

HUMAN DIGNITY AS THE BASIS OF FUNDAMENTAL HUMAN RIGHTS IN THE CONTEXT OF EUROPEAN INTEGRATION

Oksana Hryshchuk

Department of the Theory and Philosophy of Law
Ivan Franko National University of Lviv
Ukraine
<https://orcid.org/0000-0003-0096-5198>

Summary: Human dignity is a constantly changing social phenomenon. Its essence may be theoretically expressed only by notions that are developing, transforming and replacing one another. Along with that, human dignity is a basic social value, for it is based on human autonomy. Autonomy is the basis for forming a personality based on rational choice of possible actions, life style in general, following one's own values and own system of values. Under such circumstances, a person creates oneself, recognizes their responsibility for their life and ability to do anything at their own discretion. An autonomous person, who has a clearly defined individuality, a clear life plan, shaped worldviews, own system of values makes a considered independent choice, is a carrier of dignity.

In connection with this, of great importance is regulation of the idea of human dignity in positive law and establishment of effective mechanisms of their protection. The idea of inviolability of dignity and human rights, their equality and inherence reflects the age-long striving of humanity to destroy all forms of violence and oppression, striving to coexist based on principles of justice, democracy and humanism.

Key words: human dignity, human rights, principles of justice, equality, democracy and humanism

INTRODUCTION

Development of the idea of human dignity has always been ontologically connected with human beings and their rights. Human dignity was interpreted as a manifestation of human nature, its spiritual principles, and therefore considered as a foundation, a basis of intrinsic rights. Back in the Antiquity epoch, human dignity was believed to be connected with legal capacity of a person and included two components: dignity of a community member and dignity of a citizen, which lead to affirmation of inherent value of a human

being as such independent of their social status. The development of the idea of human dignity from the dignity of a family, dignity of a citizen, as social value, and to the value in itself of a human being was the central trend in the then philosophy.

Ancient philosopher's understanding of connections of justice and right, social life of a person as one of the conditions of their enjoyment of their freedom, role in the family and in the state have acquired a new core meaning in the context of Christian spirituality. Christianity made a revolution in attitude to human being proclaiming equality of people before the single God, regardless of their social status and nationality. Human dignity was understood through the prism of it initially containing the image of God in it. During the Renaissance, a transition to ideas of human inherent value took place through the prism of the humanism philosophy. Understanding of independence joined the idea of sociality as a component of human dignity, strengthened humanistic trends in Catholicism, and later – in Protestantism.

Moral rehabilitation of human being, grounding of their sovereignty as a moral agent and adoption of their rights became a characteristic feature of understanding the idea of dignity in the epoch of the modern age. The epoch was characterized by increasing self-consciousness of nations, anti-class and revolutionary manifestations. A new political force – the bourgeoisie – appeared and was actively defending the ideas of freedom, equality, and fraternity, the value of a nation and of a republic. The striving to create conditions under which humans would be less dependent of recognition of their class or family value were becoming ever stronger. The criterion of dignity was not so much the place and conditions of birth, as belonging to human kind. The requirements to reinforce the guarantees of dignity given by the state were increasing. A more full-fledged definition of the characteristic of human dignity begins along with determination of human rights of the first generation, concentrating on individual civil and political rights, and guarantees of liberty.

A great contribution to the development of the idea of human dignity within German classical philosophy was made by I. Kant, who interpreted dignity transcendently, regardless of the experience. He was the first to try to explain human dignity through internal freedom of humans as such that stems from humanitarian and family equality of people; for these reasons human dignity is seen as a result of human evolution. Kant juxtaposed the categories of dignity and price: "In the kingdom of ends everything has either a price or a dignity. What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and there-

fore admits of no equivalent has a dignity". Therefore, to own human dignity means to be a unique and one-of-a-kind personality that is accessory to real morality and can make the maxim of their behavior an objective law of will for all other people.

A significant contribution to the development of the concept of human dignity was made by John Rawls, who believed that the feeling of one's own dignity (self-respect) is an important primary value and includes two aspects: 1) it includes the feeling of self-importance, a person's strong conviction that their concept of self-value and life plan are worth implementing. Thereat, the existence of a rational life plan that corresponds to the Aristotle's principle and envisages fulfillment of natural abilities, which is of importance. In addition, important is the persuasion that both the person and their deeds are approved by other people, who also enjoy respect, and association with whom is desirable; 2) self-respect includes confidence in one's abilities, for a person has the power to fulfill one's intention. If a person feels that their plans are of little importance, they may not implement them with pleasure, and derive satisfaction from their implementation, as well as not continue an undertaking in case of failure, which includes apathy and cynicism. Thus, each person is trying to avoid such social conditions that undermine their self-respect (the feeling of one's dignity).

According to Jürgen Habermas, a normative source of modern human rights is the idea of dignity, which is rooted in the universal subject-matter of moral. Human rights are considered as such that should serve protection of human dignity. The necessary connotations here are self-respect, on the one hand, and social recognition of the international status of a democratic state, on the other hand. This leads to correlation of human dignity with realistic utopia, the necessary aims of which is realization of social justice, which is characteristic of the institutes of a democratic state.

HUMAN DIGNITY IS A CONSTANTLY CHANGING SOCIAL PHENOMENON

Its essence may be theoretically expressed only by notions that are developing, transforming and replacing one another. Along with that, human dignity is a basic social value, for it is based on human autonomy. Autonomy is the basis for forming a personality based on rational choice of possible actions, life style in general, following one's own values and own system of values. Under such circumstances, a person creates oneself, recognizes their responsibility for their life and ability to do anything at their own discretion.

An autonomous person, who has a clearly defined individuality, a clear life plan, shaped worldviews, own system of values makes a considered independent choice, is a carrier of dignity. It is this autonomy that distinguishes humans from other forms of being, forms an ideal towards which each person should strive. This ideal is human dignity, the nature of which is dual: on the one hand, human dignity embodies all the best values and value achievements of humanity, and expresses the level of humanistic development of an autonomous human being as a generic being; on the other hand, human dignity has direct and immediate impact on every person influencing their behavior through basic social values, forming their worldviews, personal system of values, and frames of reference, and, therefore, causing and shaping personal dignity of every person.

The idea of human dignity is connected with value of a person and evaluation of their importance and place in society and the state. It is this evaluation aspect in the form of moral or legal assessment that is a substantial means of influencing human behavior, on the basis of which the model requirements to a person in a particular situation in a particular regard is formed. These requirements become personal norms of action only if they are supported by internal conviction of a person that they are useful, beneficial, and valuable both for oneself and for other people.

In connection with this, of great importance is regulation of the idea of human dignity in positive law and establishment of effective mechanisms of their protection. The idea of inviolability of rights and dignities, their equality and inherence reflects the age-long striving of humanity to destroy all forms of violence and oppression, striving to coexist based on principles of justice, democracy and humanism. One of the contemporary tendencies towards the development of human rights is the universalization of the human rights concept, its extension to a wider range of states, the increase of proportion of the panhuman in the subject-matter of rights defined by legal acts of different states of the world.

Modern system of protecting human dignity and human rights takes its origins in the establishment of the UN; the preamble to the Charter declares a firm intention of the United Nations to establish confidence in fundamental human rights, and dignity and value of a person. In the *Universal Declaration of Human Rights* (1948), human dignity is referred to six times. Among them, the following references could be distinguished:

1. General or abstract reference to human dignity. It is applied to distinguish main social values and principles of functioning of a society. In particular, the preamble to the Universal Declaration of Human Rights indicates

that recognition of dignity inherent to all members of human family and equal and inherent rights is the basis of freedom, justice and overall peace in the world. It is stressed that UN member nations confirmed their confidence in fundamental human rights, and dignity and value of a person.

2. Normative reference to human dignity determines the system of ideal or desirable social connections that lay at the foundation of human relations. Article 1 indicates that all people are born free and equal in their dignity and rights. They are endowed with intellect and consciousness, and should act toward each other with fraternal spirit.

3. Extra-normative or such that is applied for realization or formalization of particular human rights. In particular, article 5 indicates that no one should be subject to torture, inhuman or degrading treatment or punishment. Article 22 determines the right of each person to social security, as well as to exercising the economic, social, and cultural rights that are necessary for supporting their dignity and free development. Article 23 determines the right of all working people to just and satisfactory remuneration that provides for decent human existence.

This found its development in preambles to *the International Covenant on Economic, Social and Cultural Rights* (1966) and *International Covenant on Civil and Political Rights* (1966) proclaiming that all human rights “derive from the inherent dignity.” This formulation gives rise to several substantial conclusions: human dignity is considered to be the source of human rights, which means it is elevated to the level of the principle of law; human dignity belongs to everyone regardless of legislative recognition; the right to dignity is derived from the principle of human dignity.

In addition, article 7 of the Covenant on Civil and Political Rights stipulates that no one can be subject to inhuman or degrading treatment or punishment, and article 10 defines that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

The UN has adopted a number of legal acts that pertain to certain violations of human rights, particularly racial discrimination, discrimination of women and children, genocide, and prohibition of torture. These acts make use of the notion “human dignity” in two ways: referential use (takes place in preambles of international legal acts by referring to the respective wordings of the Universal Declaration of Human Rights); direct application of the notion, mostly normative or extra-normative. Particularly, *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* contains reference to dignity inherent to human beings as a source

of human rights and liberties, prohibition of degrading illegal actions, and explains the notions connected with illegal actions (for instance, the notion of “torture”).

In Europe, the development of the mechanism of human dignity and human rights protection is connected with adoption of *the European Convention on Human Rights* (1950) and activity (precedent law) of the European Court of Human Rights. Thus, article 3 of the Convention indicates that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. This article determines unconditional prohibition of torture, inhuman or degrading treatment and punishment or “mistreatment” as it is called by the European Court of Human Rights. Unlike the majority of norms on protection of human rights, this prohibition does not have any exceptions, and under no circumstances can its violation be justified.

Explanation of torts stipulated by article 3 of the European Convention is spelled out in the judgment of the European Court of Human Rights in the case *Denmark, France, Norway, Sweden, and Netherlands versus Greece* (1969). The court determines such degrees of prohibited treatment: inhuman treatment or punishment (such treatment which deliberately causes severe mental or physical suffering, which is not justified under these conditions); degrading treatment or punishment (such treatment that seriously degrades a person in regard to the others or makes them act against their will or their convictions). In the case *Ireland versus UK* (1978) the European Court made some corrections to these definitions indicating that torture is inhuman treatment that is done deliberately and leads to serious and grave sufferings; inhuman treatment or punishment is causing strong physical and spiritual sufferings; degrading treatment is an abuse that aims at evoking the feelings of fear, suffering, and inferiority in the victim, as well as depriving them of dignity and breaking their physical and moral resistance.

Therefore, there is no doubt that the aim of article 3 of the Convention is protection of dignity, and physical and mental inviolability of a person. At present, there predominates the opinion that its decisions on application of both article 3 of the Convention, and other articles of this document, when it comes to respect to human dignity, the Court does not aim at determining its essence, but only determines whether the actions of the representatives of a state denied it to the claimant. However, every decision on application of this article, as well as its correlation with other articles of the Convention can reflect the approaches of the Court to understanding of the essence of human dignity and the biggest human value, which is done by it through in-

terpretation of the provisions of the Convention in the light of specific circumstances of the case.

This acquires great importance through the prism of the right of a Ukrainian citizen to file a claim against Ukraine at the European Court of Human rights in case when the claimant believes that the national justice failed to protect or restitute their violated rights. In addition, on 30 of March 2006 the Law of Ukraine “On Performance of Judgments and Application of the Practice of the European Court on Human Rights” recognizing the practice of the European Court as a source of law of Ukraine and determining mandatory check of the current laws and bylaws for their conformance to the Convention and Court practice was adopted.

Ukrainian legislation pays great attention to human dignity, and human rights and liberties. Reference to the notion “human dignity” in the Constitution of Ukraine is found, in particular: in the Preamble, where it is indicated that there is a necessity to provide “for the guarantee of human rights and freedoms and of the worthy conditions of human life”; in article 3: “The human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value”; in article 21: “All people are free and equal in their dignity and rights”; it is indicated in article 28 that “Everyone has the right to respect of his or her dignity. No one shall be subjected to torture, cruel, inhuman, or degrading treatment, or punishment that violates his or her dignity”; in article 41: “The use of property shall not cause harm to the rights, freedoms and dignity of citizens”; it is stipulated in article 68 that everyone is obliged “not to encroach upon the rights and freedoms, honor and dignity of other persons”; in article 105, which envisages responsibility for offending the honor and dignity of the President of Ukraine. According to these articles, observance, adoption, and support of human dignity and human rights are fundamental constitutional principles in Ukraine.

The Civil Code of Ukraine (article 201) recognizes dignity as a personal non-property value that is protected by the civil legislation. Article 297 envisages the right to respect, inviolability, and judicial protection of dignity and honor of an individual. Article 23 regulates the right of a person to compensation of moral damages incurred as a result of violation of their rights. It is indicated that moral damages include, in particular, degrading treatment of an individual.

The Criminal Code of Ukraine stipulates responsibility for crimes against will, honor and dignity of a person (section 3). The Code of Criminal Procedure of Ukraine indicates that respect to human dignity is a general principle

of criminal proceedings (article 7) and determines that respect to human dignity, rights and freedoms of each person should be guaranteed during the criminal proceedings (part 1 of article 11). In addition, it is prohibited to subject a person to torture, violent, inhuman or degrading treatment or punishment, resort to threats of such treatment, keep a person in degrading conditions, force them to degrading actions in the process of the criminal proceedings (part 2 of article 11). Moreover, it is determined that everyone has a right to protection of their dignity, rights, liberties and interests violated in the course of criminal proceedings by any means that are not prohibited by the law (part 3 of article 11). The content of these articles encompasses the main modern private-law and public-law peculiarities of regulation of the human dignity in law.

CONCLUSION

Human dignity as a multifaceted human value has deeply penetrated the subject-matter of the law. Features and qualities that characterize and recognize human dignity constitute the basis of human rights and liberties, and their legal status. Human rights are a form of expression of personal value (value for a person) of inherent rights. In fact, all existing social possibilities of a person are determined by their rights in contrast to the existing legal status of a person. Without this juxtaposition, without the necessity to interpret social possibilities from the perspective of just and ideal, the issue of human rights would lose its topicality. The essence of human rights lies in determination of a certain minimum of universal requirements to legal and social status of a person, which is necessary for normal existence. Human rights cannot only guarantee justice or well-being, but they protect from destruction of human dignity.

The analysis conducted allows for concluding that human dignity is a value in itself and social importance of a person determined by the existing level of social relations, social ideas of freedom, justice, equality; it is a source of human rights and liberties.

GODNOŚĆ CZŁOWIEKA JAKO PODSTAWA PODSTAWOWYCH PRAW CZŁOWIEKA W KONTEKŚCIE INTEGRACJI EUROPEJSKIEJ

Streszczenie. Godność ludzka to stale zmieniające się zjawisko społeczne. Jego istota może być teoretycznie wyrażona jedynie przez pojęcia, które się rozwijają, przekształcają i zastępują. Równocześnie godność ludzka jest podstawową wartością społeczną, ponieważ opiera się na ludzkiej autonomii. Autonomia jest podstawą do kształtowania osobowości w oparciu o ra-

cyjonalny wybór możliwych działań, styl życia w ogóle, podążanie za własnymi wartościami i własnym systemem wartości. W takich okolicznościach człowiek tworzy siebie, rozpoznaje swoją odpowiedzialność za swoje życie i zdolność do robienia czegokolwiek według własnego uznania. Osoba autonomiczna, która ma jasno określoną indywidualność, przejrzysty plan życia, ukształtowane światopoglądy, własny system wartości czyni z rozważanego niezależnego wyboru, jest nośnikiem godności.

W związku z tym ogromne znaczenie ma uregulowanie idei godności ludzkiej w prawie pozytywnym i ustanowienie skutecznych mechanizmów ich ochrony. Idea nienaruszalności godności i praw człowieka, ich równości i nienaruszalności odzwierciedla dążenie ludzkości do zniszczenia wszelkich form przemocy i ucisku, dążąc do koegzystencji opartej na zasadach sprawiedliwości, demokracji i humanizmu.

Słowa kluczowe: godność człowieka, prawa człowieka, zasady sprawiedliwości, równości, demokracji i humanizmu