

E-ISSN: 2360 – 6754; ISSN-L: 2360 – 6754

European Journal of Law and Public Administration

2018, Volume 5, Issue 2, pp. 23-33

<https://doi.org/10.18662/eljpa/39>

HUMAN DIGNITY AS A FUNDAMENTAL RIGHT OF A PERSON

Heorhii MOISEI

Covered in:

CEEOL, Ideas RePeC, EconPapers, Socionet,
HeinOnline

Published by:

Lumen Publishing House

On behalf of:

Stefan cel Mare University from Suceava,
Faculty of Law and Administrative Sciences,
Department of Law and Administrative Sciences

HUMAN DIGNITY AS A FUNDAMENTAL RIGHT OF A PERSON

Heorhii MOISEI¹

Abstract

This article is concerned with problematics of human dignity as a fundamental right of a person. It is investigated the essence of human right and law, concerning the dignity and it is argued the need to include such kind of law to the protection mechanism of human rights and freedoms. It is proved that the authorities of legislative, executive and judicial branches must pay a special attention on legal and actual enforcement of right on human dignity of each person. The author considers the necessity to improve the legislative environment of right to human dignity, its protection and security. The problem system of the regulating the human dignity as the determining of the person's right is due to the fact that the right to human dignity belongs to natural human rights and is one of the main legal values, which serves as a criterion for assessing the constitutionality and legality of acts, acts or omissions of public authorities, other legal entities and individuals.

The object of an article is to study the problems of constitutional regulation of human dignity as the fundamental right of a person and to clarify the role of right to human dignity in guaranteeing the realization and protection of other human and civil rights and freedoms.

It has been established that a special value and meaning of the right to human dignity is connected with his religious, ethical and moral principles. The concept of the right to human dignity in modern legal science is explored.

Keywords:

Human dignity, right to dignity, the concept of human dignity, constitutional right to human dignity, fundamental right.

¹ PhD Student, Department of Public Law, Yuriy Fedkovych Chernivtsi National University, Chernivtsi, Ukraine, g.moisei@chnu.edu.ua, +380958801181

Problem statement.

Human rights are considered in the legal doctrine due to the moral aspect, the main criterion of which is the justification of individual freedom. The next approach is a procedural aspect, which is based on the guarantees of equal access to the material and spiritual benefits provided by legal protection. The third approach is an essential approach since it reconciles the contradictory aspects of moral and procedural approaches and reveals human rights in the context of human dignity [1: 274-275].

The protection of human rights and freedoms in Ukraine is one of the central issues of the development of a democratic, social and legal state. Only when citizens know that their rights and freedoms can be protected by the institutions of civil society and the rule of law, these rights and freedoms acquire new meaning. In the process of integration into the European Union Ukraine has shifted from normative to a realistic doctrine of the protection of human and civil rights and freedoms, which implies the recognition of the right to human dignity, that is stated in the constitutions of different countries and becomes a guarantee of the realization of other rights and freedoms, provided when the realistic doctrine of such protection is introduced. Therefore, the main purpose of the public authorities is the legal and factual provision of the right to human dignity of the individual.

In the legal literature there is no generally accepted definition of the concept of "human dignity", and as widely recognized, this concept refers to moral phenomena, is the moral parameter of a person based on the rejection of all that degrades the human dignity. The human dignity is the primary and determinant for all other social values, a source of human and civil rights and freedoms, which is why the concept of human dignity is included in many constitutions, in particular, of European countries. The development of the problem of human dignity has attracted the attention of such national scientists as O.V. Hryshchuk (explores the category of human dignity in terms of the philosophy of law) [2], R.O. Stefanchuk (performs analysis of dignity only as one of the personal property benefits of a person) [3], S.I. Shimon (considers human dignity in the context of compensation for moral (non-property) harm as a way of protecting subjective civil rights). However, a comprehensive study that would reveal the essence of human dignity as a value, the principle of law, constitutional "natural" human rights, as well as the peculiarities of its implementation, has not been carried out. The events of the Revolution of Dignity in Ukraine in the winter of 2013-2014 became the jump start for new insights, a new understanding of this concept,

including in scientific research. The tragic death of more than a hundred people (the Heavenly Hundred), for their convictions and for the right to a decent attitude, brought the awareness of the value of human life and human dignity to a new level. As a result of further Russian aggression, a new political and legal reality has been created in the Crimea and the Donbass, in which the central place from now on should be devoted to the preservation and protection of human dignity and human rights in the face of the threat to the national security of the Ukrainian state. And this is a serious and long-range challenge facing Ukrainian scholars, state authorities and Ukrainian society as a whole, because, as stated above, the question of human dignity touches on all aspects of human life. For Ukrainian legal science, the study of all manifestations of this category in modern conditions is undoubtedly also a significant challenge, especially since the concept was not of importance for epistemological searches. Too small number of scientific works contains solid scientific researches of the desired category from the point of view of philosophy or legal axiology. Among the Ukrainian scholars, the tip of the spear in this area are V. Butkevich, P. Rabinovich, S. Rabinovich, S. Dobryansky, O. Hryshchuk. And in the vast majority of scientific developments devoted to human dignity, the search for its essence is mainly due to the prism of the criminal-legal aspect (dignity is the object of a criminal offence) or in the civil law context - in attachment to honor and business reputation. Therefore, the study of dignity in the constitutional and legal aspect is relevant.

The goal of the article is to study the theoretical and constitutionally-legal principles of dignity as a fundamental right of a person.

Presentation of basic material of the article.

Perception of human rights begins with the realization of the value of human dignity, and the knowledge of the latter, in turn, occurs mainly due to its violation, humiliation, i.e. because of its depreciation in any way - a kind of negative attitude or view on human dignity. However, since this phenomenon is a priori, the epistemological search for its essence must occur not only because of negation, but above all due to respect for it. Thus, in order to understand what such human dignity is, it is not enough to regard it as an object of encroachments, it is also worth asking in what conditions it will not be devalued.

According to E. Shishkina, "The need to protect dignity is enshrined in one of the basic principles of international law - respect for human rights.

It is not for nothing that the article 1 of the Universal Declaration of Human Rights of 1948 [4] states that all human beings are born free and equal in dignity and rights, and in the Preamble of the International Covenant on Civil and Political Rights of 1966 [5], human dignity is recognized as the source of natural human rights. By giving an interpretation of Art. 3 of the European Convention on Human Rights in 1950 [6], the European Court of Human Rights recognized life and human dignity as one of the fundamental values of a democratic society, while pointing out the duty of state power to protect dignity under all conditions. And the Constitution of Ukraine has consolidated dignity as the highest social value in the first part of the article 3 of the document [7].

At the same time, human dignity is not only an up-tending moral principle, a source of human rights, a value in law. In fact, it is the foundation of democratic rule of law, and respect for it and its high level of protection is a factor through which the right of the state is determined. As the German law theorist Jürgen Habermas points out: "Human dignity plays the role of a seismograph, which shows how democratic law and order are formed, namely the rights that members of the political community endow themselves when they respect each other as free and equal persons. The guarantee of these human rights induces individuals as subjects of equal rights to demand respect for their human dignity ... human dignity creates a "portal" through which the equal (egalitarian) and universalistic essence of morality is imported into the law. The idea of human dignity is a conceptual essence that combines the morality of equal respect for anyone with a positive right and democratic legitimacy in such a way that their interaction can give rise to a political order based on human rights [7].

Only with the inclusion of the right to human dignity to the mechanism of protection of other human and civil rights and freedoms, as shown by foreign experience, this mechanism begins to work for a person. Thus, in the Basic Law of the Federal Republic of Germany, most of the fundamental rights enshrined in the first section protect all components of the status of a person. It goes about some guarantees, which vary in scope and subject to legislative precautions, and may therefore be subject to different constraints. The general protection of free development, which defines a person, arises from the fundamental right of a person embodied in the Basic Law. Thus, the decisive right of the individual as an independent fundamental right is interpreted by the Federal Constitutional Court (FCC) of the Federal Republic of Germany. Initially, the FCC developed out of separate issues the doctrine of universal protection of the rights of the

individual, and then, in the decision in the “Elfes” case [8], the FCC noted that the Basic Law of the Federal Republic of Germany guarantees every citizen along with the general freedom of action, as well as the intact sphere of private life as part of the intellectual, political and the economic human freedom, an area that is not affected by public authority. Such an extensive interpretation of the general freedom of the person prepared the basis for the dogmatic definition of the FCC determining the right of the individual. The protection of the rights of a person in the context of the doctrine of human dignity also includes defining it as a social value and respecting this dignity on the part of society, which was elaborated in the FCC Decision in the case of “Mikrozensus” [9].

The function of fundamental right of a person, such as the right to respect for the private sphere and the social recognition of an individual, as well as the significance of this legal structure for the legal protection of a person in the field of private law, covers, in accordance with the legal position of the FCC, the whole system of social values consolidated in the Basic Law in fundamental rights. This system occupies a central place in the structure of the free development of the person as a member of society. It's clear that the fundamental person's right is narrow, in terms of factual circumstances, material outlines, so there remains a possibility to adjust it with the help of judicial law [10: 100-15].

The notion of “dignity” in law science is multidimensional, it has many features and manifests itself in various spheres of human existence, it is an inalienable natural sign of a civilized person that is connected with human rights and freedoms and definitely requires legal regulation and protection.

The analysis of the research gives grounds for the conclusion that dignity may be viewed from two standpoints:

objective – as recognition and respect for the person from the surrounding;

subjective – as person's awareness of his or her social status.

In this case, there are three basic concepts of the right to human dignity:

normative-positive (the right to dignity is considered as a formally recognized human right, provided by an effective legal protection);

social and legal (law which is consolidated in normative and non-normative sources and can be protected by legal and non-legal means, while the moral right of a person to human dignity is a sufficient basis for his protection);

natural-legal (the right to human dignity is a moral imperative that has an overriding importance and that is protected by law in democratic countries or through peaceful or armed revolutions in totalitarian countries).

In our opinion, the right to human dignity is a natural human right and one of the main legal values, which is a criterion for the constitutionality and legitimacy of the acts of public authorities. It is also an independent subjective right that has the following properties:

- legally supports neighboring rights;
- ensures the realization of the legal status of a person;
- defines the limits of human rights restrictions;
- obliges the state to create the necessary conditions for the life of citizens;

obliges others to refrain from actions that may harm the dignity of a person [11].

Article 28 of the Constitution of Ukraine [12] establishes the right of everyone to respect their dignity, which belongs to personal inalienable human rights. Without recognizing this right by the state and ensuring a high level of its protection, a person cannot be a full member of society .

As O. Hryshchuk notes, Ronald Dworkin, who believed that the sense of human worth (self-esteem) is an important primary well-being and includes two aspects, made a significant contribution to the development of the concept of human dignity. First of all, it involves a person's sense of self-importance, his firm belief in the fact that her concept of her own good, life plan deserves realization. In this case, it is important to have a rational life plan that corresponds to the Aristotelian principle and involves the realization of natural abilities. In addition, it is important to be convinced that the person and his affairs are approved by other people who also enjoy respect and the association with which they are desirable. Secondly, self-esteem involves confidence in one's own abilities since a person has the power to carry out his own intentions. If a person feels the worthlessness of his own plans, he or she cannot fulfill them with pleasure, enjoy satisfaction with their implementation, and continue their efforts in the event of a failure that causes apathy and cynicism. Thus, each person seeks to avoid social conditions that undermine his self-esteem (the sense of human worth) [13].

According to the concept of Jürgen Habermas, the normative source of modern human rights is the idea of human dignity, which is rooted in the universal sense of morality. Human rights are considered to be the protection of human dignity. It has its necessary connotation, on the one hand, self-esteem, and on the other - social recognition of the international

status of a democratic state. This implies a correlation of human dignity with a realistic utopia, the purpose of which is to realize social justice, which is inherent in the institutions of a democratic state.

The idea of human dignity is associated with the value of a person and the assessment of his significance and place in society and the state. It is the assessment moment in the form of moral or legal assessment is an essential means of influencing human behavior, on the basis of which a standard of requirements is put forward to the actions of people in a particular situation on a particular occasion.

Human dignity, as the multifaceted value of human, deeply penetrated into the content of law. Signs and qualities that characterize and define human dignity form the basis of human rights and freedoms, its legal status. Human rights are a form of expression of personal value (values for a person) of natural law [13].

Human dignity (in addition to its importance and systemic significance as an objective fundamental norm of constitutional law), together with the Federal Constitutional Court of Germany (BVerfG), should be regarded as a real fundamental right. The opposite position seems unconvincing, even though the third paragraph of Article 1 of the Basic Law refers to "the following fundamental rights." The first paragraph of Article 1 of the Basic Law begins with the section of the Constitution and must be regarded as the starting point for considering a person as a subject not only in an objective legal sense. Human dignity is a subjective (individual) right of the individual; it is enshrined in a guarantee of submission of a constitutional complaint as one of the fundamental rights in the sense of paragraph 4a of the first paragraph of Article 93 of the Basic Law. Thus, for its defense, it is not required to assert (in the appropriate circumstances, also possible but not obligatory) the attachment of 3 rights relating to freedom or equality with which it should not be confused. Human dignity as the fundamental / constitutional right is affected not only when the law on amendments to the Constitution restricts or abolishes other fundamental rights Thanks to human dignity, the social-state (and, in this sense, objective and legal) duty to guarantee the existential (subsistence) minimum for existence, is guaranteed and, subject to it, is subject to the judicial protection (by submitting a constitutional complaint), namely: based on the first paragraph of Article 1 combined with the first paragraph of Article 20 of the Basic Law [14: 95-105].

In Ukraine, after the Revolution of Dignity, judicial practice is reorienting precisely to protect the right to dignity. The decision of the

Constitutional Court of Ukraine (CCU) in the case of psychiatric assistance, concerning freedom of conscience and religion [15], demonstrate a radical renewal of the judiciary's right and the protection of the person's right to dignity. It should be noted that the CCU in its decisions applies the doctrine of a friendly attitude to international law and refers even to the practice of the Federal Constitutional of the Federal Republic of Germany.

The analysis of the decisions of the FCC of Germany allows us to determine the content of the defense of fundamental right of a person, which covers the protection of the private sphere, the right to search for identity and the free development of the private sphere in accordance with their own decisions and the freedom to choose means of representing their own personality in society.

Misunderstanding of human value and its dignity has far-reaching negative consequences for both law-making and law enforcement. It is precisely the way, laws are implemented that gives human dignity a concrete, realistic dimension. In this aspect, it is expedient to speak of dignity as an assessment of a person himself, as a self-esteem (subjectivist approach). Unfortunately, the Ukrainian legislator does not always take care of how carefully the provisions of the laws adopted by him will be carefully implemented, and therefore often situations which result in neglect of human rights and human dignity.

A good example can be the protection of the rights of volunteer battalions participating in the anti-terrorist operation (Kiev's anti-terrorist operation (ATO)). In the spring of 2014, when the military aggression against Ukraine became a reality, many people became aware of the patriotism and duty to protect the Motherland in the ranks of volunteer groups. At the same time, the question arose about the legality of such associations and the possibility of obtaining these persons the status of participant in hostilities. In accordance with the annual report of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights, the question of assigning persons who participated in the ATO in the volunteer units (which were not part of the force departments) or voluntarily in the military units (but not included in their lists) to the participants the fighting remained at the time legally unregulated. In turn, this prevented those individuals from identifying their special status and applying for appropriate social protection. The problem was partly solved by amending the Law of Ukraine "Concerning the Status of War Veterans, Guarantees of Their Social Protection" dated April 7, 2015 [16]. It is interesting that in April 2016 a constitutional appeal was received by the Constitutional Court of the citizen V.A. Chayka, in

which the applicant directly raised the question of the official interpretation of paragraph 20 of the first article 6 of the Law of Ukraine "Concerning the Status of War Veterans, Guarantees of Their Social Protection" and its extension to volunteer battalion participants who were not included in the Armed Forces of Ukraine and other relevant structures. Unfortunately, due to discrepancy with the formal requirements for the execution of constitutional appeal, it was returned to the applicant, but this does not stop his right to apply again [7: 17-19].

Conclusions

The many-sidedness of human dignity, its perceptual unity as the character of a human being and the value of a particular person, leads to a constant epistemological search for its essence. Being irrational, the dignity is not a subject for logical comprehension, determination or restriction since there can be no boundaries for human nature. It is for this reason that the question of respecting, preserving and protecting human dignity should form the basis of any rule of law and be reflected in the exercise of its functions. Dignity is objectively peculiar to every person, but the feeling of a person to be a value (the feeling of personal dignity) appears only under certain conditions, the creation of which is the main responsibility of the state with respect to a person. Dignity is an anthroposociocultural principle that combines freedom and equality, i.e. generalizes the legal and moral aspects of human rights. Proceeding from the above, the consolidation of the dignity as a constitutional value is different in Ukraine in comparison with the constitutions of European countries, in particular with Germany.

In our opinion, such an understanding should be employed by the courts of Ukraine on the formation of judicial practice in the protection of the right to human dignity. At the same time, the problems of the right to human dignity doesn't arise so much in the field of legislation, but it arises in the sphere of its implementation.

References

- [1] Savchyn M. Suchasni tendentsiyi konstytutsionalizmu u konteksti hlobalizatsiyi ta pravovoho plyuralizmu. Uzhhorod; 2018.
- [2] Hryshchuk O. Lyuds'ka hidnist' u pravi: filosof's'ki problemy. L'viv: L'Vivs'kty Derzhavnzz Universytetvnutrishnikh Sprav; 2007.

- [3] Stefanchuk R. Osobysti nemaynovi prava fizychnykh osib (ponyattya, zmist, systema, osoblyvosti zdiysnennya ta zakhystu). vidp. red. Shevchenko YA. Kiev: YA Osobysti, editor; 2007.
- [4] Universal Declaration of Human Rights of 1948 Dec 10, 1948. [cited 2018 May 18]. Available from: <http://www.un.org/en/universal-declaration-human-rights/>
- [5] International Covenant on Civil and Political Rights of 1966 Dec 16. [Accessed 2018 May 18]. Available from: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
- [6] European Convention on Human Rights of 1950 Nov 04. [accessed 2018 May 18]. Available from: https://www.echr.coe.int/Documents/Convention_ENG.pdf.
- [7] Shyshkina E. Understanding Human Dignity: Challenges of Modern Ukrainian Realities. In: Schloer B, editor. Die würde des menschen. Was verstehen wir unter „Würde“, „Mensch“ und „Menschenwürde“? Conference Proceedings. Kyiv: German-Ukrainian Jurisprudential Dialogue NGO; 2017: 17-19.
- [8] German Federal Constitutional Court. Elfes Case No. 6BVerfGE32; 1957 [accessed 2018 May 17]. Available from: <https://germanlawarchive.iuscomp.org/?p=9>.
- [9] German Federal Constitutional Court. Mikrozensus Case No. BVerfGE27; 1969 [accessed 2018 May 17]. Available from: http://www.servat.unibe.ch/dfr/bv_027001.html#Rn043.
- [10] Hays ME. Prava osoby v sudoviy praktytsi Federal'noho Konstytutsiynoho Sudu Nimechchyny. Visnyk Konstytutsiynoho Sudu Ukrayiny. 2012; 3: 100-15.
- [11] Vdovichenko S, Kampo V. Pravo na lyuds'ku hidnist': ukrayins'ka teoriya i praktyka u konteksti yevropeys'koho dosvidu. Visnyk Konstytutsiynoho Sudu Ukrayiny. 2012; 5: 60-70.
- [12] Constitution of Ukraine of 1996 Jun 28 [accessed 2018 May 17]. Available from: <http://zakon2.rada.gov.ua/laws/show/254k/96-bp>.
- [13] Hryshchuk O. Human Dignity – Human Right Source. In: Schloer B, editor. Die würde des menschen Was verstehen wir unter „Würde“, „Mensch“ und „Menschenwürde“? Conference Proceedings. Kyiv: German-Ukrainian Jurisprudential Dialogue NGO; 2017: 29-30.
- [14] Mikhael L, Morlok M. Fundamental Rights. In: Schloer B, editor. Die würde des menschen Was verstehen wir unter „Würde“, „Mensch“ und „Menschenwürde“? Conference Proceedings. Kyiv: German-Ukrainian Jurisprudential Dialogue NGO; 2017: 95-105.

- [15] Decision No. 6-rp/2016 of the Constitutional Court of Ukraine of 2016 Sep 08 in the case under the constitutional petition of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights on the compliance of the Constitution of Ukraine (constitutionality) with the provisions of part five of Article 21 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations "(The case of an early notification of the conduct of public worship, religious ceremonies, ceremonies and processions) [accessed 2018 May 17]. Available from: <http://ccu.gov.ua/docs/1924>.
- [16] Law of Ukraine No. 3551-12 about the status of veterans of war, guarantees of their social protection of 1993 Oct 22 [accessed 2018 May]. Available from: <http://zakon2.rada.gov.ua/laws/show/3551-12>.