

## FEATURES OF HUMAN DIGNITY IN THE CONTEXT OF MODERN PHILOSOPHY OF LAW

### Abstract

The article explores the notion and peculiarities of the concept of “human dignity” in the modern democratic, legal state. In the given research, the author implements holistic, systematical (methodical) analysis of content and distinguishing features of the dignity as the structural element of the concept “legal status of the individual”.

This study is also focusing on various approaches of well-known jurists on the essence, content and legislative consolidation of the dignity of the individual.

The author concludes that the dignity of a person, who is a subject of law, is ensured by the complex of subjective rights and freedoms assigned to him/her and constituting the legal status of a person. In other words, the person is both a subject of law and of “dignity”. Therefore, the dignity of the person becomes, from a legal point of view, a complex interdisciplinary legal institute. Consequently, the whole mission of this legal institute is to fulfil the virtues of man in the relations of reality. Thus, the law becomes an effective mean of regulating the whole complex of public relations that expresses human dignity.

*Keywords:* dignity, fundamental human rights and freedoms, subjective rights, democratic state, government, obligation, the legal status of the individual.

### Introduction

In modern philosophy of law, there are numerous approaches to the concept of “human dignity”. For instance, the religious philosophers have tried to reveal the human dignity by justifying the idea of a human being created in the image of God (Gelernter, 2008) or the dignity is correlated with holiness (Dworkin, 1993, pp. 239-242).

According to A. Gewirth (1992), some philosophers have suggested that human should be considered as a demand to have one’s basic needs fulfilled. Another group of scientists has preferred the concept of reductionism, according

to which human dignity is a label for our fundamental human rights (Birnbacher, 2004, pp. 250-259; Stepanians, 2003, pp. 82-101). Moreover, Kant’s association of human dignity with reason has continued to attract many adherents of that concept (Habermas, 2001, pp. 58-60).

The conducted research shows that modern constitutional and legal concept of human dignity mainly derives from the categorical imperative of I. Kant.

As a prominent thinker and intellectual, I. Kant laid out the basic principles of development of the concept of human dignity by transforming and rediscovering a philosophical tradition that began at least with the writings of Cicero. More-

over, based on Kant's approach, representatives of German classical philosophy developed ideas about human dignity. In particular, J. G. Fichte (2000), believed that dignity is based on the necessary mutual recognition of subjects of legal relations as reasonable beings with freedom (pp. 59-61).

G. Hegel (1896) defined the recognition of dignity as self-awareness, respect for one's own value (p. 36). Meanwhile, F. Schiller (2010), introduced into the concept of dignity an essential element of the ability to protest at the sight of injustice, disrespect for human dignity (pp. 33-34).

The conducted research shows, all those individual characteristics of the person, such as origin, career, wealth, relationships, played a decisive role for the Roman in court and were combined to create an exceptional quality: dignity. Furthermore, we agree with the opinion of I. Surikov (2018) that abovementioned Latin lexeme does not seem to have adequate correspondence in ancient Greek <sup>8</sup>. Thus, if we ignore the etymology and turn to semantics, it turns out that the Greek version of the term dignity occurs does not correspond with the Latin "dignitas", but with the Latin "auctoritas", which in translation means authority, prestige. However, this is not the same thing because it contains a deeper approach and meaning (Morris, 2004).

### Analysis of Human Dignity

The analysis of means of protection and prevention of human rights in the international arena confirms that the task of the legal protection of human dignity is impossible without ensuring the right to a decent life for everyone, the standards of which are embodied in economic, social and cultural rights. For the first time, the

idea of the dignity of the individual was legally enshrined as a natural and inalienable right in Article 6 of the Declaration of the Rights of Man and of the Citizen (French: *Déclaration des droits de l'homme et du citoyen* de 1789), set by France's National Constituent Assembly in 1789, which guarantees all citizens equality and dignity. It should be noted, that, the idea of inherent rights had gone a long way, with important milestones such as the Magna Carta Libertatum ("Great Charter of Freedoms", 1215), The English Bill of Rights (1689), and the Bill of Rights of the United States of America (1791).

E. Kantipenko (2015) rightly pointed out, that only "human dignity" and "the right to a decent life" are thus complementary categories that reflect the entire system of human rights as a comprehensive and integral task of protecting a person in all conditions and circumstances of his/her life.

In modern philosophy of law, many legal scholars define the dignity as the right of a person to be valued and respected for his or her own sake, and to be treated ethically (Barac, 2015, pp. 5-6; Shultziner & Rabinovich, 2012). *Based on the conducted research, we consider, such an approach to human dignity is underestimated and may complicate the process of defining, examining the substance, content and notion of a person's dignity. Therefore, in our opinion, dignity must be determined as the immanence of human that is equivalent to the right to be respected and the obligation to respect others. Moreover, it is achieved during a certain stage of development of the individual, when he realizes his freedom and equality with others, his security when a person begins to perceive and appreciate his role and place in society.*

It is evident that the recognition of human dignity as comprehensive and absolute constitu-

tional value protected by the state is the essential characteristic of the legal status of the individual in a democratic, legal and social state. At the same time, the notion of “dignity” as a social category predetermines the comprehensiveness and plurality of the content of the constitutional category of “dignity of the person”. As a constitutional requirement prerequisite (reality), the dignity of the person is a crucial and indivisible determinant of the human being as a bio-psychosocial essence, defining him/her as a full and equal subject of social life (Harutyunyan & Vagharshyan, 2010, pp. 55-65).

It should be noted that positive and negative factors of dignity are distinguished in the theory of modern state and law. From the point of view of legal and social-guarantees, *the positive part* of the dignity of the individual characterizes the creation of conditions, by the government, that guarantee a decent life, acts as a constitutional and legal criterion for the legislative regulation of relations combined with the implementation of fundamental rights and freedoms of the human being and the citizen (Harutyunyan & Vagharshyan, 2010).

At the same time, in the scope of the concept of “dignified life”, the material factor is more consistently emphasized: the provision of appropriate social security with certain means of consumption and affordable social benefits.

*The negative part* of a person’s dignity presupposes an arbitrary interference by a public authority with a person’s legal status, which is usually represented as an unjustified restriction or deprivation of fundamental rights.

It is noteworthy, that the right to dignity is a fundamental source of human rights and freedoms, and is reflected in international legal documents and the constitutions of many democratic states. Thus, according to Article 1 of the Uni-

versal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. In other words, a person is anyone who is endowed with an indivisible, that is, unconditionally recognizable dignity. Therefore, the government must prohibit, in the legal and political sense, unlawful or arbitrary interference in privacy and provide an opportunity for comprehensive development, because everyone deserves it.

The conducted research shows that as a result of constitutional and legal reforms, the democratic state has taken over the protection of human rights and freedoms. Thus, the Basic Law of our country declares the principle of human dignity, which is reflected in Article 3 of the RA Constitution: “The human being shall be the highest value in the Republic of Armenia. The inalienable dignity of the human being shall constitute the integral basis of his or her rights and freedoms”<sup>1</sup>. Moreover, according to Article 23 of the Constitution of RA, human dignity is inviolable. It is obvious that in a democratic, legal state, the constitution enshrines human dignity, not only as an essential value system but also an individual human right.

It is noteworthy that as a result of the constitutional reforms in 2015 the provision of inviolability of dignity was enshrined in the Chapter “Fundamentals of the Constitutional Order” to clarify the harmonious connection between human dignity and fundamental rights.

Therefore, there is a precise formula: “Without dignity, there are no fundamental rights, and without fundamental rights, there is no dignity”.

In modern legal literature, the dignity of a person is defined not only as a human right but as a value, that is foundational to the legal and

<sup>1</sup> See The Constitution of the Republic of Armenia. (06.12.2015). <https://www.president.am/en/constitution-2015/>.

social order. In our opinion, the various interpretations of the term “dignity” in legal literature do not fully reveal a person’s dignity as a legal concept. The problem is that human dignity, as a legal concept, is not on the same level with such rights as the right to personal inviolability and freedom, the right to privacy, right to inviolability of the home, freedom of thought, conscience and religion, and even the right to life.

The question arises, whether the embryo can be considered as a human being that is entitled to human dignity and hence to the right to life in the sense of the Basic Law or not.

It is hard to agree with the opinion of several modern researchers that the embryo is not endowed with dignity (Enders, 2010; O’Mahony, 2012, pp. 567-569). It is no coincidence that in the Constitution of the Republic of Armenia, human dignity precedes even the right to life, as it applies both before birth and on the human embryo (even if the pregnancy is terminated) and after death. In other words, the dignity of a person is beyond his life and death. Therefore, there is a significant difficulty in defining it from a legal point of view, without revealing its philosophical value or even a theological essence. Moreover, if the legislative considers that the embryo is awarded human dignity, its status as a legal person and possessor of fundamental rights is determined. This approach is inherent in the legal system of post-Soviet countries, including the Russian Federation, the Republic of Belarus, etc. It should be noted that modern jurists try so hard to give a person all the rights and freedoms that in many cases, they go beyond wise limits thus, that it would mean that the extinction of unborn life without strong and legally recognized justification is generally illegal.

At the same time, the dignity of a person as a legal category is revealed by the system of per-

sonal rights and freedoms guaranteed for each person in a given state. Nevertheless, the most crucial prerequisite for the full realization and protection of human dignity is the unhindered exercise of a person’s opportunities, rights and freedoms.

It should be noted, that in its decisions, the European Court of Human Rights has repeatedly referred to violations of the provisions of the European Convention on Human Rights, which mainly relate to torture or inhuman or degrading treatment or punishment (Article 3), violation of the right to liberty and security of person (Article 5).

The European Court of Human Rights (ECHR) continues to emphasize the protection of the right to liberty, dignity and personal integrity of the individual in a democratic society. For instance, in the case of *Slyusarev v. Russia*, the court ruled that the refusal to provide glasses to a prisoner with poor eyesight humiliated his dignity and caused mental suffering.<sup>2</sup>

In the Case *Kalashnikov v. Russia*, the ECHR has also ruled, that the conditions of detention (applicant’s cell was infested with pests, he was detained on occasions with persons suffering from syphilis and tuberculosis etc.), which the applicant had to endure for approximately 4 years and 10 months, must have caused him considerable mental suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement).<sup>3</sup>

Earlier, in the case of *De Wilde, Oms and Versipp v. Belgium*, in which the applicants had reported voluntarily to the police, the European

<sup>2</sup> See Case of *Slyusarev v. Russia*. (20.07.2010). *Application no. 60333/00*, [https://hudoc.echr.coe.int/eng#-{}%22dmdocnumber%22:\[%22866668%22\],%22itemid%22:\[%22001-98331%22\]}](https://hudoc.echr.coe.int/eng#-{}%22dmdocnumber%22:[%22866668%22],%22itemid%22:[%22001-98331%22]}).

<sup>3</sup> Case of *Kalashnikov v. Russia*. (15.07.2020). *Application no. 47095/99*, [https://hudoc.echr.coe.int/eng#-{}%22itemid%22:\[%22001-60606%22\]}](https://hudoc.echr.coe.int/eng#-{}%22itemid%22:[%22001-60606%22]}).

Court ruled that the right to liberty and security of person is too important in a democratic society. Moreover, the person cannot be deprived of the right to defense even of his own free will, but also after that, regularly, before being released or sentenced by the court to a certain period of imprisonment<sup>4</sup>.

We agree with the opinion of legal scholars that the Constitution of Republic of Armenia by restricting the public power with the basic rights and freedoms of the human being and the citizen as directly applicable law necessarily excludes the direct application of rights in legal relations between individuals (Poghosyan & Sargsyan, 2015).

As a result of the direct application of fundamental human rights by individuals, the fundamental rights of the individual, which are directed against the state, will become the responsibilities of each individual towards his fellow citizens. *In our opinion, this will completely deprive the essence of the basic rights, because instead of expanding freedom, fundamental rights will become an instrument that restricts freedom. Nevertheless, the fundamental rights of the individual have an impact in the sphere of private law, when the state is obliged to balance the basic rights of participants in a legal relationship in the event of a conflict, if there is no fundamental reason to give preference to one of the parties.*

### Conclusion

Summing up the results of explored issues and considering the dignity of the person as dynamic phenomenon of the philosophy of law, we

concluded that it is necessary to consider the dignity, based not only on the social conditions in this society but also on the legal norms of the state. It is known, the rights and freedoms of a person are intertwined with the dignity of a person, and their restriction should not infringe on their dignity. At the same time, in a democratic legal state, the dignity of the individual is recognized not only as one of the fundamentals of the constitutional order but also as the subjective right of the individual. As a result of our research, we have come to the simple conclusion, that the main direction of constitutional reform should be to strengthen the constitutional guarantees for the protection of human rights, freedoms and dignity. Moreover, the government must clarify the scope of possible restrictions on these rights, based on the provisions of international law, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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<sup>4</sup> Case of the De Wilde, Ooms et Versyp v. Belgium. (18.06.1971). *Application no. 2832/66; 2835/66; 2899/66*, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-57606%22%7D>.



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