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## **The Concept of Business Reputation of the Legal Entity**

*The general personal non-property rights are the part of rights, which, to a great extent, condition the social status and stability for the civil circulation of legal entities and offer the guarantee for the steadiness and social calm. The catalogue of the personal non-property rights (personal rights) encompasses a number of rights, the most significant of which was chosen and included in the general part of the Civil Code. Among the personal non-property rights, the object of private legal protection is deemed to be the business reputation of a person along with the dignity and honor acknowledged and defined by the Constitution. A legal entity as well as a natural person can build its business reputation. In the modern civil circulation under the conditions of fierce competition the improvement of means of legal defense of the trademarks as well as business reputation of the legal entity is becoming increasingly important. The protection of business reputation of the legal entity is a matter of practical and legal interest but a problematic issue as well. If considering either the earlier or present effective legislation offering no normative concept of the business reputation, it is of utmost importance to clarify the essence of business reputation based on the Judicial Practice and Legal science and this is what the present paper aims at.*

**Keywords:** Business Reputation, Professional Reputation, Intangible and Non-Property Benefits, Intangible Assests, Goodwill, Types of Market, Image

### **1. Introduction**

Under the conditions of the market economy, the issue concerning the protection of business reputation is attached the great significance due to the fact that it is related not only to the ethical scope but the income of the enterprise as well. According to its legal nature, a legal entity is the abstract concept which is legally strengthened by each specific rule of law<sup>1</sup>. From this point of view, a legal entity is the artificially organized formation. The individualization and identification of the legal entity in the civil circulation can be made through the attributes such as the trade name, trade mark and business reputation. The business reputation as well as the goodwill of the trademark are the means which create the convenient market conditions for the entrepreneurs, at the same time allow them to receive more income than their competitors through the price difference<sup>2</sup>. The business reputation is one of the conditions for the successful performance of the legal entity. The positive business reputation promotes attracting the new clientele for the legal entity, whereas the negative reputation may account for the failure of its unsuccessful performance. Defining the concept of a legal entity is a matter of greatest importance, as the issues related to its breaching or protection are impossible to be discussed without being aware of the notion of business reputation. According to the recognized standpoint, the business reputation is the intangible and non-property right. However, it has the dual legal nature like its name.

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<sup>1</sup> Chanturia L., General Part of Civil Law, Tbilisi, 2011, 217.

<sup>2</sup> Dzamukashvili D., Intellectual Rights Law, Tbilisi, 2012, 164.

The business reputation is the non-property asset of the legal entity, and at the same time it can be transferred and alienated. The business reputation can be expropriated together with the enterprise as a complex property. The business reputation is alienated together with the trade mark as well. Defining the essence and concept of business reputation will ensure the significant simplification and transparency of the mechanism of protecting the right conferred on the legal entity and the means of civil legal liability upon the violation of this right.

## 2. The Concept of Business Reputation of the Legal Entity

### 2.1. The Concept of Business Reputation in the Legal Science

Compared to the old legislation, the catalogue of the personal non-property rights as well as the forms of civil legal protection of the rights, which were recognized by the old legislation as well, have been expanded in the Civil Code of Georgia. The protection of the non-property benefits such as privacy, personal immunity and business reputation hold the fixed position in the Civil Code in contrast to the old legislation providing the defense for only honor and dignity<sup>3</sup>.

**The personal non-property rights are regulated by Article 18 of the Civil Code (Hereinafter in the text the Articles of Civil Code are referred without mentioning –Civil Code), pursuant to the second part of which the legal entity reserves the right to protect its own honor, dignity, privacy, personal immunity or business reputation from the violation through the Court under the rule established by law.** The non- property rights are also referred as personal rights<sup>4</sup>, which represent the right originated from that of the dignity, honor and the development of an individual, imposing the liability to each entity (among them even the state) to treat the personality with respect<sup>5</sup>.

Article 18 is based on the Constitution<sup>6</sup> and the European Convention of Human Rights.<sup>7</sup> In the French and German Law the civil legal protection of the personal non-property rights such as honor, dignity, business reputation, self- image, etc. were established as a result of the judicial practice and became the natural institutes of the Civil Law despite the fact that they had not been strengthened in Civil Codes. This experience was envisaged by the Georgian Civil Code and the personal rights were prescribed in its general part<sup>8</sup>

Most of the categories of non-property rights are that of the natural person. In accord with the established viewpoints, the legal person is equalized to a natural person in terms of all the rights which

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<sup>3</sup> *Ninidze T.*, The Civil Code of Georgia, Comment, Book 1, Tbilisi, 1999, Article 18, 60.

<sup>4</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private law, The Publishing House of European and Comparative Law Institute, Tbilisi, 2009, 132.

<sup>5</sup> *Bichia M.*, The Scope of Private life Concept According to Georgian Legislation and Judicial Practice, Journal of Law, 1/2011,78.

<sup>6</sup> The Constitution of Georgia, Articles 17- 20 and 24, 1995, <www.matsne.gov.ge>, [16.02.2018].

<sup>7</sup> *Jorbenadze S.*, The Commentary to the Civil Code of Georgia, Book 1, Tbilisi, Article 18, 2017.

<sup>8</sup> *Chanturia L.*, The General Part of Civil Code of Georgia, Tbilisi, 2011, 74.

are not qualitatively related to a human. The legal entity may be vested with the part of personal rights only in the modified form.<sup>9</sup>

**Pursuant to the 5<sup>th</sup> part of Article 27, the rules envisaged by Article 18 of this Code are applied in case of the violation of business reputation of a legal entity.** The essence of non-property rights of a legal entity follows primarily from this article, according to which such right is considered to be the business reputation<sup>10</sup>.

The concept of business reputation of the legal entity is normatively stipulated neither in the Georgian nor Foreign legislation. On the one hand, Article 18 refers to the business reputation alongside the intangible benefits of natural and legal persons such as the name, honor and dignity, privacy and immunity of the private life, private image; on the other hand, the mentioned Article provides the unified rule for the defense of honor, dignity and business reputation.

From the etymological point of view, the French word “reputation” is derived from the Latin word “reputatio”, where the latter means –thought, realization.<sup>11</sup> In the French language and later, from the international standpoint, the established meaning of this word was defined as “the mutual opinion about somebody or something i.e. the public evaluation.” Hence, upon its lexical significance, *reputation* is the common opinion generally built up about somebody or something, the evaluation of a certain human according to the public opinion. This evaluation implies the positive as well as negative viewpoints and may refer to a human, a thing or some other phenomenon, an individual or a team. At the same time, in lexical terms, *reputation* is understood as the positive or negative evaluation for any quality of an individual, team, object or phenomenon.

Due to the fact that according to its lexical sense the word *reputation* does not differ from the word *honor* at all, the collocation “business reputation” is applied in the entrepreneurial practice and legal literature in order to attach the specific connotation to “*reputation*”

In the legal literature, especially in the post-soviet countries, the authors identified the sense of the collocation “business reputation” with the public opinion about the evaluation of business - related features. This is the meaning by which the mentioned term is defined in the Georgian legal literature as well. According to the primary commentaries on the Civil Code of Georgia the business reputation implies the public evaluation of the person’s professional or some other peculiarities related to business, which is the basis of the attitude of the society towards a certain natural or legal person<sup>12</sup>. “The business reputation is the public evaluation of the professional and business features.” – reads the guidebook, the author of which is P. Moniava<sup>13</sup>

The same definitions are met in the Russian literature. According to Bulovich, “the business reputation represents the evaluation of the business (manufactural, professional) superiorities<sup>14</sup>”

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<sup>9</sup> Kereselidze D., *The Most General Systematic Concepts of Private Law*, Tbilisi, 2009, 166.

<sup>10</sup> See the Decision of Supreme Court of Georgia, September 30, 2015, №AS -1052-1007-2014.

<sup>11</sup> Chabashvili M., *Dictionary of Foreign Words*, Tbilisi, 2000, 50.

<sup>12</sup> Ninidze T., *The Commentary to Civil Code*, Book 1, Tbilisi, 1999, 61.

<sup>13</sup> Moniava P., *The Introduction to General Part of Georgian Civil Code*, Tbilisi, 2013, 344.

<sup>14</sup> Zikratski C., *Concepts of Business Reputation*, <<http://www.ziz.by/publications/23-p6>>, [01.02.2018] (In Russian).

From Zingilevski's point of view, the business reputation means the evaluation in the sphere of business circulation<sup>15</sup>. And Anisimov defines the mentioned term as the established opinion in the business circulation including the manufacturing field<sup>16</sup>. Rozhkova considers the business reputation to be the established public opinion about the natural or legal entity based on the professional activities and the quality of the work performance.<sup>17</sup> According to Frolovski, the business reputation of the organization is the opinion of the third parties established on the professional (business) competency of the legal entity<sup>18</sup>. In Maleina's view, the business reputation is the combination of the properties and evaluations, through which the entity possessing them is associated with the counteragents, clients, consumers, colleagues, fans (in case of show business), electors and thus personifying the professionals engaged in the specific field of the activities.<sup>19</sup> Based on the English-American Law Erdelevski<sup>20</sup> deems it expedient to use the general term for denoting the different types of reputation and considers the Court being able to identify the specific type of reputation according to the subject applying thereto. But Ulyanova holds the opinion that the mentioned approach could not be justified<sup>21</sup>, because the nature of business reputation of the legal and natural person are diverse and the divergence between them should be stipulated at the legislative level, accordingly, it should not depend on the judgment of the Court.

The professional reputation of the natural person, who does not represent the subject of the entrepreneurial activity differs from the business reputation of the legal entity. The latter is characterized by the business activity and accordingly, has built the business reputation. The term "business reputation" is expedient to be applied to the legal entities (among them the non-commercial legal entities implementing the entrepreneurial activities) as well as the natural persons - individual entrepreneurs. The other natural persons are more reasonable to be referred to by the term "kind name", as the mentioned term, in its broad sense, completely includes the relationships related to using and protecting the professional habits and skills of the physical persons in the society<sup>22</sup>. According to Rozhkova, the identification of the legal entity with the natural person, who are not in business, has not been substantiated. At the same time, the notion "kind name" cannot adequately show the insight about the professional skills of the natural person existing in the society. The "kind name" comprises wider circle of relationships, e.g. the image of a person in the sphere of personal and friendly relations. The images in

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<sup>15</sup> *Zikratski C.*, Concepts of Business Reputation, <<http://www.ziz.by/publications/23-p6>>, [01.02.2018] (In Russian).

<sup>16</sup> Ibid.

<sup>17</sup> *Rozhkova M.A.*, Judicial Practice on the Issues of Protection of Business Reputation of Legal Entities and Entrepreneurs, Appendix to Journal "Economy and Law", 2010, №2, 3-80.2 (In Russian).

<sup>18</sup> *Frolovski N.G.*, Protection of Business Reputation of Legal entities// Laws of Russia: Experience, Analysis, Practice, 2012, № 4, URL:<http://lexandbusiness.ru/view-article.php?id=493>, [20.03.2015] (In Russian).

<sup>19</sup> Ibid.

<sup>20</sup> *Erdelevski A.M.*, Compensation of Moral Harm: Analysis and Review of Legislation and Judicial Practice, 3<sup>rd</sup> rev. ed., Walters Kluwer, 2004 (In Russian).

<sup>21</sup> *Ulyanova O.A.*, Business Reputation of Legal Entities in Russian Civil Code: Concept and Distinguishing Peculiarities, The Young Scientist, 2015, №9, 891-896, 2, (In Russian) <<http://moluch.ru/archive/89-17830/>>, [19.12.2017].

<sup>22</sup> *Rozhkova M.A.*, Judicial Practice on the Issues of Protection of Business Reputation of Legal Entities and Entrepreneurs, Appendix to Journal "Economy and Law", 2010, №2, 5-6 (In Russian).

the professional activities may be called the professional reputation. **The business reputation of the legal entity is determined as its intangible assets, which is based on the image of the entrepreneurial subject and is formed in the process of entrepreneurial business.** According to Kudrjavtseva and Olefirenko, **the business reputation of the legal entity is the dynamic category established in the process of performance of the legal entity.** The authors mentioned above consider the business features to be the preconditions for the successful performance of the organization, among which the following is distinguished: the quality of the manufactured products or provided service, the reliability of the partner in the contractual relationship, the payment capability and good faith<sup>23</sup>. In Ulyanova's view, **only the subject of the entrepreneurial performance may be endowed with the business reputation, as the business reputation is originated and exists only in the field of entrepreneurial activities.** Respectively, if a non-commercial legal entity implements the entrepreneurial activities pertaining to his goals, it will build the business reputation in the process of its performance<sup>24</sup>. It is expedient to name the images originated in the process of basic activities of the non-commercial legal entity as the professional reputation. The business reputation may be acquired by the state, governmental and non-governmental authorities<sup>25</sup>.

## **2.2 The Concept of Business Reputation in the Judicial Practice**

As prescribed by the Case Law of European Court, “pursuant to the general principles the **commercial and non-commercial organizations** are entitled to file a defamation suit in order to defend their **corporate reputation**, which could have been inflicted the harm as a result of the defamatory announcements”<sup>26</sup>

It has been already mentioned that the concept of the business reputation of the legal entity does not exist in the legislation, but it has been interpreted by the judicial practice. In one of the cases<sup>27</sup> the Supreme Court of Georgia noted that “ **the business reputation implies the public evaluation of the professional or other business peculiarities. The profession is a job, activity, specialty which requires the certain preparation and through which a human earns his living, but the business features, which are meant by the business reputation, are endowed to those participating in the economic ( commercial) activities. Hence, the violation of the business reputation, which is envisaged by Article 18, should apply to the business operations implemented (or to be**

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<sup>23</sup> *Kudrjavceva A. V., Olefirenko S. P.*, Proof of Moral Harm in Criminal Proceedings, Yurlitinform, M., 2011, 126-127 (In Russian).

<sup>24</sup> Civil Code of Russian Federation (hereinafter: CCRF) Art., 2. Article 1, 3<sup>rd</sup> par. (In Russian). Civil Code of Russian Federation (part one) of 30.11.1994, №51 – F3, <<http://stgrf.ru/>>, [17.12.2017] (In Russian).

<sup>25</sup> *Ulyanova O.A.*, Business Reputation of legal Entities in Russian Civil Code: Concept and Distinguishing Peculiarities, Young Scientist, 2015, №9, 891-896, <<http://moluch.ru/archive/89/17830/>>, [19.12.2017] (In Russian).

<sup>26</sup> *Steel and Morris v. the United Kingdom* no. 6841/01, 1732, <<http://hudoc.echr.coe.int/>>.

<sup>27</sup> See The Decision of Supreme Court of Georgia, July 18, 2001, № 3k/ 376- 01.

**implemented) by the entity. This kind of violation may account for the tangible damage to the entity as well, e. g. miss out the profit, lose the client, etc.”**

Pertaining to the viewpoint developed in the aforesaid interpretation offered by the Supreme Court of Georgia, the business reputation implies the business features revealed in the economic (commercial) activities, that does not exclude the existence of other social properties of the legal entities, among them commercial as well as non-commercial.

In another case<sup>28</sup> the Supreme Court of Georgia pointed out that the abuse of the business reputation is evident even when the prevalent information impacts and contradicts the proper “market image” selected by the entity, i.e. the commercial image, which the legal entity would like to establish in the society, in addition, the widespread information conditions its failure in the business relationships with the third parties.

The freedom of expression is acknowledged by Article 10 of Convention for the protection of Human Rights and Fundamental Freedoms<sup>29</sup>. The precedents of the European Court of Human Rights confirm that not only the natural but the legal entities as well are acknowledged as the subject of this legal norm. Pursuant to the clarification of the European Court, Article 10 is applicable to “all”, the physical as well as legal entities<sup>30</sup>. In one of the cases related to the dispute over the freedom of expression between the natural person and legal entity<sup>31</sup> the European Court did not share the claim of the contending party that the powerful multinational company, such as MacDonald, should have been principally deprived of the right to self-defense against the defamatory accusations or the defendants should not have been vested with the obligation to prove the truth of the statements having been made. The truth of the matter is that the powerful companies consciously and properly put themselves in such a situation when their activities are open for the comprehensive critical discussions..., the scopes of admissible criticism is far wider with respect to such companies<sup>32</sup> However, alongside the social interest in the open debates on the business practice there also exists the competitive interest in the defense of commercial success and viability not only pertaining to the interests of shareholders and employees of these companies, but from the viewpoint of the broad economic benefits as well. Accordingly, a state reserves the right to freedom of evaluation in compliance with the internal Legislation while providing the means, which allows the company to dispute the truth of statements jeopardizing its reputation and thus reduce the damage.<sup>33</sup> Accordingly, it is prescribed by the Case Law of the European Court that the relevant party defending the reputation from the defamation may be the legal entities as well, however,

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<sup>28</sup> See The Decision of Supreme Court of Georgia, September 30, 2015, № AS -1052-1007-2014.

<sup>29</sup> Everybody has right to freedom of expression, This right comprises the freedom of a human to have his/her own opinion, accept or distribute information or ideas without the interference of public power and despite the state borders. This article cannot hinder the state to license the Radio, TV communication and cinematographic production. The Convention for protection of Human Rights and Fundamental Freedoms, Rome, November 4, Art., 10, 1950, <[http://www.supremecourt.ge/files/upload\\_file/pdf/aqtebi5](http://www.supremecourt.ge/files/upload_file/pdf/aqtebi5)>, [9.02.2018].

<sup>30</sup> See *Autronic AG v Switzerland*, 1990, par. 47, <<http://hudoc.echr.coe.int>>.

<sup>31</sup> *Steel and Morris v. the United Kingdom* no. 68416/01, & 32, <<http://hudoc.echr.coe.int>>.

<sup>32</sup> *Fayed v. the United Kingdom*, 1994.

<sup>33</sup> *Markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989.



the contracting states reserve the right to freedom of regulating the issue related to the protection of reputation of the legal subject by the internal legislation, in case the damage resulted from defamation is in dispute<sup>34</sup>.

In one of the above mentioned precedent cases<sup>35</sup> where the plaintiff – the multinational corporation defended itself against the defamatory accusations related to the subjects of social care, such as reprehensible and immoral economic activities or employment practice, cutting down forests, the exploitation of children and their parents through the aggressive promotions and selling the junk food, the European Court noted that the plaintiff –the corporation had reasonable grounds to file suit and be granted the compensation for inflicting the damage thereto, in case of being able to prove that it had built the **reputation** on the basis of the relevant jurisdiction and the defamatory publications could have inflicted the damage to its **prestige**. **The mentioned above states that the Court deemed the prestige related to the economic activities of the corporation to be its reputation.**

In one of the cases Tbilisi Appellate Court explained, that the business reputation the entity is the opinion molded about the business peculiarities and the skills of a specific entity in the sphere of business circulation. Such an opinion is shaped in the public, society<sup>36</sup> and may condition the future success as well as the failure<sup>37</sup>. Thus, the business reputation of an entity may be regarded as its honor and dignity<sup>38</sup>, as the business reputation is equalized to the competency of a person of the particular profession<sup>39</sup>.

Hence, in the judicial practice and literature the concept of business reputation implies the established public opinion on the business, entrepreneurial and commercial features of a subject, as a participant in the economic circulation and in a manner of speaking, such understanding of the concept is unequivocal. In addition, such essence of the concept distinguishes it from the notions of honor and dignity, which first of all, comprise the moral traits of the person as a participant in the social relations<sup>40</sup>.

In the legal literature and judicial practice the tendency of public evaluation of the business reputation, as the particulars of any economic entity, is being established only according to the positive signs. It is true, that in the Georgian legal literature the positive assessment of business features, as essential elements, expressed in the above mentioned explanation is not emphasized, but the general essence of the aforesaid interpretation made by the Supreme Court of Georgia explicitly shows that the business reputation means the values, the violation of which inflicts damage to the economic entity<sup>41</sup>. However, the diverse viewpoints related to the public opinion on the positive evaluation, as an essential element of the concept of business reputation, exist even in the legal literature of the post-soviet

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<sup>34</sup> See the Decision of Supreme Court of Georgia, September 30, 2015, №AS – 1052 -1007 2014.

<sup>35</sup> Steel and Morris v. the United Kingdom no. 68416/01, &32, <<http://hudoc.echr.coe.int>>.

<sup>36</sup> The Judgment of Tbilisi Appeal Court, June 25, 2013, №2 b/696-13.

<sup>37</sup> *Dzlierishvili Z., Svanadze G., Tsertsvadze G., Tsertsvadze L., Janashia L., Robakidze I.*, Contract Law, Tbilisi, 2014, 669.

<sup>38</sup> See the Judgment of AC, December 1, 2005, № AS-448-775-05.

<sup>39</sup> See the Judgment of AC, November 15, 2013, № AS – 378 -359 – 2013.

<sup>40</sup> *Zikratski S.*, Concepts of Business Reputation, 3, <<http://www.ziz.by/publications/23-p6>>, [01.02.2018] (In Russian).

<sup>41</sup> See The Decision of Supreme Court of Georgia of July 18, 2001, № 3 k/376 – 01.

countries: e.g. according to Anisimova, the business reputation is the public opinion about the qualities (positive and negative) of a person<sup>42</sup>. And Zingilevski considers that first of all, the business reputation may imply the positive evaluation of an conscientious entrepreneur made by other participants of the property circulation<sup>43</sup>. Pursuant to the word-by word interpretation of Article 18 the business reputation represents the benefits, the right to protection of which is conferred on the entities. As mentioned above, the latter includes the person, as a generic private-legal concept, the essence of which implies the physical and legal entities as well.

### 3. The Business Reputation and Other Non-Property, Intangible Benefits

The business reputation is referred to alongside such intangible benefits that have assumed the pure non-property (honor and dignity, privacy, personal immunity), as well as non-property and property values (e.g. the name of a person)

Despite the fact that the general rule of the protection of honor, dignity as well as business reputation is prescribed by the Civil Code of Georgia, the mentioned benefits are reviewed as different from each other phenomenon.

Premised on the above-mentioned the question arises- what are the signs distinguishing the business reputation, honor and dignity from each other, which are considered to be the benefits protected by law?

The business reputation is the specific case of the general term “reputation”, running the concept of honor the closest. The latter, on its part, is defined as the public opinion on the positive qualities of a human. However, the distinctive interpretations on this issue also exist in the Georgian legal literature. In particular, P. Moniava thinks, that the concept of business reputation, with respect to the legal entities, includes the notion of honor and dignity as well<sup>44</sup>. The author confirms his standpoint by denoting the 5<sup>th</sup> part of Article 27, which reads, that Article 18 shall be applied in case of the violation of reputation of the legal entity. Following from the aforesaid, according to the author, the right to protection of business reputation envisaged by Article 18 is vested only in the scope of the capacity for rights of the legal entities, and the essence of the capacity for rights of natural persons comprises the rights to honor and dignity as well as business reputation<sup>45</sup>. We think, that the author’s interpretation is not ensued from the legal essence of Articles 18 and 27 due to the following circumstances: first of all, Article 18 refers to honor, dignity and business reputation, as the notions conceptually independent from each other and the diverse objects protected by the truth, that is expressed by the different from each other terms. In addition, Article 27 stipulates the rights to protection of two personal non-property benefits- the name and business reputation of one type of legal person of private law –the non-commercial legal entity. At the same time, the Article indicates the rule divergent from that of envisaged by Article 17 concerning

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<sup>42</sup> Zikratski S., Concepts of Business Reputation, 3, <<http://www.ziz.by/publications/23-p6>>, [01.02.2018] (In Russian).

<sup>43</sup> Ibid, 2.

<sup>44</sup> Moniava P., The Introduction to General Part of Georgian Civil Code, Tbilisi, 2013, 344.

<sup>45</sup> Ibid, 344.

the protection of a name. The norm of reference pertaining to the protection of business reputation is prescribed by the 5<sup>th</sup> paragraph of Article 27, in accord with which the rules envisaged by Article 18 are applied in case of violation of business reputation of the legal entity.<sup>46</sup> Following from the aforesaid, in case of violation of one intangible benefit, in this intense - business reputation, the rules protecting another non-property, intangible benefits (honor, dignity, name, privacy) are applied. To put it differently, the rules envisaged by the law, which directly regulate the relationships established as a result of the violation of other benefits, are exercised related to the relationships having been formed as a consequence of the infringement of business reputation. The right to banning the violation of business reputation of the person, to be more precise, the right to neutralizing of the accompanying activities, which were caused by such breaches, as well as the demand of the compensation for the harm inflicted thereto is prescribed by Article 27.5<sup>47</sup>.

In accordance with the interpretation established in the science of ethics the honor of a person implies the public evaluation of moral or such other qualities of an individual. The honor is the objective evaluation of a person determining the public attitude towards the person. The protection of the honor means the right of the human not to be presented to the society in negative terms. The most significant component of abuse of the right to personal respect is the “injustice” The person should objectively deserve such evaluation, that means that the opposite reality must not be confirmed<sup>48/49</sup>.

The dignity implies the person’s self- assessment of his own moral or other qualities, capability, honorable fulfilment of his duty to the society and his social significance. At the same time, this self-assessment is premised upon the criteria of evaluation of the moral or such other qualities acknowledged by the society. The honor as well as dignity should be based on the facts pertaining to the reality<sup>50</sup>.

On this basis, the person’s rights may also be applicable to legal entities unless it contradicts the essence of the specific right, in particular, unless the relevant right follows directly from the personality. For example, the dignity is the inseparable category from the human. A person has the dignity exactly due to being a human. In addition, except for the human, nothing, even the legal entity, can be endowed with dignity<sup>51</sup>.

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<sup>46</sup> In terms of legal technique, the 5<sup>th</sup> part of Article 27 became the target of criticism. First of all, the essence of the mentioned norm is not expedient to the title of Article 29 of CC. (the title of non-entrepreneurial(non-commercial legal entity) Secondly, it generally stipulates one of the rights of legal entity, whereas the Article, including it as the part, represents the special norm referring to only one type of the legal entity – non-commercial entity; Hence, the place of the norm envisaged by the 5<sup>th</sup> part of Article 27 is not correctly stipulated in the text of Code, as it contains nothing new in comparison with the content of Article 18.

<sup>47</sup> *Burduli I.*, Commentary to Civil Code, Book 1, Tbilisi, 2017, Art. 27, 211.

<sup>48</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private law, Tbilisi, 2009, 146.

<sup>49</sup> The Decision of Supreme Court of Georgia of July 18, 2001 № 3k/376 – 01 is worth noting in terms of the demarcation of protection of business reputation from other personal rights.

<sup>50</sup> *Ninidze T.*, Commentary to CC, Book 1, Tbilisi, 1999, Art. 18, 60.

<sup>51</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private law, Tbilisi, 2009,132.

The different approach has been established in respect of the honor. For example, the Federal Court of Germany recognized the honor of legal entity and, accordingly, deemed its legal protection to be admissible<sup>52</sup>.

Importantly, in the German Legal Literature the general concept representing the public opinion about the evaluation of the legal entity is considered to be the honor of the legal person. According to Doctor Herbert Lessman's interpretation, the honor of the legal entity exists in its social significance that was gained by its members from their unified introduction into the environment and the performance of legal and moral responsibilities assigned to them<sup>53</sup>. From the author's point of view, the legal entities have capability of the moral as well as the specific professional and entrepreneurial honor. The social significance of the legal entities are grounded exactly in their economic authority<sup>54</sup>. Hence, in contrast to the opinions voiced in the Georgian Legal Literature the German author considers that the legal concept of Honor is the general concept, the essence of which encompass the moral as well as business peculiarities<sup>55</sup>.

As it was mentioned, some of the rights are conferred on the legal entities only in the modified form. In particular, the protection of honor and social "image" of the natural person is related to the personality of an individual as separate. **But in case of the legal entity the protection of honor or social image of the individuals united therein is made in combination, i.e. the defense of all of them in homogeneity and not protecting the separate parts or independently from each other**<sup>56</sup>.

In one of the cases<sup>57</sup> the Supreme Court of Georgia, based on its practice regarded the judgment of Appellate Court on the violation of honor of the legal entity to be unsubstantiated<sup>58</sup>. Concerning this case the Grand (Cassation) Chamber made the following interpretation: "The legal entity does not possess the benefits, such as personal immunity, privacy as well as the right to demand the compensation for the moral damage related to the moral emotions protected by Article 18. According to the Grand (Cassation) Chamber the moral harm cannot be inflicted to the legal entity as the essence of moral damage implies the **violation of the legally protected non-pecuniary interests having no property equivalent** (spiritual or physical pain, emotion, etc.) Accordingly, the demand of the legal entity on the compensation for moral damage is legally groundless"

Most of the categories of the non-property rights are conferred on the physical person. The content of Article 27 corresponds to the legal nature of the legal entity which cannot experience the physical or spiritual sufferings<sup>59</sup>, for instance, while discussing the issue about the dignity<sup>60</sup>". In case of the abuse of

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<sup>52</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private Law, Tbilisi, 2009, 132.

<sup>53</sup> Dr. Herbert Lessman, *Persönlichkeitsschutz juristischer Personen*, Münsteri.Westf. 274, <<http://www.-jstor.org/discover/10.2307/40994518?uid=3738048&uid.=2&uid=70&uid=4&sid=21103284645633>>.

<sup>54</sup> *Ibid.*, 274.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, 166. (Regarding the protection of honor of legal entity, see BGH, NJW 1974, 1762 and BGH, NJW 1975, 1882, 1883).

<sup>57</sup> The Decision of Supreme Court of Georgia, September 30, 2015, № AS – 1052 – 1007 – 2014.

<sup>58</sup> The Decision of Supreme Court of Georgia, December 21, 2001, № 3k/924 – 01.

<sup>59</sup> *Chikvashvili Sh.*, Compensation of Moral Damage for Violation of Non-property Rights of the Legal Entity, Journal "Law", № 1 -2/2004, 42-43.

non-property rights of the legal entity, there must exist the fact of violating the business reputation that hinders the latter from implementing its activities<sup>61</sup> on the grounds, that the prevalent information contradicts the “market image” and commercial opinion of the legal entity.<sup>62</sup> At the same time, in the specific case the addressee of the announcement, e.g. a legal entity or its director, etc. must be clearly determined.<sup>63</sup>

#### **4. The Business Reputation- the Object of Private Law or the Object Protected by Law**

In order to reach the goals of the research it is interesting to review what is the essence of the legal impact on business reputation, as an object of the Private Law: is it the object of right or the object to be protected by law? To put it differently, does the business reputation represent the object of the civil legal regulation or the object to be protected by Civil Law?

The business reputation of the legal entity is the object of the Private Law. The question arises referring to the category of the objects of Private Law the business reputation belongs to - tangible or intangible, the benefits of property or non-property values.

The statute related to the business reputation as being the public evaluation for performance of the entity, i.e. the public opinion, which does not exist in any material form and belongs to the category of the ideal phenomenon, does not raise any doubt in the legal literature. The opinions diverge on the issues whether the business reputation is property or non-property benefits, or none of such values are assumed thereto.

The object of the relationships of Private Law represents the non-property (intangible) alongside the property benefits. The object of the relationships of the Private Law can be tangible or intangible benefits possessing the property or non-property values, which is removed from the circulation under the established rule<sup>64</sup>. The law differentiates the private non-property from property rights, first of all, according to its circulation capability. In compliance with the general rule, the indicator of the intangible benefits is the absence of economic essence and impossibility to be expressed by the monetary units as well as the constant contact to a person, due to which they are inadmissible to be transferred and expropriated<sup>65</sup>. It is true, that like the property, non-property right may represent the object of the Private Law, however, in contrast to property rights, it is inadmissible to alienate the private non-property rights or transform them into other type of (Contract Law) object<sup>66</sup>. This is the essence of their absolute nature. The mentioned classification follows from the property and intangible nature of the right. Particularly,

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<sup>60</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private Law, Tbilisi, 2009, 132.

<sup>61</sup> The Judgment of Tbilisi Appeal Court, June 25, 2013, № 2B/696-13.

<sup>62</sup> The Decision of Supreme Court of Georgia, September 30 2015, № AS – 1052 – 1007 – 2014.

<sup>63</sup> The Judgment of Tbilisi Appeal Court, June 25, 2013, № 2B/696-13.

<sup>64</sup> Civil Code of Georgia, Tbilisi, 1997, Art. 7, <[www.matsne.gov.ge](http://www.matsne.gov.ge)> [05.02.2018].

<sup>65</sup> *Ulyanova O.A.*, Business Reputation of Legal Entities in Russian Civil Code: Concept and Distinguishing Peculiarities, The Young Scientist, 2015, № 9, 891 -896, <<http://moluch.ru/archive/89/17830>>, [19.12.2017] (In Russian).

<sup>66</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private Law, Tbilisi, 2009, 133.

the intangible benefits can be alienated in some of the cases, if it possesses the property nature, that is excluded in case of the non-property right<sup>67</sup>

According to the viewpoint existing in the literature, despite the fact that the definition of Article 7 refers to the “benefits of non-private values, which could have been easily understood as the non-property private rights as well, they are hindered from being considered as “objects” due to their inability to circulate, which is the significant indicator of the object. **The private non-property rights are removed from the circulation and it is has been doubted to deem them as objects.** The honor, dignity, business reputation, private image and similar to them non-property benefits represent the objects of civil legal protection, but not the objects of the civil circulation<sup>68</sup>.

### 5. The Dual Legal Nature of the Business Reputation

The general opinion held in the legal literature states that some of the intangible benefits are granted the non-property as well as property values.

According to L. Chanturia the right to a name is considered to be of dual nature. From the author’s point of view, “considering the right to a name as the personal non-property right must not hinder its recognition as the intangible property right either, especially when the name is applied in the commercial relations<sup>69</sup>”

In the commercial relationships there exist occurrences when the name of a person is possible to be transferred, i.e. it can be transferred to another person. **In this case the civil name is transformed into the trade (commercial) name, the part of the property belonging to the enterprise and it can be considered as an intangible property right<sup>70</sup>**

In our opinion, the business reputation of the legal entity, as an intangible right (benefit) is also of dual nature. Sometimes it possesses the capability to be circulated like the name, in particular, its alienation together with the legal entity is possible.

The business reputation cannot be independently, alone transferred to the third party like a name. As it is designated in the legal literature, the German judicial practice introduced the rule, pursuant to which “the right to a name and the similar thereto rights cannot be independently transferred to other persons according to the results of the Law of Justice<sup>71</sup>”.

According to the reverse conclusion inferred from the aforesaid, the transfer of the name and similar thereto rights ( other personal non-property rights, among them the business reputation) is possible due to its property essence.

Premised on the above mentioned interpretation of Supreme Court of Georgia, the property values may reflect only the damage which can be the result of the violation of the business reputation<sup>72</sup>. The

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<sup>67</sup> *Kereselidze D.*, The Most General Systematic Concepts of Private Law, Tbilisi, 2009, 135.

<sup>68</sup> *Chanturia L.*, General Part of civil Code of Georgia, Tbilisi, 2011, 139.

<sup>69</sup> *Chanturia L.*, Introduction to General Part of Civil Code of Georgia, Tbilisi, 1997, 168.

<sup>70</sup> *Chanturia L.*, General Part of Civil Code of Georgia, Tbilisi, 2011, 201.

<sup>71</sup> *Ibid*, 201.

<sup>72</sup> See the Decision of Supreme Court of Georgia of July 18, 2001, № 3k/376 – 01.

above mentioned decision does not contain the indication regarding the property value of the business reputation. In the legal literature including the legal science of the post-soviet countries there is expressed the opinion in accord with which the denotation to the intangible nature of the non-property rights should not be understood as if they do not possess the economic value. The business reputation represents the discrepancy between the purchase value of the enterprise and the balancing values of its assets and obligations<sup>73</sup>.

The business reputation of the legal entity can be alienated<sup>74/75</sup>. The legal entity may sign the agreements in the scopes of both property and non-property rights. e.g. the business reputation may be alienated to the third person on the basis of the purchase agreement<sup>76</sup>. Apart from the aforesaid, the business reputation can be contributed to the corporation as a partnership share. Accordingly, alongside the other property of the corporation the business reputation represents the community property belonging to its members<sup>77</sup>. A member of the corporation, contributing its business reputation as the share, implemented its alienation in favor of the third party (corporation) and from then onward, its business reputation became the intangible asset of the corporation. The capability of alienation denotes to the fact that the business reputation is subject to evaluation or its value can be determined. As it is prescribed by the law, the share of a member of the corporation is deemed to be all its contribution including the **business reputation and contacts** made to the common cause<sup>78</sup>. Pursuant to the general rule, the value of shares of the corporation members is equal, unless otherwise stipulated by the corporation agreement or stated according to the factual circumstances. Correspondingly, the business reputation stipulated as the share of the corporation can always be determined and expressed in monetary equivalents. The mentioned signs – the expropriation to the third person and the possibility to be expressed in the monetary amount - is not characteristic to the non-property intangible benefits of the natural person. The business reputation acquired by the third party can be accounted as an intangible asset of the company. Considering the business reputation of the company to be the intangible asset is prevalent in the Anglo-American as well as Continental legal systems, particularly, in the French and German Law. The intangible assets of the company reflected in the financial accounts are identified by the term – “Goodwill” The latter is defined as the prestige, business reputation, contacts, clients and staff, as the assets of the company assessed and deposited on the special account. It does not have the independent market value<sup>79</sup>; It is worth noting, that Goodwill in the foreign legal order encompasses the business reputation alongside other categories, which represent the visiting cards of the entrepreneurial performance of the company ( e.g. education, qualification, the vocational skills of the staff and their

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<sup>73</sup> Zikratski S., Concepts of Business Reputation, < <http://www.ziz.by/publications/23-p6>>, [ 01.02.2018] (In Russian).

<sup>74</sup> Ulyanova O.A., Business Reputation of Legal Entities in Russian Civil Code: Concept and Distinguishing Peculiarities, The Young Scientist, 2015, № 9, 891 -896, <<http://moluch.ru/archive/89/17830>>, [19. 12. 2017] (In Russian).

<sup>75</sup> CCRF Art., 150.1 (In Russian).

<sup>76</sup> CCRF Art., 132 (In Russian).

<sup>77</sup> CCRF Arts. 1042.1, 1043.1 (In Russian).

<sup>78</sup> CCRF Art. 1042.1 (In Russian).

<sup>79</sup> International Standards of Financial Statement № 38, (IFRS 2017), <[www.saras.gov.ge](http://www.saras.gov.ge)>, [2. 02. 2018].

ability to acquire novelties and introduce the nonstandard methods of business management)<sup>80</sup> “Goodwill” is the accounting term reflecting the situation, when a firm purchases the other company at a little more expensive price than its net balance value, in this case the additional money paid voluntarily is called goodwill. When the procurement price is less than the net balance value of the assets, the amount of goodwill is of negative significance. Goodwill is the intangible assets reflected in the balance statement. The amount of negative goodwill is possible to be completely or partially written-off the profit upon compiling the accounting reporting<sup>81</sup>.

The term - Goodwill is established in the laws and sub-legislative acts regulating the economic and financial relations in many countries. While purchasing the enterprise, as the property complex, the business reputation is reflected in the intangible assets upon the accounting. At the same time, the cost of the purchased business reputation is determined as the discrepancy between the procurement price and company and responsibilities according to the accounting balance on the date of purchase.

From the legal point of view, the business reputation created by the company and purchased by the third parties does not principally differ from each other. They are considered as the intangible assets of the enterprise, despite the fact that the latter is subject to the accounting and the former - is not.

The business reputation is not assumed to the legal entity in the process of the establishment. In contrast to the natural person having the non-property rights stipulated and protected by law from the birth, the legal entity cannot obtain the business reputation through the registration. The right to the business reputation is protected but not created by the law. The business reputation is established in the process of activities of the legal entity. That is why, the business reputation is not the same during the existence of the company. The business reputation may play the decisive role in the certain scope of its performance. For example, the violation of the business reputation of the organization implementing the legal, insurance or medical services may cause their liquidation as well. Unless otherwise stipulated by the law, i.e. the cases when the business reputation may be alienated to the third party or contributed to the community property under the general rule, the business reputation, as non-property benefits, cannot be transferred to the third person pursuant to the universal rule of hereditary justice<sup>82</sup>.

**The intangible property nature of the business reputation is confirmed by the international judicial practice<sup>83</sup>, in accordance with which the business reputation of the enterprise is acknowledged as the property in compliance with the protocol №1 of Article 1<sup>84</sup>.** The mentioned is

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<sup>80</sup> *Ulyanova O.A.*, Business Reputation of Legal Entities in Russian Civil Code: Concepts and Distinguishing Peculiarities, *The Young Scientist*, 2015, № 9, 891- 896, <<http://moluch.ru/archive/89/17830>>, [19.12.2017] (In Russian).

<sup>81</sup> The International Standards of Financial Statement № 38 (IFRS 2017), <[www.saras.gov.ge](http://www.saras.gov.ge)>, [02. 02. 2018].

<sup>82</sup> *Ulyanova O.A.*, Business Reputation of Legal Entities in Russian Civil Code: Concepts and Distinguishing Peculiarities, *The Young Scientist*, 2015, № 9, 891-896, <<http://moluch.ru/archive/89/17830>>, [19. 12. 2017] (In Russian).

<sup>83</sup> *Iatridis v. Greece* [GC], no. 31107/96, ECHR 1999 –II 9 In English.

<sup>84</sup> Each natural and legal person has the right to smooth use of property. A person may be deprived the property due to the public necessity in conditions envisaged by Law and general principles of the international Law.



the only Article of the Convention directly referring to the “legal entity”<sup>85</sup>. In addition, the enterprise deemed as the commonality of a number of rights and interests as well as the unanimity of relations, which has set the proper goals and is organized by the entrepreneur as the economic unit, is also protected by Article 1. The enterprise contains the interests and relations, such as the clientele and reputation, business secrecy and the potential sources of revenue, including the organization and promotions. In fact, Article 1 of Protocol №1 regarding the business (enterprise) performance is applied only to their clientele and reputation, as they represent the units having assumed the certain value which, in many respects, due to the nature of private right represent “the means of property”, and accordingly, in the sense of the proposition of Article 1 they are determined as the “property”<sup>86</sup>.

Are all the forms of protection of civil rights envisaged by Article 18 used to defend the business reputation in case of its violation?

The business reputation like honor and dignity represents the benefits which are not originated in the legal framework. In the process of creation and formation of the business reputation of persons as well as their honor and dignity is not directly associated with the law.

In compliance with the prevalent opinions, the business reputation is originated and shaped up in the field of economic relations; Accordingly, the conditions and essence of creating of the business reputation are determined by the economic criteria. In the economic science it is recognized that “the business reputation of the firm is the evaluation thereof by its contingent, consumers. Generally, the business reputation of the firm is evaluated by the qualitative indicator, in addition, the application of the quantitative indicators is accepted as well”<sup>87</sup>. **However, we suppose that non-entrepreneurial legal entities also build their business reputation related to the activities pertaining to their ideal goals.**

## **6. The Right to Protection of the Business Reputation**

In accordance with one of the classifications of the legal relations recognized in the legal literature the legal rules regulate the relations originated only from the violation of the business reputation, which represent the relationships of protective nature. Still in the 60s of the previous century, when in the soviet legislation the development of the tendency for the acknowledgment and protection of the non-property interests started, Pr. Yoffe noted that the only non-property right, whose relationships related to its creation, revision and termination are regulated by the Civil Law, is the right to a name of a person; Concerning other non-property benefits, these are the rights to their protection and not the rights conferred on them which are recognized by the Law. In the modern post-soviet civilized literature there

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<sup>85</sup> The Convention for Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950, <<http://www.supremecourt.ge/files/upload-file/pdf/aqtebi5>>, [09. 02. 2018] (In English).

<sup>86</sup> “The Right to Property under European Convention on Human Rights”, A guide to the implementation of the European Convention on Human Rights and its Protocols. Human Rights handbook, №10, Council of Europe, 2007, 10 (In English).

<sup>87</sup> The Economic Encyclopedic Dictionary, Tbilisi, 2005, 537.

is acknowledged the viewpoint according to which the civil legal relations pertaining to the intangible benefits represent the relations assuming the regulatory and protective nature<sup>88</sup>.

The protection of the business reputation is connected to the same rules envisaged as protecting the honor and dignity of natural and legal entities by the Civil Law. In particular, the rights to defending of these intangible benefits are originated in the case of existing the similar foundations and are implemented by the similar legal forms.

## 7. Conclusion

The discussion developed in the research allows us to infer that in the judicial practice and legal literature the concept of the business reputation implies the established public opinion concerning the business, entrepreneurial, commercial features of the subject, as a participant of the economic circulation and this understanding is unambiguous. At the same time, such essence of the concept diverges it from the notion of the honor and dignity which include, first of all, the moral qualities of a person, as a participant of the social relations.

In addition, in the legal literature and judicial practice there is being established the tendency for the public evaluation of the features of business reputation, as an economic subject, only according to their positive signs. In our opinion, eventually the business reputation of the legal entity may be stipulated as the benefits having assumed the non-property as well as the intangible property essence, which is protected by the Civil Law. It is the positive public opinion on the professional qualities or other business (entrepreneurial or commercial) features. The business reputation, as a rule, represents the economic phenomenon and is reflected in the economic indicators. The Private Law regulates the relations pertaining to only the protection of the benefits and envisages the same rules of Civil Law protecting the business reputation, honor and dignity of the natural and legal entities.

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<sup>88</sup> *Sergeeva A.P., Tolstoy U. K.*, Civil Rights, Vol.1, M., 1998, 100 (In Russian).

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