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## The Case of Stopping The Attack on The Right to Personality in Turkish Law *Türk Hukukunda Kişilik Hakkına Saldırının Durdurulması Davası*

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### Abstract

The rights that a person has just because he/she is a human are personality rights. Personality is acquired together with the right and full birth in Turkish law. The right over all the values that make up the personality is characterized as the right of personality. With birth, each person acquires personality and becomes a direct owner of personality rights as well. Personality rights are rights that are absolute rights that can be asserted against everyone. Article 24 of the Turkish Civil Code (TCC) has deemed all attacks on the right to personality unlawful. TCC has not counted the individual values of the right to personality. It is left to the discretion of the judge what will be evaluated within the scope of personality right in accordance with the developing technology and increasing needs. Since personality rights are closely related rights to the person, it is not possible to transfer them to others or give them up. Since attacks on the right to personality are unlawful, cases protecting the right to personality are regulated in Article 25 of the TCC. In Turkish law, cases protecting the right to personality are cases of preventing, stopping and detecting an attack on the right to personality. Depending on the stage reached by the attack in the violation of the right of personality, it is determined which protective case should be opened. A stop lawsuit should be filed against the unjustified attack on the right to personality that has begun and is ongoing. The goal is to eliminate the existing attack. In this study, the legal elements that are necessary to open the case to stop the attack on personal rights are examined. If the attack has ended, but the effects continue, there will be no legal benefit in opening this case. Therefore, the correct analysis of the attack on the right to personality from the legal point of view will allow obtaining a positive result in the case of stopping.

**Keywords:** Personal right, protective cases, the case for stopping, personality

### Öz

İnsanın sadece insan olması nedeniyle sahip olduğu haklar kişilik haklarıdır. Kişilik, Türk hukukunda sağ ve tam doğumla birlikte kazanılır. Kişiliği oluşturan değerlerin tümü üzerindeki hak, kişilik hakkı olarak nitelendirilir. Doğumla birlikte her kişi kişilik kazanır ve kişilik haklarının da doğrudan sahibi olur. Kişilik hakları herkese karşı ileri sürülebilen mutlak hak niteliğinde olan haklardır. Türk Medeni Kanunu (TMK) m. 24 kişilik hakkına yapılan tüm saldırıları hukuka aykırı kabul etmiştir. TMK kişilik hakkı değerlerini tek tek saymamıştır. Gelişen teknoloji ve artan ihtiyaçlar doğrultusunda nelerin kişilik hakkı kapsamında değerlendirileceği hakimin takdirine bırakılmıştır. Kişilik hakları şahsa sıkı sıkıya bağlı haklar olduğundan başkalarına devredilmesi veya vazgeçilmesi mümkün değildir. Kişilik hakkına yönelik saldırılar hukuka aykırı olduğundan, kişilik hakkını koruyucu davalar TMK m. 25'de düzenlenmiştir. Türk hukukunda kişilik hakkını koruyucu davalar, kişilik hakkına yönelik saldırının önlenmesi, durdurulması ve hukuka aykırılığın tespiti davalarıdır. Kişilik hakkı ihlalinde saldırının ulaştığı aşamaya bağlı olarak hangi koruyucu davanın açılması gerektiği belirlenmektedir. Başlamış ve devam etmekte olan kişilik hakkına yönelik haksız saldırıya karşı durdurma davası açılması gerekmektedir. Amaç var olan saldırının ortadan kaldırılmasıdır. Bu çalışmada, kişilik hakkına saldırıyı durdurma davasının açılabilmesi için gerekli olan hukuki unsurlar incelenmiştir. Saldırı sona ermiş, ancak etkileri devam ediyorsa bu davanın açılmasında hukuki bir yarar bulunmayacaktır.

**Anahtar Kelimeler:** Kişilik hakkı, koruyucu davalar, durdurma davası, kişilik.

## Introduction

The purpose of cases to protect the right to personality is to protect the right to personality against unlawful attacks on personal values. These cases regulated in Article 25 of the Turkish Civil Code; These are the cases to prevent the danger of attack, to stop the ongoing attack, to determine the illegality of the attack whose effects continue even if it has ended.

Along with the cases of prevention and stopping of the attack on the personal right and determination of illegality, it may be requested from the judge to notify or publish the correction or decision to third parties. Again, if the conditions are met with these cases, the right to demand material and moral compensation claims and the profits obtained due to unlawful attack on the provisions of working without power of attorney are also reserved.

The case of stopping the right to personality, which is the subject of our study, from protective cases, has been studied under the general concept of cases protecting the right to personality, the concept of stopping cases with the legal regulation related to them, their terms, legal nature and procedural law.

### 1. Personal Protective Cases

Personal right is defined as the rights over personal values such as life, physical integrity, health, honor and dignity, name, picture, private life, which are granted to individuals only by virtue of their existence and protected by the legal order that individuals inseparably possess (Özsunay, 1982, p. 97; Serozan, 2011, p. 411; Kılıçoğlu, 2008, p. 3; Helvacı, 2016, p. 99; Zevkliler et al., 2000, p. 395; Oğuzman et al., 2014, p. 155; Tandoğan, 1963, p. 12; Öztan, 1994, p. 107).

The concept of protection of the right to personality is the prevention of unlawful interventions that violate the values of a person within the scope of the right to personality, the rules of private law that arise in the event of termination and are aimed at compensation for this if a harm has arisen due to this intervention (Helvacı, 2001, p. 13; Zevkliler et al., 2000, p. 426). The ways of protecting the personal right can be examined as violating the personality right with or without the consent of the person.

Protection of the personality against attacks arising as a result of the person's consent is regulated in Article 23 of the TCC (Dural ve Öğüz, 2010, p. 136). According to this; no one can renounce their rights and capacity to act, even partially, or limit them illegally or unethically.

Cases protecting the right to personality are the type of protection provided for in cases of violations of the right to personality that occur without the consent of the person. Protective cases are legal ways in which a person whose right to personality has been attacked or is under threat of attack can apply to a judge to ensure the protection of this right (Helvacı, 2011, p. 79). These cases are cases of preventing, stopping the attack and detecting illegality. If necessary, it may also be requested to publish the court decision or notify third parties, as well as to file a lawsuit for material and moral damages in exchange for damages arising from the attack, and the earnings obtained from the attack may also be requested in accordance with the provisions of working without a power of attorney (Zevkliler et al., 2000, p. 471) Compensation cases differ from protective cases in terms of purpose, as they deal with the damage caused by a past attack, not a current attack (Helvacı, 2011, p. 79). Protective cases are not the consequences of the attack, but directly target the attack itself, so defects and damages are not required.

Depending on the stage reached by the attack in the violation of the right of personality, it is determined which protective case should be opened. Prevention of an attack in cases where the attack has not yet begun, but there is a danger of an attack (Ataay, 1978, p. 152; Helvacı, 2016, p. 155; Dural ve Öğüz, 2010, p. 144); a stop to ensure that the attack that has started and is ongoing is terminated (Arpacı, 2000, p. 143; Oğuzman et al., 2010, p. 223; Dural ve Öğüz, 2010, p. 146); in cases where the attack has ended but its effects continue, a case may be opened to determine the illegality (Öztan, 1994, p. 154).

Wherever it is necessary to protect absolute rights, there is a system of protective actions in intellectual property, unfair competition or real rights (Helvacı, 2011, p. 80).

## **2. Legal Regulation**

Article 24 of the previous Turkish Civil Code, before it was replaced by Law No. 3444, provided for three cases in case of an attack on the personality; a case for stopping the attack, a case for financial compensation and a case for moral compensation. In addition, the doctrine recognized that cases of preventing the attack and determining the illegality of the attack could also be opened (Arpacı, 2000, p. 149; Oğuzman et al., 2010, p. 219).

Article 24/a, which was added to the previous Civil Code with the Law No. 3444, included all of these cases and stipulated that the gains from the attack be demanded pursuant to the provisions of working without power of attorney, and a special provision was made for the competent court.

Article 25 of the current Civil Code, which regulates protective cases under the title of "Cases", has brought a regulation based on the previous provision in general. According to this;

“The claimant may request from the judge the prevention of the danger of attack, the termination of the ongoing attack, the determination of the illegality of the attack whose effects continue even though it has ended.

In addition, the claimant may also request that the correction or decision be notified to third parties or published.

The claimant's right to claim for pecuniary and non-pecuniary damages and the earnings obtained due to unlawful attack be given to her in accordance with the provisions of working without power of attorney is reserved.

The request for non-pecuniary damage cannot be transferred unless accepted by the other party; It does not pass to the heirs unless it is claimed by the inheritor.

The claimant can file a lawsuit in the court of his own place of residence or the defendant's place of residence for the protection of personality rights.”

In the Turkish Code of Obligations, non-pecuniary damages are included in the compensation cases that differ in purpose from the cases protecting personal rights. Article 58 of the TCO contains a regulation on the claim for non-pecuniary compensation for violations of the right to personality under the heading damage to the right to personality. According to this;

“A person who has suffered damage to his right to personality may request that some money be paid under the name of non-pecuniary compensation in exchange for the non-pecuniary damage he has suffered.

Instead of paying this compensation, the judge may decide on another form of compensation or add it to this compensation; in particular, he may issue a decision condemning the attack and order the publication of this decision.”

If the cases protecting the right of personality are applied in particular to legal entities, the provisions of the Civil Code, as well as the regulation of Article 56 of the Turkish Commercial Code on unfair competition, will also find scope for application. There are also provisions in the Law on Intellectual and Artistic Works that include protective cases.

In addition to all these regulations, the Law No. 6284 on the Protection of the Family and the Prevention of Violence Against Women, which is in force especially against violence or threats of violence against family or close relatives, and attacks on personality, protects women, children, family members who have been subjected to violence or are at risk of violence. and regulates the procedures and principles regarding the measures to be taken in order to protect the victims of stalking and unilateral stalking and to prevent violence against them (Oğuzman et al., 2014, p. 220).

## **3. The Case for Stopping The Attack on The Right to Personality**

If the attack on the right to personality has begun and is continuing, the lawsuit that will be filed is a case for stopping. The purpose of the case is to end the ongoing attack by convicting the defendant and eliminating the existing attack (Helvacı ve Erlüle, 2016, p. 98; Zevkliler et al., 2000, p. 472).

### 3.1. Conditions for Filing a Stopping Case

#### 3.1.1. Having the Right to Personality

All natural and legal persons who have the right to personality may be injured by this protection provided by the Civil Code. Legal entities, by their nature, have less personal values than natural persons, so their use of this protection will differ depending on the situation (Helvacı, 2001, p. 87).

Personality right is a right granted to all real persons from birth to death. Since it is not required to have the capacity to act in order to be entitled, the fully incompetent and limited incompetent are also entitled.

Every person with legal capacity may request the protection of her personality right in case of attack. Since the fetus will have the right to be born alive, it will not be able to benefit from protective cases in the event of an attack on its personality right while it is still in the mother's womb; However, if the attack has ended before the birth, the right person will be able to file a lawsuit for material and moral compensation after the birth (Helvacı, 2016, p. 89). Since conditions have not been formed at this stage, prevention and stop cases will not be opened.

Small and limited persons who have the power to distinguish can open personal rights protection cases without the permission of their legal representatives. It is accepted that their legal representatives can file these cases only with the express or implied consent of the minor or the restricted person (Oğuzman et al., 2014, p. 222).

Since small and limited persons who do not have the power to distinguish cannot act on their own behalf, it is considered possible for their legal representatives to open these cases in order to protect them (Oğuzman et al., 2014, p. 223).

It has been recognized in doctrine and practice that legal entities, like natural persons, have the right to personality and will benefit from the protection provided by the Civil Code (Gönen, 2011, p. 141; Arpacı, 2000, p. 148). This protection covers private law and public law legal entities without any distinction.

Since legal entities do not have a material-organic structure, such as people, there can be no mention of the right of a person to their material bodily values, such as the integrity of their body, life and health. But with spiritual personal values such as honor, dignity, name, secret environment, personal rights over professional and economic personal values should be protected. The law has granted this right only to communities that have a legal entity. For this reason, they will be able to take action through their members in the event of an attack on communities that do not have a legal entity, in which their members are also affected (Helvacı, 2001, p. 91).

#### 3.1.2. Attack on the Right to Personality

An attack on the right to personality can be defined as a violation by one person in any way of another person's personal values within the scope of the right to personality (Gönen, 2011, p. 151). One of the conditions for filing an action to stop a protective action is that the personal right is subject to an ongoing attack. While protective cases are filed against the attack, compensation cases are filed against the consequences of the attack.

The stop case does not have a compensation function; it has a blocking purpose that functions to destroy the source of the attack on the right of personality (Kocayusufpaşaoğlu, 1980, p. 159).

#### 3.1.3 The Unlawfulness of the Attack Against Personal Rights

As stated in Article 24/2 of the Civil Code; Any attack on personal rights is unlawful unless it is justified by the consent of the person whose personal right is violated, for a superior private or public interest, or for the use of the authority given by the law.

Unlawfulness can be defined as the violation of the orders and prohibitions of the legal order in order to protect the legal value that has been attacked without just cause (Oğuzman et al., 2014, p. 14; Kocayusufpaşaoğlu et al., 2008, p. 30).

In order for a lawsuit to be filed against an ongoing and started attack on personal rights, the current attack must be unlawful.

Violation of all kinds of rules of law aimed at protecting the personality means violation of the law. But the presence of a reason that will remove the illegality saves the perpetrator's behavior from constituting an unlawful attack on the personality (Oğuzman et al., 2014, p. 195). Regarding this; In cases based on public authority or in the public interest, there is a decision of the 4th legal chamber of the Court of Cassation that the action will not constitute an attack on personal rights.

It is not necessary for the act to be committed with fault in order for an attack on the right to personality to be unlawful. Fault is an element to be sought in order to entitle the violation of personal rights to compensation (Oğuzman et al., 2010, p. 195).

The reasons to eliminate the unlawfulness in the text of the law; The consent of the person whose personal right is violated is regulated as a superior private benefit, superior public interest and the authority given by law. As a rule, the victim's consent to this during the intervention to the personal right will eliminate the unlawfulness. A clearly expressed consent for a particular intervention, given consciously and freely, and which does not constitute an immoral nature, is valid and may make the intervention lawful (Helvacı, 2016, p. 144). If the interference with the right to personality exceeds the limits of the consent shown, the interference becomes partially unlawful, and it is possible to file lawsuits protecting the right to personality for the unlawful part (Helvacı, 2001, p. 109).

The best interests that renders the interference with the right to personality lawful may belong to the victim, the perpetrator or a third person (Kılıçarslan, 2015, p. 52). In the event that the best interests that ensures compliance with the law belongs to the victim, medical interventions appear.

It is possible for an attack to be lawful due to the best interests of the perpetrator or a third person, if the attack falls under the scope of self-defense, distress, commercial boycott, and freedom to seek justice (Kılıçarslan, 2015, p. 53).

The existence of the best public interest will eliminate the illegality of the attack. In many cases where it is claimed that the reason for compliance with the law is the best public interest, and in similar situations, the reason for compliance with the law is actually public power (Helvacı, 2016, p. 149).

The existence of superior public interest is most evident in the activities of media organs. Media organs not only inform readers and viewers about events that are beneficial for the public, but also express their thoughts on events of general interest to society (Dural ve Öğüz, 2010, p. 130). While this is being done, the benefit of informing and informing the public should outweigh the benefit of protecting the personal rights of the person who has been interfered with (Özel, 2004, p. 42). In a decision of the supreme court of law general assembly for the determination of which interest is the best; he was sentenced to pay compensation for the fact that the patient, who had the footage of the doctor harassing him with a hidden camera recorded and broadcast on private television, caused a violation of his personal rights because he had the doctor broadcast as news on television instead of complaining to the necessary places<sup>1</sup>.

In case of incomplete reporting of real events or adding unrealistic elements, which will cause different ideas to arise in the audience or the reader, illegality will arise (Özel, 2004, p. 52).

Interventions by public officials and institutions in violation of personal rights shall not be deemed unlawful if they exercise their authority originating from public law (Oğuzman et al., 2010, p. 217). In case of overstepping the authority or misconduct during the exercise of the authority given by the law, it will no longer be possible to talk about compliance with the law (Helvacı, 2001, p. 118).

The right to petition, to obtain information and to apply to the ombudsman, as stipulated in Article 74 of the Constitution, can be given as examples of the jurisdictions granted by the law. The person who makes

<sup>1</sup> YHGK 07.03.2007 T., 2007/4-98 E., 2007/110 K. For decisions about which interest will be the best: YHGK 23.03.2005 T., 2005/4-197 E., 2005/189 K.; YGHK 01.12.2004 T., 2004/4-627 E., 2004/627 K.; Y. 4. HD. 27.06.2013 T., 2013/14933 E., 2013/12471 K.; Y. 4. HD. 12.02.2013 T., 2012/15170 E., 2013/2174 K.(Kazanıcı İçtihat Bilgi Bankası)

a complaint or report using these rights will not have unlawfully attacked the personality of the person who is the subject of the complaint or denunciation, since he/she uses the authority given by the law<sup>2</sup>.

### 3.1.4. Starting and Continuing the Attack

The existence of an attack directed at the rights of a person and still ongoing is necessary for the case to be brought to a halt. A stop lawsuit cannot be filed if the attack is over or has not started yet. The attack must be present at the time of the opening of the case (Akipek ve Akıntürk, 2002, p. 415).

Since the case for stopping can be opened as long as the attack starts and continues, if the attack has ended, but the effects continue, it will not be possible to open this case (Zevkliler et al., 2000, p. 472). For example, an insult to a person's face, verbal disclosure of secrets belonging to him to others, humiliating imitation of him, unfair criticism on a radio or television program are attack elephants that end in being committed, so they do not constitute an attack situation (Doğan, 2003, p. 393). In this case, if a lawsuit or conditions have been established to determine the illegality of the attack, a compensation lawsuit should be filed. The stopping case is aimed at drying up the cause and source of the attack on the right to personality (Serozan, 1977, p. 95). For this reason, it is aimed at the future, not the past.

In order for a case to be opened for stopping violations of the right to personality through the press, it is necessary to have a press release that continues or continues to have its effects (Yüzer, 2013, p. 157). In order for the right of personality to be attacked through radio and TV to be stopped in the event of an attack, the right of personality must be attacked due to serially ongoing programs and advertisements (Serdar, 1999, p. 258). To give an example of a continuous attack, a photo published in a book, magazine, brochure, poster, tape, window display or website is the source of the constant attack. Likewise, if a person's trade secrets are started to be disclosed in a series of articles published in a newspaper, there will be an ongoing attack (Doğan, 2003, p. 393). With the case of stopping, a person may request the collection of books, brochures, posters or magazines with statements that violate his honor and dignity, the deletion of an audio recording, the destruction of a photo in a display case, the cessation of publication on the Internet (Akipek ve Akıntürk, 2002, p. 417).

If a certain section of information about a person's private life is regularly shared in a magazine every week, this person will be able to file a lawsuit to stop publication against a section that has not yet been published in order to protect their right to personality (Yüzer, 2013, p. 157). In this case, a lawsuit cannot be filed for the published part. Because with the publication, the attack ended.

If the effect will continue after the termination of the attack, it may also be requested that the court decision be notified or published to third person in order to eliminate the effects of the attack along with the request to end the attack.

## 4. Law of Procedure in Stopping Case

### 4.1. Claimant and Defendant

Every natural or legal person whose right of personality has been attacked in the interception case has the title of claimant. Legal persons shall use their capacity to sue through their authorized bodies (Gönen, 2011, p. 215).

Swiss law recognizes that associations can bring personal rights-protective actions on behalf of their members. In this regard, the Federal Court has stated that a professional association can file a lawsuit with the request of stopping the attack if its statute permits the damage to the personal rights of its members and if the members have the right to file a lawsuit on their own behalf. However, it is not possible to file a lawsuit for pecuniary and non-pecuniary damages on behalf of the members (Gönen, 2011, p. 217).

<sup>2</sup> In a decision of the Court of Cassation, it has ruled that a petition submitted to the party chairman cannot be considered within the scope of exercising the right to complain since the party chairman is not a complaint authority, and since the allegations in the petition regarding the mayor's personal interests and corruption and irregularity have not been proven, there is an attack on the personality rights of the defendant. (Y. 4. HD., 30.11.1998 T. 1998/6386 E., 1998/9569 K., Kazancı İçtihat Bilgi Bankası)

The Court of Cassation accepts that it is possible for legal persons to demand non-pecuniary damages in case of an attack on the personal rights of real persons other than those specific to their personality<sup>3</sup>.

Since the right to open protective cases is one of the rights that are strictly attached to the person, the right to open these cases does not pass to the heirs. However, since it is accepted that the monetary elements included in the personality are passed to the heirs and it is accepted that they must put forward these demands, it is possible for the heirs to file a lawsuit for the material compensation claims arising from the attack on the personality right of the inheritor (Oğuzman et al., 2014, p. 222). The right to file a claim for immaterial compensation is inalienable unless it has been accepted by the counterparty in accordance with Article 25 / IV of the TCC, and will not be transferred to the heirs unless it has been put forward by the testator (Helvacı, 2016, p. 165).

It is possible for the person or persons who have been harmed through reflection due to the words spoken in the society to have the title of claimant. In a decision of the Court of Cassation, it has been accepted that people who have been harmed by reflection can file a lawsuit for non-pecuniary damage<sup>4</sup>.

In the event that the attack on the personal rights of natural and legal persons affects more than one person, it is possible for each person to file an independent lawsuit on her own behalf or to act together. In cases protecting the right to personality, the title of the defendant belongs to those who attack the right to personality.

<sup>3</sup> The case concerns the request for non-pecuniary damage based on the attack on personal values. In the statement of the defendant, which was published in the press release of 12.7.1999 and in the Büyük Kayseri Newspaper dated 14.7.1999, the attorney of the plaintiff claimed that the claimant cooperative was accused of persecuting the public and that his personal rights were attacked in this way, and requested non-pecuniary damages. The court decided to reject the case on the grounds that the claimant is a legal person and the legal person does not have moral personality rights, and the judgment was appealed by the claimant. The scope and conditions of the attack on personal rights are specified in article 24, 24/a of the TCC. The scope and nature of the sanction in case of attack is regulated in Article 49. Non-pecuniary damage stated in Article 49 of the Law is a decrease in the personal interests (rights) of the person. An attack on the personal rights of a legal person (such as name, honor, dignity and reputation); It is a fact that it will cause a decrease (moral damage) in these moral values. However, it is unthinkable for legal persons who do not have feelings to feel pain and suffering. However, this does not mean that their personality values are not attacked. Since the legal order recognizes legal persons as subjects of law and personal assets such as name, honor, honor and reputation are mentioned (Article 46 of the TCC.), the rejection of the case on the grounds that the legal person will not feel sorry is not correct. In any case, moral damage is not only in the presence of sadness, but in the event that one's personality values are attacked. For this reason, both the Civil Code and the Law of Obligations (art. 49) protect the personal rights of not only real persons, but also legal persons. The practice of judgment and the dominant view in scientific works are that legal persons can also request non-pecuniary damages in case of an attack on their personal rights, which are not specific to the personalities of real persons. Regardless of this aspect, the decision to reject the case with a written justification was contrary to the procedure and the law, and the decision had to be reversed. Y. 4. HD., 24.09.2001, 2001/4164 E., 2001/8421 K. (Kazancı İçtihat Bilgi Bankası).

<sup>4</sup> It is understood that during the port construction being carried out by the defendant company, the general road connecting the area where the claimant's house is located to the district center was frequently closed to transportation due to the damages caused by heavy construction equipment and the accumulation of various construction materials, or the passage became difficult because the road was severely damaged. Since this situation lasted for more than a year, the claimant was not able to use the road, and he requested non-pecuniary damages on the grounds that he had great difficulties due to the lack of another road suitable for transportation, that he had to live in prison in his home and that he had mental problems. As a rule, it cannot be accepted that closing the road used by a person for a certain period of time will harm his personality values. However, in the concrete case, without a just cause, the road used by the claimant was kept unusable for a much longer period than the tolerable time, and the claimant was compelled to use more difficult, long and inconvenient roads. The geographical and social environment in which people live must be capable of meeting their daily life needs with the least amount of problems. The place where the claimant's house is located consists of holiday and resting residences, and it is understood that the claimant preferred this place to live in a comfortable and clean environment away from distress and stress during his retirement. Considering this situation, leaving the road, which should be open to general use and which has no alternative, unused for much longer than it should be, creates an intolerable situation for the claimant. As a result, the claimant has been put in a lot of trouble and normal living conditions have been adversely affected. Thus, it should be accepted that the personality values of the claimant were harmed by limiting the normal daily life of the plaintiff. Moreover, due to the personal situation of the claimant, he is a person receiving medical treatment. Due to the current action, this situation has become more severe and has caused her to experience mental problems to the extent that she needs separate treatment. Even if the defendant has an obligation to use the road due to the construction activity, he must take measures in a way that does not hinder their use, taking into account the condition of the environment. The fact that the defendant has been indifferent to the extent of preventing the use of the road for more than a year without taking any care in this regard constitutes a serious fault. For all these reasons, since it is understood that the conditions for non-pecuniary compensation are fulfilled pursuant to Article 49 of the Code of Obligations, an appraisal of non-pecuniary damage is required. The fact that the request for non-pecuniary damage was rejected by the court in writing without focusing on this aspect necessitated reversal. Y. 4. HD. 12.11.2001 T., 2001/11091 E., 2001/10985 K. (Kazancı İçtihat Bilgi Bankası).

The title of the defendant belongs to the person or his heirs who have attacked the personality rights. The heirs are not obligatory but optional companions in these cases. Thus, the claimant can direct his case to the heir of his choice (Oğuzman et al., 2014, p. 223). It is accepted that the concept of "attackers" within the meaning of article 24 of the Turkish Civil Code should be interpreted broadly, and that a lawsuit can be filed against anyone who causes, allows or encourages the attacker to carry out this attack (Gönen, 2011, p. 220).

#### 4.2. Competent Court

The competent court in cases protecting the right to personality is regulated in Article 25/5 of the TCC. According to this; "The claimant may file a lawsuit in the court of her own domicile or the domicile of the defendant for the protection of her personality rights."

According to an opinion accepted in the doctrine, the regulation regarding the competent court is of a general nature and is valid for all cases listed in Article 25 of the TCC (Bulut, 2006, p. 217). There are also Court of Cassation decisions in this direction<sup>5</sup>. According to another view, according to the text of the article in which the competent court is regulated, what is meant by the expression "cases to be filed for the protection of personal rights" is prevention, suspension and determination cases, and in the case that compensation cases are filed together with these cases, MK. It is stated that the rule of authority in article 25 will be applied, otherwise the authority should be determined according to the Code of Civil Procedure (Oğuzman ve Öz, 2010, p. 240).

In practice, the Court of Cassation has decided that Article 25/5 of the TCC does not have the nature of a definitive rule of authority that eliminates the competent courts specified in the Code of Civil Procedure, and that the claimant has the right to choose in this regard<sup>6</sup>. Opposing view is stated that the legislator wants to introduce a definite authority rule with Article 25 of the MK in terms of lawsuits to be filed in case of an unlawful attack on personal rights by removing the suffix "too" in the old regulation (Helvacı, 2016, p. 166).

If the defendants are more than one, the victim can file a separate case for each or a single case against all of them. A single case against them all may be brought if the defendants' domiciles are in different

<sup>5</sup> The attorney of the claimant company claimed that the personal rights and commercial reputation of the client company were attacked by the defendants and requested non-pecuniary damages in the court of the settlement of the company. Since the legal order recognizes legal persons as subjects of law and they are endowed with personal assets such as name, honor, honor and reputation, it should be accepted that legal persons can also claim non-pecuniary damages. In any case, moral damage is a harm that occurs not only in the presence of sadness, but in the event that one's personality values are attacked. Written, verbal or visual statements that degrade the reputation of the legal entity in its environment, and publications stating that it does not have such or such qualifications should be considered as an infringement on honor and dignity from personal rights. In addition to the honor and dignity of the legal person, his social reputation and commercial reputation also benefit from the protection in Article 24 of the TCC. With the acceptance that the 25/last article of the TCC covers both the protection of personal rights and the lawsuits for pecuniary and non-pecuniary damages, non-pecuniary damages can be filed in the court of the residence of the plaintiff company due to the attack on the personal rights of legal persons. YHGK 01.02.2012 T, 2011/4-687 E, 2012/26 K (Kazancı İçtihat Bilgi Bankası).

<sup>6</sup> The case is related to the claim for compensation for wrongful act. The claimant requested non-pecuniary damages because of the attack on his personal rights in the statements made by the defendant and published in the newspaper H..., which was distributed nationwide. Since the defendant filed an objection to jurisdiction and defended its rejection because the Beyoğlu Civil Court of First Instance was not the residence of the claimant or the defendant and the case was filed in an unauthorized court, the defendant may file a lawsuit in the court of his own domicile or the defendant's domicile in order to protect the claimant's personality rights pursuant to Article 25/last of the Turkish Civil Code. Since their court is not a settlement court, they decided to reject the petition due to lack of jurisdiction. As a result of unfair action, in cases related to personal rights, the plaintiff may file his case at the defendant's residence in accordance with the general provisions, or in his own residence in accordance with the 25/last article of the Turkish Civil Code or in the court of the place where the wrongful act occurred pursuant to Article 21 of the Code of Civil Procedure. In other words, the optional right in this matter belongs to the plaintiff. The plaintiff requested non-pecuniary damages due to the attack on his personal rights in the publication of the newspaper distributed throughout the country and abroad. It is based on his statements in the newspaper H... and the newspaper distributed. The Beyoğlu Court, which is the place where the lawsuit is filed, is not the court of residence of the plaintiff and the defendant, but it is the court of the place where the distribution of the publication is made, in other words, the result of the wrongful act. The regulation in Article 21 also stipulates that such a lawsuit will be filed in the place where the wrongful act occurred. In this case, the plaintiff may also file a lawsuit in the place where the act occurred, according to the more specific article 21. For this reason, the rejection of the lawsuit petition due to lack of jurisdiction, without observing the aforementioned legal regulations, was contrary to the procedure and the law, necessitating reversal. Y. 4. HD., 15.04.2004 T., 2004/6312 E., 2004/7223 K. (Kazancı İçtihat Bilgi Bankası)



places, but only in the claimant's domicile or the place where the attack took place (Oğuzman ve Öz, 2010, p. 242).

If the claimants are more than one, they can each file a separate case or they can file a case together. If the claimants want to act together, a case can be filed in the court of the defendant's domicile, if this is not preferred, in the court of the domicile of one of the claimants or in the place where the attack took place (Helvacı, 2001, p. 169).

#### **4.3. Duration of Filing a Case**

The case of stopping personal rights from protective cases is a case that can be opened as long as the attack continues. For this reason, the statute of limitations or a period of limitation will not be in question for the case of suspension. If the conditions are met, the claimant can always file a case to stop the attack.

#### **4.4. Responsibility for Trial Fees and Expenses**

All the money spent by the parties on the hearing and conclusion of a case before the court is called a trial expense. Article 323 of the Civil Procedure Code specifies which costs are considered to be trial expenses. According to this; hearing, decision and ilam fees, litigation expenses and mailing the notification of, due to, files, paperwork, and miscellaneous expenses, temporary legal protection measures protest and, in turn, cease and desist, and expenses relating to the regulation of the power of attorney, discovery, expert witness fees and expenses paid to witnesses, documents received from the state office paid for tuition, taxes, fees, and miscellaneous expenses (attorneys' are not followed by that in the case where the parties belonging to the day they are ready casual, travel and accommodation expenses will appreciate the amount that correspond to judge Attorney court by myself relax, the daily, travel and accommodation expenses that will be appreciated for the party called to be resigned or sworn in, the power of attorney fee that will be appreciated in accordance with the law in cases followed by the proxy, other expenses incurred during the trial, the advance trial expense for the substitution of evidence are taken as trial expenses.

In order for the attorney's fee to be awarded, the parties in the case, especially the partial or complete winner of the case, must have followed the case through the attorney (Helvacı, 2001, p. 170).

According to Article 326 of the Code of Civil Procedure, it is decided that the costs of the trial will be taken from the side against which the judgment was made. If each of the two parties is partially justified in the case, the court will divide the costs of the proceedings according to the rightness ratio of the parties. If there are more than one of those convicted against them, the court may divide the costs of the trial between them, as well as decisively decide that they will be held accountable.

#### **4.5. Execution of the Decision**

In the case of stopping the attack on the right to personality, the judge will sentence the defendant to end the attack if he decides that the unlawful attack on the claimant's personality rights exists and continues.

If the defendant does not comply with the finalized suspension decision, it may be considered to apply the provisions regarding the execution of the judgment pursuant to article 30 of the Enforcement and Bankruptcy Law and to impose a prison sentence on the defendant in accordance with article 343 of the EBL (Oğuzman ve Öz, 2014, p. 226).

In addition, the person who does not stop the unlawful attack on the victim's personality by not complying with the finalized court decision will be deemed defective and will have to compensate the damage suffered by the claimant.

#### **Conclusion**

If there is an unlawful attack against any of the elements constituting the personality, a case for stopping the attack can be filed. The first and most important condition for filing this case is that the attack continues. If the attack has ended but its effects are still on the agenda, a case for determination of the illegality of the attack can be filed, not a case for stopping. If the conditions are met, compensation may also be claimed.

If the effects of the attack will continue after the end of the attack with the stop lawsuit, it may be requested to notify or publish the court decision to third parties in order to eliminate the effects of the attack, together with the request to stop the attack.

As long as the attack continues, a case may be filed to stop the attack. In this sense, there will be no statute of limitations for a stay case.

Any natural or legal person who has been subjected to an attack can file a case to stop the attack on the right to personality. In the case of stopping the attack on the right to personality, the judge will sentence the defendant to end the attack if he decides that the unlawful attack on the claimant's personality rights exists and continues.

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#### **Additional Statement/Contributing Authors**

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The author declares no conflict of interest.