

Aspects of Ensuring Human Dignity

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Abstract

The relevance of the study of human dignity as a projection of wholeness stems from the fact that it serves as a fundamental principle of many modern constitutions and defines the wholeness of human existence. The main purpose of the study is to explore the concept of human dignity by uncovering the fundamental elements of the principle, and to examine the implementation of the human dignity principle and its protection. To achieve the objectives and goals of the study, a number of methodological approaches were used: theoretical-methodological approach, functional methodological approach, logical analysis, legal hermeneutics method, etc. The study revealed and uncovered that human dignity is based on natural human rights. Furthermore, the personal non-property rights of the individual were uncovered as they are the basis of the constitutional order. Equally importantly, the concept of "human dignity" was characterised by revealing its basic elements of functioning.

Keywords: Natural human rights, jurisprudence of the European Court of Human Rights, universal values, right to dignity, remedial mechanism.

Introduction

One of the most important attributes of a modern democratic society is ensuring respect for individual rights and dignity. The dignity of the individual has the nature of a relationship based on the norms of morality and law, and the principles of freedom, mutual responsibility between the state, society and the individual, between different social groups and personalities. According to this, civil society is the bearer of appropriate attitudes and values. Honour and dignity of the individual are concepts that emerge with the beginning of his or her awareness of his or her identity. Considering the subject of the development and formation of these concepts in modern society, one should highlight that it has its origins in primitive society (Humeniuk, 2020; Komilova et al., 2021).

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Resolution of the Plenum of the Supreme Court of Ukraine No. 1 "On judicial practice in cases of protection of the dignity and honor of individuals, as well as the business reputation of individuals and legal entities" (2009) notes that the current legislation does not define the concepts of dignity, honour and business reputation. This is because they are defined by moral and ethical categories, and personal non-property rights, which the legislation provides for separate objects of judicial protection. In general, the dignity of the individual should also be understood as the recognition of the value of each person as a unique biopsychological value (Berdibayeva et al., 2021).

The Criminal Code of Ukraine (2001) does not contain provisions which may provide for liability for offences against the honour and dignity of any individual.

According to the above, an important objective and purpose of the study is to investigate human dignity as a whole. This objective can be explored from both theoretical and practical perspectives by first examining natural human rights, as they provide the basis for the realisation and enforcement of human dignity. The need to study personal non-property rights, among which one of the main objectives is to ensure respect for all the rights and fundamental freedoms of citizens, in particular the principle of respect for and recognition of personal dignity, should be highlighted further. In this respect, the next stage is the disclosure of the concept of "dignity" and the protection of human dignity through the study of legal and regulatory instruments and the uncovering of their practical implementation. The most important stage is to examine the problems that may hinder effective assurance of human dignity and to highlight recommendations and solutions to the identified problems.

Materials and Methods

The study, aimed at exploring human dignity and uncovering all aspects of this concept, has been carried out through the use of different methodological approaches. First of all, attention should be paid to the importance of using a theoretical methodological approach, as it enables the disclosure of the concept of "human dignity" and tracing the place of this concept in the system of international legal acts and regulatory provisions of Ukraine. The use of the functional methodological approach should be noted further, because it can reveal the holistic mechanism of the functioning of an individual's personal non-property rights, which is the basis of human dignity and natural human rights in general. Considering the method of legal hermeneutics, it is possible to trace the formation and development of the term "human dignity" in the system of international legal

instruments, namely in the United Nations Charter (1945), Universal Declaration of Human Rights (1948), European Convention on Human Rights (1950).

Moreover, the notion of human dignity as a projection of integrity in regulations can be examined. The study used logical analysis to examine the operation of the legal protection of human dignity. Based on this method, the list of legal acts regulating the protection of human dignity was reviewed and the practical relevance of the enshrined provisions was studied. The method of induction enables the characterisation of specific elements and components of the concept of "human dignity" based on its full-fledged implementation mechanism. The use of structured analysis is important for identifying the relevant problems that stand in the way of the desired functioning of the field under study. The method of systems analysis, in turn, helps to identify key recommendations that can be applied to address the identified problems, thereby improving the performance of the segment under study. The method of synthesis will combine the presented theoretical and practical aspects, resulting in a disclosure of the concept and realisation of dignity as a projection of the integrity of the person in its fullest manifestation.

This study will therefore be carried out in several stages. The first stage will be characterised by the disclosure of the concept and realisation of natural human rights. These are the basis for the implementation of human dignity and the study of the personal non-property rights of individuals. The second stage involves exploring the concept of "human dignity" through the prism of identifying it as a supreme human value, and examining the aspects of ensuring the realisation of this right and its protection. In this respect, it is important to analyse the international legal standards and the norms of current legislation that regulate the implementation of human dignity in all spheres of life. The purpose of conducting the third stage is to identify the current problems that hinder the proper functioning of the segment under study and that prevent the principle of human dignity from being fully realised. In this regard, an important aspect is to explore the main methods and ways of overcoming the identified problems. This, in turn, will enable the regulation of the functioning of human dignity as a projection of integrity.

Results and Discussion

The importance of legal regulation of natural human rights is inextricably linked to the appropriateness of its application. It lies in the ordering, organisation and protection of these rights by creating, supplementing, amending or abolishing legal rules, and by defining the scope of these rights in time, space, legal force and scope of persons. The scientific literature refers to this type of legal regulation as

general, since its implementation is based on the activities of law-enforcement and law-making bodies. Each of these bodies adopts legal decisions within its competence and enforces them. This type of legal regulation is defined in current legislation as "the establishment of a regime by legislation and regulations adopted on its basis", "the adoption of laws and other legal and regulatory acts", "the establishment of rules of conduct by legislation". The essence of general legal regulation is the exercise of law-making activity by the authorised public bodies. The legal regulation of natural human rights in the process of their normative generalisation acts not only as a form or result of such generalisation, but also as a means of further orderly influence on the entire social system (Tatsiy et al., 2019).

In identifying the main problem of the general legal regulation of natural human rights, the focus should be on normativity. It has certain forms through which it is objectified in the means of legal regulation. Among them, the main place is occupied by the rules of law. When characterising normativity, several specific features of this aspect of legal regulation of natural rights should be identified. Firstly, it is a feature that reveals the content and purpose of this type of legal regulation. Secondly, it reflects the need to establish a normative basis in social relations associated with ensuring the orderliness of human life, the movement in society towards freedom, consent and compromise of the individual in public life, the protection of the status of human autonomy, the observance of his or her rights, including natural ones. Thirdly, it can be characterised as a "system of norms" that applies to all cases that concern natural human rights. According to this, normativity is defined by deep legal content based on general provisions and unified legal principles. Therefore, the main point of legal regulation is its general permissive nature, and the definition of basic rights, obligations and legal authorisations in the legal matter.

In general, the main features of the legal regulation of natural rights lie in the fact that they do not require individual regulation (Heorzhy, 2017). Moreover, it is possible to achieve the regulatory goals by establishing, amending, supplementing or abolishing the relevant legal rule. Considering the subject of legal regulation of natural human rights, one should distinguish relations associated with inalienable human rights that require individual and normative regulation. The boundaries of the legal regulation of natural rights are defined by separating the legal from the non-legal sphere and setting limits to the application of legal rules, their boundaries in influencing the consciousness and behaviour of individuals (Varyvoda, 2022; Aghyppo et al., 2021). In other words, they emerge from the nature of society and individuals and are conditioned by the culture and civility of persons. This provides reason to believe that the boundaries of the legal

regulation of natural rights are a kind of boundary sphere for the determination of which the existing reality is necessary. The normative law-making activity of public authorities and the state as a whole applies to these boundaries as one of the necessary factors.

Notably, the main ideas of natural law are enshrined in international legal acts. For example, the philosophical idea of the "intelligent nature of human beings" is reflected in Article 1 of the Universal Declaration of Human Rights (1948). It states that human beings are endowed with conscience and reason and should therefore act with respect to each other. Further, Article 3 of the Universal Declaration of Human Rights (1948) states that everyone has the right to life; Article 7 says that all persons are equal before the law; Article 17 states that no one shall be unreasonably deprived of property. When considering other international legal acts, the focus should be on Chapter 39 of The Great Charter of Liberties (1215). Its formula is based on ideas of natural human rights and natural justice in general, which are reflected in Articles 10 and 11 of the Universal Declaration of Human Rights (1948). Having thus defined the legal regulation of natural rights, it is necessary to consider the non-property rights of natural persons as one of their components. As has been noted, personal non-property rights of individuals are based on the natural human right, which in turn ensures the right to respect for human dignity (Otar, 2014). Accordingly, the theoretical aspect of the study of individuals' non-property rights is of particular importance.

In today's context, there is no single approach to defining personal non-property rights of individuals. On the one hand, the content of personal non-property rights of natural persons is defined as legally guaranteed opportunities that belong to every individual and are characterised by their personal and non-property nature. On the other hand, the content of personal non-property rights is defined as a subjective right that provides the authorised person with a legally enforceable ability to require society to refrain from any action that could interfere with the proper assessment of his or her individual characteristics. Furthermore, it is important to highlight the definition of personal non-property rights as a measure of a person's possible conduct in relation to non-property goods. These goods have no economic content and provide the person with the opportunity to determine his or her own conduct in the private sphere, without interference from others (Volkov, 2022).

There are certain features inherent in personal non-property rights of individuals. They arise inconspicuously, are permanent and cannot be terminated by any legal acts or transactions. They belong to each person by birth or by law, and have no economic content. Accordingly, an individual's personal non-property

rights are absolutely subjective. They belong to each individual by birth or by law and belong to him or her for life, are inalienable and are not material in nature. When considering the right to respect for honour and dignity as a personal non-property right, one should note that it exists in Ukrainian legislation in two forms. Namely, as an element of a person's leading right or as a positive and specifically defined right. Ensuring the personal non-property rights of individuals consists in separating social needs from physiological ones. However, the physiological principle involves the existence of the individual as a biological and mental being, while the social principle encompasses the functioning of the individual as a member of a particular social group. This criterion enables the division of personal non-property rights of individuals depending on whether they provide for physiological or social needs.

In general, the content of these rights of individuals implies providing the opportunity to determine at their own discretion their own conduct in the sphere of private life, in particular in the right to respect for human dignity. In other words, personal non-property rights of individuals are rights that give effect to the natural existence of a person and are the embodiment of basic human rights. Therefore, particular attention should be given to the study of the right to respect for human dignity as a personal non-property right. Scientific literature indicates different approaches to describing and interpreting the concept of "dignity" as a person in general and as an object of legal protection enshrined in the provisions of Law of Ukraine No. 2469-VIII "On National Security of Ukraine" (2018). At the same time, human dignity is one of the best grounds for defining and justifying all other human rights, including in the context of Ukraine's national security. Many doctrinal sources argue that human dignity is a rather complex concept and does not have a clear definition. This makes it quite difficult to enforce respect for the individual in practice if there is no clear definition of what is meant by the concept. Consequently, it is not possible to measure the content of respect for persons in a particular sphere.

The judges of the Constitutional Court of Ukraine note that the concept of "human dignity" is found in the provisions of the Constitution of Ukraine (1996). Article 3 recognises human dignity as one of the highest social values, and Article 28 prohibits subjecting any person to cruel treatment, torture or any form of degrading treatment or punishment. Notably, the Constitution of Ukraine (1996) contains no further provisions on human dignity other than those prohibiting inhuman treatment of persons. However, the concept of "human dignity" is a broader legal phenomenon. This is because human dignity is an ascendant provision of natural human rights. Therefore, the Constitution of Ukraine (1996)

enshrines this concept as a systemic value in law and requires its own interpretation based on a value-oriented legal perception. In this context, the different approaches to defining the content of human dignity as a legal phenomenon should be the main subject of debate by the Constitutional Court of Ukraine, as its role in this respect is determinative. According to the provisions enshrined in paragraph 2, part 1 of Article 150 of the Constitution of Ukraine (1996), and in paragraph 4, part 1 of Article 13 of Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine" (2017) it is defined that only the Constitutional Court of Ukraine has the right to interpret the provisions of the Constitution of Ukraine (1996) and the laws of Ukraine officially. However, when considering this in practice, it should be noted that the Constitutional Court of Ukraine has not yet developed any legal position on the concept of "human dignity", given the content of Article 3 of the Constitution of Ukraine (1996) and its other provisions.

The jurisprudence of the Constitutional Court of Ukraine contains some decisions relating somehow to the subject matter of the study. Although these decisions do not formulate positions on this phenomenon, they should be analysed in the context of an examination of respect for and protection of human dignity. The first and only one decision on the recognition of human dignity as a source of human right is the Decision of the Constitutional Court of Ukraine No. 11-rp/99 (1999) on the death penalty. This decision recognised that the provisions of the Criminal Code of Ukraine (2001) in force at that time were inconsistent with the Constitution of Ukraine (1996), namely with regard to the application of the death penalty as a form of punishment. The Constitutional Court of Ukraine also referred to the fundamental human rights to life, honour and dignity. Under this legal position, the Constitutional Court recognised that these rights implement other human rights and accordingly they cannot be limited or restricted. In the case of *Soering v. The United Kingdom* (1989), the European Court of Human Rights determined the legal position that human dignity and human life are defined as the fundamental basis of a democratic society. This has an applied nature for defining the content of the concept of human dignity and also provides an opportunity to form a legal basis for ensuring human dignity in the national security system of Ukraine.

The above-mentioned case of Decision of the Constitutional Court of Ukraine No. 11-rp/99 (1999) on the death penalty provided the basis for a further examination of dignity as a basic provision of the Constitution of Ukraine (1996). However, despite this fact, the Court did not resort to singling out its own vision of the concept in subsequent judgments. As practice shows, this has had a rather

negative impact on the enforcement of this constitutional right of an individual and a citizen and, equally importantly, on the effectiveness of the Ukrainian national security sector. An illustrative decision in this respect is Decision of the Constitutional Court of Ukraine No. 6-rp/2007 (2007), namely the case concerning social guarantees for citizens. The decision was based on an understanding of the nature of the constitutional right to social protection and the state's obligation to ensure it. Considering this, the ruling of the Constitutional Court of Ukraine held that the observance of social guarantees as an element of the right to social protection is determined by one of the principles of a social state governed by the rule of law. Although the Constitutional Court of Ukraine did not link the right to social protection to the right to respect for human dignity as a constitutional value, this link is implicit in the content of this legal act. It states that the link stems from the recognition of the need for the state to fulfil the social duties of the Constitutional Court of Ukraine, indicates the obligation of the state to respect the individual in his or her rights and dignity. This decision is not related to the content of the concept of respect for human dignity, but it stems from a deeper analysis of the Ukrainian Constitutional Court's legal positions.

Therefore, Article 3 of the Constitution of Ukraine (1996) recognises the right to respect for human dignity as the highest social value. Under this legal approach, the state has an obligation to create living conditions in which human dignity is the centre of respect. Notably, such conditions should include the observance of social human rights as referred to in the decisions of the Constitutional Court of Ukraine. Although honour and dignity are inalienable personal non-property rights of an individual, and honour is equal to civil honour having its origin from the state, it disappears when criminal proceedings are applied to a person. In this case, the concept of honour is to be understood as an external social evaluation of a person and a reflection of a person's quality in the public consciousness. The imposition of criminal liability on a person, irrespective of the form of implementation of these proceedings and the stage at which the investigation stage is completed, has a negative impact on all areas of a person's life (Gavriltsiv & Rybak, 2021, p. 34). The Criminal Procedure Code of Ukraine (2013) regulates the conduct of proceedings in the course of which human dignity must not be degraded. This constitutional principle is reflected in Article 11 of the Criminal Procedure Code of Ukraine (2013), which provides that the principle of conducting criminal proceedings should be based on respect for human honour and dignity.

Another manifestation of this constitutional principle is the need to carry out the search at a time when the least harm to the ordinary activities of the

individual is caused. This is regulated in Article 236(2) of the Criminal Procedure Code of Ukraine (2013). Article 240(2) of the Criminal Procedure Code of Ukraine (2013) regulates the prohibition of degrading honour and dignity during an investigative experiment. Article 27(2) of the Criminal Procedure Code of Ukraine (2013) prohibits the disclosure of information that may humiliate the honour and dignity of participants in court proceedings. However, while constitutional provisions on the protection of honour and dignity are direct-action norms, they do not reveal exactly how legal action is taken against those who infringe on the dignity of others. The Constitution of Ukraine (1996) contains only the norms-principles stipulating the obligation not to infringe upon the honour and dignity of others. However, other elements of the mechanism of non-infringement upon the honour and dignity of individuals are not stipulated in the legislation of Ukraine. In other words, the guarantees in Article 3 of the Constitution of Ukraine (1996) are not provided with a material basis. This creates a problem of inaccessibility of judicial protection and non-judicial forms of protection for citizens. The fact that it is a mistake to use the term "humiliation" in relation to an offence to dignity cannot be overlooked, as one cannot humiliate a person "in their own eyes" (Du Plessis, 2019). This clarification in the disclosure of the term is quite justified, as it determines the primary nature of improving the mechanism for protecting honour and dignity rather than the terminology of constitutional and legal provisions.

The provisions of the Constitution of Ukraine (1996) are universal in nature. They provide for both restrictions on the investigator, inquirer and judge during criminal proceedings and other procedural actions, and prohibit actions that may degrade the honour and dignity of a person. Real protection of honour and dignity of the individual is implemented by the rules of criminal and civil law through the provision in the legislation of certain sanctions for infringement of this object. For instance, civil law provides penalties for civil legal infringements, thereby protecting the non-property rights of individuals and restoring the correct public valuation of that person. As for criminal law, it provides penalties for crimes against personal honour and dignity (Yaremchuk, 2019). The main problem with Ukrainian legislation is the lack of a sufficiently defined concept of "dignity". This has a negative impact on the realisation of this right for individuals and negatively affects the areas of public life of a person. To address this problem, approaches to the definition of this concept should be identified based on the practice of European countries. The approach to defining human dignity in the Constitution of Ukraine (1996) limits the possibility of developing the institution of human rights, as it does not define what constitutes its basis. Article 30 of the

Constitution of the Republic of Poland (1997) clearly states that natural and inherent dignity is the source of human and civil rights and freedoms. It is defined as inviolable, and its enforcement and protection is an obligation imposed on the public authorities.

This implies that the Constitution of Ukraine (1996) contains an authoritarian transitional model of respect for the protection of the honour and dignity of individuals. The amendment to the content of Article 21 of the Constitution of Ukraine (1996), which would highlight human dignity as a fundamental value in the constitutional system of human rights, deserves particular attention. The formula of the Judgment of the Federal Constitutional Court of Germany (1977) identifying human dignity as a founding principle of fundamental rights should also be considered in this context. This, in turn, will help to raise it to the level of a constitutional value. The Constitution of Ukraine (1996) should be supplemented with a separate article which will disclose the concept of "human dignity" in a more substantive way, and will describe its structural elements and the ways of implementing the protection of human dignity. Therefore, having conducted academic study on human dignity, one should note that addressing the problem of adapting the domestic institution of dignity to the concept of European states is a rather difficult process. However, reforming the current legislation and supplementing it with substantive provisions will not only help to strengthen the theoretical basis of the regulations, but will also have an impact on all areas of life.

Conclusions

By conducting academic study in the field of human dignity, all the aspects that help to reveal as fully as possible this mechanism of functioning have been explored. It has been found that the most significant problem in Ukrainian legislation regarding the right to human dignity lies in the fact that there are no enshrined provisions in the legal acts describing this concept and its elements. First of all, it is necessary to start with the disclosure of natural human rights. Their essence of general legal regulation consists in the implementation of law-making activities by authorised bodies of state power. Further, an important stage refers to the disclosure of the personal non-property rights of an individual. It has been established that the content of these rights of individuals implies a discretionary power to determine their own conduct in the sphere of private life, in particular the right to respect for human dignity. The most noteworthy stage is the disclosure of the concept of human dignity. The decisions of the Constitutional Court of Ukraine, the provisions of the Constitution of Ukraine and the Criminal Procedure Code of Ukraine were considered in this regard. It was revealed that

Article 3 of the Constitution of Ukraine recognises the right to respect for human dignity as the highest social value. Accordingly, the state has an obligation to create living conditions in which a person's dignity will be the centre of respect. It has also been examined that the Constitution of Ukraine contains only norms-principles that provide for obligations not to infringe on the honour and dignity of other persons. Accordingly, the guarantees in Article 3 of the Constitution of Ukraine are not provided with a material basis. This creates a problem of inaccessibility of judicial protection and non-judicial forms of protection for citizens. In this regard, recommendations have been suggested to address this problem.

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