point to be considered here is that although the advancement of technology brings with it positive effects, it also leads to negative and dangerous consequences, and attacks that may harm non-material integrity in an abstract manner may accordingly increase. With deepfake²⁰ technology, as one of the simplest known examples, it is possible to attack a person by rearranging factors such as the face, mouth, smile, limbs, etc. constituting the material integrity of a person in a computer environment to make it appear that he/she has undertaken actions that he/she has not actually performed and that would harm his/her honor and dignity if he/she had actually done so. For this reason, considering the state of the art in technology, it becomes clear why the protection of non-material integrity is of great importance. Within the scope of attacks on non-material integrity, all issues that can be described as criticism should not be considered as attacks on honor and dignity²¹. Each concrete case should be examined specifically to see the extent of the criticism and whether the extent of the criticism constitutes an attack on the personality.

2. Privacy Zone

“Privacy zone” and “intimate circle” are names given to the areas that a person wants to reserve for himself/herself and keep out of public sight, regardless of whether they are private or official²². Although we spend time in many communal areas since we live a social life, maintaining our privacy zones in these common areas or wanting these zones to be respected constitutes one of our greatest claim rights. In response to this claim right, attacks on our privacy zones in communal areas are also considered as attacks on our non-material integrity. By stating, for example, that “the reading of a personal letter in an apartment, pictures showing public or official ceremonies or general meetings, and pictures related to daily events are not essential for radio or filmed news,” the law also states that public figures should behave tolerantly. The point that should not be forgotten within the scope of the Law on Intellectual and Artistic Works is that each concrete case is evaluated within itself, and when an unlawful matter is noticed, the provisions of the Turkish Code of Obligations, the Turkish Criminal Code, or the TCC may be reserved and subject to processing.

¹⁹ Öztan, p. 279; Akipek/Akıntürk/Ateş, p. 386.

²⁰ “The deepfakes app is a deep learning algorithm that learns how to reconstruct faces. Give it a bunch of pictures, let it run a few hours, and it spits out fuzzy copies of those images. Do note, it doesn't create a copy. It learns what a face looks like, in different expressions, and is able to output that face solely based on that...” CHARLEER, Sven, “*Family fun with deepfakes. Or how I got my wife onto the Tonight Show,*” medium.com/towards-data-science/family-fun-with-deepfakes-or-how-i-got-my-wife-onto-the-tonight-show-a4454775c011 (A.D. 11.01.2023).

²¹ “...the views put forward in the criticism should not be subjective, and the objective principles on which they are based, and the criticized issues should be reflected in a truthful manner without any modification.” Akipek/Akıntürk/Ateş, p. 386.

²² Dural/Öğüz, p. 135.

3. Attacks on Economic Assets

Another issue that needs to be addressed within the scope of external protection of personality is that of attacks directed against economic assets, these being an unlawful attack to prevent a person from utilizing an economic asset or to act with the intention of any prevention that will harm his/her business²³. A person has the freedom to work for someone with the aim of performing any profession, as well as to establish his/her own business and carry out his/her trade, and thanks to this freedom, no one's desire to work can be restricted. The point to be noted here is that obstructive behaviors can be carried out with active or passive actions. For instance, preventing someone from looking for a job or engaging in behaviors that will negatively affect his/her social future constitutes a positive or active obstacle, while attempts such as damaging goods by not delivering them in the context of the agreements necessary for the operation of a commercial enterprise or violating the prices set for the sales of the same goods constitute negative or passive obstacles, and both types of behaviors constitute illegality and an attack on personality.

Trade and competition are indispensable for businesses operating in the market. For this reason, unfair competition constitutes one of the types of attacks that may be directed against economic assets²⁴. Unfair competition means that a person or organization acts illegally to gain an advantage over other competitors in the market. For instance, a company may use unfair means of competition such as copying competitors' products or using counterfeit products, providing false information, or disparaging competitors' products. Such actions involve unlawful behavior and are considered as an attack on personality by violating the rights of competitors in the market²⁵.

The issue of unfair competition, which is of paramount importance, has been subject to special legal regulations. These regulations are mainly found in the Turkish Code of Obligations and the Turkish Commercial Code. In accordance with Art. 57 of the Turkish Code of Obligations, it is regulated as follows: "The person whose customers decrease or who faces the danger of losing them due to the dissemination of untrue news or the making of such announcements or other behaviors contrary to the rules of honesty may request the cessation of these behaviors and the compensation of the damage in the presence of fault." It then refers to the Turkish Commercial Code in the second paragraph. The Turkish Commercial Code provides regulations pursuant to Art. 56 et seq. There is no doctrinal consensus on these regulations.

IV. LAWSUITS TO STOP UNLAWFUL ATTACKS

The TCC provides for various lawsuits for the prevention of attacks on personal rights. It will be more systematically correct to begin by examining lawsuits for the cessation of attacks.

A. Types of Lawsuits and Their Conditions

²³ Dural/Öğüz, pp. 142-143.

²⁴ Ülgen, Hüseyin / Helvacı, Mehmet / Kaya, Arslan / Nomer Ertan, N. Füsün. *Ticari İşletme Hukuku*, 6th ed., Vedat Kitapçılık, İstanbul, 2019, p. 547.

²⁵ Ülgen/Helvacı/Kaya/Nomer Ertan, p. 554.

For external protection of personality, it is first necessary to stop unlawful attacks and/or to prevent the attacks from happening again.

In accordance with Art. 25 of the TCC: “The plaintiff may request the judge to prevent the threat of attack, to ensure the cessation of the ongoing attack, and to determine the illegality of the attack whose effects continue even if it has ceased. The plaintiff may also request that the correction or decision be notified to third parties or published.” Lawsuits for the cessation, prevention, and determination of the attack can be filed by the harmed party before courts.

1. Lawsuit to Cease the Attack

The subject matter of a lawsuit for the cessation of unlawful attacks is the cessation of ongoing attacks on the personality and the prevention of their recurrence²⁶. This lawsuit meets the characteristics of a general lawsuit because it plays a major role in preventing external attacks on the personality. If the personality has been attacked and the attack is still ongoing on the date of the lawsuit, an order will be issued to stop the ongoing attack regardless of whether there has been any damage or not²⁷.

a. Attack on Personality Rights

The aim here is to prevent all kinds of attacks on a person’s personality by third parties.

b. Unlawfulness of the Attack

Unlawfulness refers to the behaviors that are not appropriate according to the legal definition within the entire legal order²⁸. The point to be noted here is that the exercise of a behavior by a person in accordance with its type may warrant a presumption of illegality in accordance with the Turkish Criminal Code. Therefore, the doctrinal views presented in the Turkish Criminal Code and criminal law should be taken into consideration regarding illegality.

In accordance with the definition set out above, unlawful assault consists of actions that contradict legal orders and are not welcome. The point to be noted here is that attacks that contradict the rules of written law, customary law, and even the rules of law created by the judge should be characterized as unlawful²⁹.

c. Ongoing Attack

The concept of “ongoing attack” is of great importance because, in order to stop the attack, the attack must be ongoing. In these cases, in other words, although the attack has been committed, it must not have ended, or else it is not possible to file the lawsuit³⁰. The point to be noted here is that it is not possible to file this type of lawsuit to stop attacks that are carried out instantaneously, with no temporal difference between the initiation of the attack and its termination.

2. Lawsuit for Prevention of the Danger of Attack

A lawsuit for the prevention of the danger of attack is based on the idea of preventing an

²⁶ Oğuzman/Seliçi/Oktay-Özdemir, p. 153; Akıntürk/Ateş-Karaman, p. 153.

²⁷ Akipek/Akıntürk/Ateş, p. 397.

²⁸ Akbulut, p. 453; Dural/Öğüz, p. 149.

²⁹ Oğuzman/Seliçi/Oktay-Özdemir, p. 154.

³⁰ Akipek/Akıntürk/Ateş, p. 396.

unlawful attack that has not yet occurred but is likely to occur in the near future³¹. The point to be considered here is that although there is not yet an unlawful attack, it can be understood from a concrete event that an unlawful attack will be carried out in the near future. Presenting shocking statements about a famous businessman's honor and dignity in headlines for a month can be given as an example. In this case, although an unlawful attack has not yet occurred, there is a possibility of a potential unlawful attack, and in order to prevent the danger of this unlawful attack, this lawsuit can be applied, and a measure can be taken to be effective for the future³².

3. Lawsuit for Determination of the Unlawfulness of the Attack

A lawsuit for the determination of the unlawfulness of an attack is based on the idea of understanding whether the existing behavior is unlawful in nature³³. The TCC expresses this as “the determination of the illegality of an attack whose effects continue even if it has ended.” The point to be noted here is that the court is asked to determine whether a behavior, the effects of which are still ongoing, is unlawful or not. In addition to that determination, Art. 25/II of the TCC gives the right to request that the matter be published or that third parties be notified. It is not enough to determine unlawfulness in social life; the person whose personality has been damaged may demand that the matter be announced in order to restore his/her damaged reputation³⁴.

B. Reasons of Lawfulness

Art. 24 of the TCC also explains which attacks will be considered as lawful attacks. This article states as follows: “Unless justified by the consent of the person whose right of personality is harmed, a superior private or public interest, or the exercise of the authority granted by law, every attack on personal rights is unlawful.” The point to be noted here is that the criteria for compliance with the law are listed in a limited manner. Although they are not listed in the text of the law, doctrinally, it is said that “justified defense” and “state of necessity” can be evaluated within the scope of “relying on the authority granted by law”³⁵.

1. Consent of the Damaged Party

“Consent of the damaged party” is based on the idea of a person having allowed interference with his/her personality by others in any way and not claiming illegality even if damage has occurred as a result of those interventions³⁶. This is because he/she is deemed to have foreseen the damage that could arise and to have given consent because he/she could bear the damage. The point to be noted here is that the consent given must be in accordance with the relevant procedures and principles³⁷. In other words, consent that is not in accordance with morality and decency or consent given only verbally when it should have been given in writing is not considered valid³⁸.

³¹ Helvacı, p. 153.

³² Akıntürk/Ateş-Karaman, p. 153.

³³ Öztan, p. 288.

³⁴ Dural/Öğüz, p. 149.

³⁵ Hatemi, p. 65; Öztan, p. 285; Akipek/Akıntürk/Ateş, p. 401.

³⁶ Akipek/Akıntürk/Ateş, p. 401; Dural/Öğüz, p. 150.

³⁷ Oğuzman/Seliçi/Oktay-Özdemir, p. 155.

³⁸ Gençcan, p. 269. See also Art. 23/III of the TCC: “...upon written consent, it is possible to take, vaccinate, and transfer biological substances of human origin” but unwritten consent is deemed invalid.

2. Presence of a Superior Private Interest

“Superior interest” generally refers to the prominence of a person or a thing due to its characteristics. The existence of a superior interest in terms of the existence and protection of private benefit is based on the idea that the person’s personality is likely to be harmed and that the intervention to be made to prevent the harm can be carried out without resorting to the consent of the person³⁹. The point to be considered here is that an action that may be considered unlawful due to the lack of consent may be considered as “private interest.” In other words, “the situation necessary for the protection of personality” emerges and the intervention is for the benefit of the personality.

3. Presence of a Superior Public Interest

The existence of public interest involves the protection of the benefit of a superior interest, as mentioned above regarding the existence of private interest, but here it is based on the idea that public interest should prevail over the private interest⁴⁰. The point to be noted here is that although there is interference with the personality, public interest should be granted priority when the concrete case is evaluated, rather than the private interest pertinent to the personality.

4. Reliance on the Authority Given by Law

“Reliance on the authority given by law” is based on the idea of preventing the characterization of interventions against personality as unlawful, regardless of public or private law⁴¹. Examples include the searching of the residence, the wiretapping of telephones, and even the pre-trial detention of a person based on decisions made by the courts in line with public law.

Self-defense is the use of a reasonable amount of force that is necessary and reasonably limited to stop an attacker in a situation where a person’s self, another person, or property is being attacked. Although this concept is interpreted and applied in different ways in different legal systems, it is considered as an intervention originating from both private and public law⁴².

V. LAWSUITS FOR THE COMPENSATION OF DAMAGES CAUSED BY UNLAWFUL ATTACKS

Lawsuits for the compensation of damages caused by unlawful attacks are intended to ensure the compensation of material and non-material damages that occur when the personality is subjected to an unlawful attack⁴³. The point to be noted here is that while material damage can be determined quickly because of a concrete event, non-material damage such as the pain and sorrow felt after the damage to the personality should be carefully examined and interpreted according to the specific case. For instance, as a result of a person being injured by a third party, hospital expenses can be financially calculated and quickly reported, but it is difficult to understand the type or extent of damage a person suffers from being insulted by a third party.

³⁹ Dural/Öğüz, p. 150; Öztan, p. 284.

⁴⁰ Akipek/Akıntürk/Ateş, p. 402.

⁴¹ Oğuzman/Seliçi/Oktay-Özdemir, p. 160.

⁴² Hatemi, p. 65. See also Turkish Code of Obligations, Art. 63/I, and Turkish Criminal Code, Art. 25/I.

⁴³ Oğuzman, M. Kemal / Barlas, Nami. *Medenî Hukuk*, 27th ed., On İki Levha Yayıncılık İstanbul, 2021, p. 328; Akipek/Akıntürk/Ateş, p. 403.

The TCC regulates lawsuits for “material damages,” “non-material damages,” and “unauthorized acts,” considering the abovementioned points⁴⁴.

A. Lawsuit for Material Damages

A lawsuit for financial damages is based on the idea of compensating the financial losses of the person whose personality has been unlawfully attacked⁴⁵. Within the scope of the lawsuit, the person who organized the unlawful attack is sentenced to pay the amount of the material loss of the person whose personality has been damaged. The point to be considered here is that this material loss should be determined in each concrete case and the amount of compensation should be calculated and evaluated by the judge accordingly.

B. Lawsuit for Non-material Damages

A lawsuit for non-material damages is based on the idea of compensating losses suffered by the person whose personality has been unlawfully attacked that cannot be characterized as material, instead being relevant to his/her non-material integrity. The point to be considered here is that although the person may not have suffered any material damage, he/she may have suffered non-material damage and may have encountered grief/sadness/spiritual problems due to that damage⁴⁶. In order to overcome the grief/sadness/spiritual problems to some extent and to meet the needs of the person, there is a request for non-material compensation.

According to Art. 58 of the Turkish Code of Obligations: “The person who has suffered damage to his/her personality rights may request the payment of a sum of money in the name of non-material damages in return for the non-material damage he/she has suffered. Instead of the payment of this compensation, the judge may decide on another form of compensation or add it to this compensation; in particular, the judge may issue a decision condemning the attack and may order the publication of this decision.” It should be noted here that the Turkish Code of Obligations does not require the payment of a sum of money in order to compensate for non-material damage. On the contrary, it gives the judge wide discretionary power and stipulates that the judge may take additional satisfactory provisions in addition to the payment of a sum of money or may take different measures without the payment of money⁴⁷.

C. Conditions for Compensation Lawsuits for Material/Non-material Damages

There is no difference between the conditions of material and non-material damages; therefore, it will be appropriate to examine the conditions of these lawsuits within a single subsection. It is argued in the doctrine that it is appropriate to consider lawsuits for material and non-material damages within the scope of tort liability⁴⁸, since both categories encompass the idea of “fault liability” and are based on the idea that the damage caused by a third party to another person by an unlawful and at the same time faulty attack will not be protected and this

⁴⁴ Gençcan, p. 275.

⁴⁵ Dural/Öğüz, p. 157; Başmanav, Y., “Medya Yoluyla Kişilik Hakkı İhlallerinde Maddi Tazminat Davası”, *Sakarya Üniversitesi Hukuk Fakültesi Dergisi*, 1(1), pp. 76-77.

⁴⁶ Oğuzman/Seliçi/Oktay-Özdemir, p. 179; Dural/Öğüz, pp. 158-159; Kılıçoğlu Yılmaz, K., “Kişilik Hakkının İhlalinde Manevi Tazminat”, *Terazi Hukuk Dergisi*, 11(115), p. 39.

⁴⁷ Akipek/Akıntürk/Ateş, p. 409; Helvacı, p. 159.

⁴⁸ Okur, Sinan. *Borçlar Hukuku Pratik Çalışma Çözüm Metodu ve Örnek Çözümler*, 1st ed., Adalet Yayınevi, Ankara, 2020, p. 90; Akipek/Akıntürk/Ateş, p. 404.

damage will be compensated.

Art. 49/I of the Turkish Code of Obligations states the following: “Whoever causes damage to another through a faulty and unlawful act is obliged to compensate for this damage.” Furthermore, it requires the conditions of “unlawful attack,” “fault,” “damage,” and “causal link” for tort liability.

1. Unlawful Attack

In order to claim compensation for material and non-material damages, first of all, an unlawful attack against the personality must have occurred. Legal systems regulate the law through written or unwritten rules, and acting contrary to those rules constitutes a violation of the law⁴⁹. Absolute rights are the fundamental rights of individuals⁵⁰ and are protected against attacks and violations by third parties. In committing this violation, illegality in the context of liability law does not extend to the violation of all kinds of norms, but only to the violation of legal norms that aim to protect a right or legal entity from damaging interference⁵¹. In order to be able to refer to the existence of unlawfulness, there must be a violation of a mandatory norm that aims to protect a right or legal entity, and there must not be a reason for compliance with the law.

2. Fault

In order to claim compensation for material and non-material damages, the person who has committed an unlawful attack against the personality must be at fault. Although fault is one of the constituent elements⁵² within the scope of tort liability, no legal definition has been made. This concept is based on the idea that the behavior of the unlawful attack deviates from the average behavior of a reasonable individual. Fault is divided into the two categories of intent and negligence. Negligence can be defined as the failure to take the necessary measures to prevent such a result from occurring, even though an unlawful result is not desired, while intentional fault can be defined as a person’s desire for an unlawful attack to occur and planning with special effort for that purpose⁵³.

3. Damage

In order to claim compensation for material and non-material damages, it is necessary that the person who has committed an unlawful attack against the personality has caused damage. Although the Turkish Code of Obligations stipulates that damages may be claimed as a result of a tortious act, it does not legally define the concept of “damage.” This concept is doctrinally divided into two categories as narrow and broad damage⁵⁴. Damage in the narrow sense is defined as damages that occur only to assets, while damage in the broad sense refers to

⁴⁹ Eren, Fikret, *Borçlar Hukuku Genel Hükümler*, 23rd ed., Yetkin Yayınları, Ankara, 2018, p. 611; OKUR, p. 90; Nomer / Akbulut, p. 115.

⁵⁰ Kılıçoğlu, Ahmet. *Borçlar Hukuku Genel Hükümler*, 22nd ed., Turhan Kitapevi, Ankara, 2018, p. 374; EREN, p. 617.

⁵¹ Okur, p. 91.

⁵² Erdoğan, İhsan. *Borçlar Hukuku Genel Hükümler*, 4th ed., Gazi Kitapevi, Ankara, 2019, p. 124; EREN, p. 594.

⁵³ Erdoğan, Kemal / Akkurt, Sinan Sami / Eren, Hüseyin Tokat, *Borçlar Hukuku*, 5th ed., Seçkin, Ankara, 2022, p. 199; Antalya, Osman Gökhan, *Borçlar Hukuku Genel Hükümler Cilt: V/1,2*, 2nd ed., Seçkin, Ankara, 2019, pp. 74-75-76; Eren, p. 601; Erdoğan, pp. 126-128.

⁵⁴ Eren, p. 545; Antalya, p. 133.

decrease in the assets or personal existence of a person against his/her will⁵⁵. Any decrease or diminution in the assets of a person against his/her will is considered as material damage⁵⁶. Although personality rights are not accepted among these assets, they are considered among the values that constitute the assets of a person⁵⁷. In order to be able to talk about damage, a decrease in the assets must occur. The decrease in question may be in the form of a decrease in the assets or an increase in liabilities.

Damage is defined as the difference between what the assets would have been had the unlawful attack not occurred and what the assets have become after the attack⁵⁸. Financial damage is classified as actual damage and deprived profit⁵⁹. While actual damage may be expressed as a decrease in the assets or an increase in liabilities, deprived profits may be described as the partial or total prevention of the increases that are likely to occur in the normal course of the existence of the assets as a result of the unlawful attack.

4. Causal Link

In order to claim compensation for material and non-material damages, there must first be a causal link between the unlawful attack against personality and the damage. In legal terms, the cause-and-effect relationship between the damage and the attack to which liability is attached is called a causal link⁶⁰. “Causal link” is defined as the existence of a causative reason conducive to producing a result of the type that occurs in the normal course of events and general life experiences⁶¹.

D. Lawsuit for Unauthorized Acts

The lawsuit for unauthorized acts is based on the idea that the person who is attacked should receive compensation from a third party unjustly enriched as a result of the attack. This is because a person may gain material or non-material profit as a result of an unlawful attack against the personality of another person; in other words, he/she may be unjustly enriched. The point to be noted here is that unjust enrichment should be satisfied not in accordance with Art. 77 of the Turkish Code of Obligations but rather in accordance with Art. 526 of the Turkish Code of Obligations, or, in other words, in accordance with “true⁶² unauthorized acts”⁶³.

E. Jurisdiction in Lawsuits

The concept of jurisdiction is a geographically limited concept⁶⁴. Art. 6/I of the Code of

⁵⁵ Erdoğan/Akkurt/Eren, p. 193.

⁵⁶ Erdoğan, p. 130.

⁵⁷ Eren, p. 546; Akçaal, p. 5.

⁵⁸ Antalya, p. 139.

⁵⁹ Yılmaz, p. 80; Eren, p. 551.

⁶⁰ Antalya, p. 281.

⁶¹ Eren, p. 566.

⁶² “In the doctrine, unauthorized acts are divided into two as true and untrue unauthorized acts,” Ercoşkun Şenol, H. Kübra. “Gerçek Olmayan Vekâletsiz İş Görmenin Sistemik Açısından Borçlar Kanunundaki Yeri ve 2020 İsviçre Borçlar Kanunu Tasarısı’ndaki Durum”, *Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi*, C. XXII, P. 4, 2018, p. 39.

⁶³ Akipek/Akıntürk/Ateş, p. 413.

⁶⁴ Atalı, Murat / Ermenek, İbrahim / Erdoğan, Ersin. *Medenî Usûl Hukuku*, 2nd ed., Yetkin, Ankara, 2019, p. 167; Pekcanitez, Hakan / Özkes, Muhammet / Atalay, Oğuz, *Medeni Usul Hukuku*, 11th Ed., On İki Levha Yayıncılık, İstanbul, 2023, p. 76.

Civil Procedure states the following: “The court with general jurisdiction is the court of the place of residence of the defendant real or legal person at the time the lawsuit is filed.” Furthermore, unless otherwise stipulated, the relevant article of the Code of Civil Procedure shall apply. It should be noted that, in accordance with Art. 25/V of the Civil Procedure Code, which states that a “plaintiff may file a lawsuit for the protection of his/her personal rights in the court of his/her own domicile or in the court of the defendant’s domicile,” the jurisdiction is regulated with a special provision and the concept of the contrary provision stated in the relevant articles of the Code of Civil Procedure has emerged in this context.

CONCLUSION

This study has examined the concepts of “person” and “personality,” the protection of personality, the concepts of “internal protection” and “external protection” of personality, and the lawsuits that provide external protection of personality. The TCC regulates the concept of “person” or “personality” by combining the legal capacity of rights with the capacity to act, the protection of personality in terms of both material and non-material integrity (“honor and dignity,” “privacy zone,” and “economic assets”) first internally and then externally, and the lawsuits through which protection can be realized and the details of those lawsuits.

The Turkish legal system protects personality with its written or unwritten rules. In social life, all individuals are free and equal in terms of their rights. This freedom and equality must be protected both internally and externally. While internal protection can be described as a kind of self-protection, external protection refers to the protection of a person from unlawful attacks by third parties.

Within the scope of the external protection of personality, the judge may be asked to prevent the threat of attack, ensure the cessation of an ongoing attack, and/or determine the illegality of an attack with effects that continue even if the attack itself has ceased. In addition, the person who has been subjected to an unlawful attack needs to be materially and non-materially satisfied, and compensation lawsuits can be filed in the presence of the necessary conditions (“unlawful attack,” “fault,” “damage,” “causal link”) in order to achieve that satisfaction.

Conflict of Interest

There is no conflict of interest.

Author Contributions

The authors did not specify the contribution rate.

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