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TOPICAL PROBLEMS OF LEGAL AND RELIGIOUS CONTENT OF THE RIGHT TO HUMAN DIGNITY

The article investigates the nature and content of human dignity, conditions of its existence and analyzes legal and religious approaches to understanding the concept of "human dignity". Particular attention is paid to the category of human dignity, ratio between social rights and human dignity, analysis of international legal standards in the field of human right to dignity and the characteristics of the basic elements of human dignity. The authors indicated that there are three basic concepts of the right to human dignity in foreign and domestic science.

The main focus of the article is on interrelationship of religious and legal approaches to moral foundations of a human, including provision of personal dignity. The content of Ukrainian Constitution and of the other legal acts, which support the right to human dignity, was considered. Analysis of religious component of human dignity focuses on spiritual and moral knowledge that define human's place in society.

Key words: human dignity, law, religion, human consciousness, morality.

Statement of the problem and its connection with important scientific and practical tasks.

Human dignity as a multidimensional value of a person deeply penetrated into the content of law. Features and qualities that characterize and define human dignity are the basis of human rights and freedoms. In turn, through the system of social networks human dignity is a starting point in relationship between people and finds a direct reflection in every person.

The concept of human dignity is mainly associated with human value and estimation of its role and place in society and a state. This estimation moment in the form of moral or legal assessment is an important way to influence human behavior, as it is the basis for standard requirements to people's actions in a particular situation. These requirements are norms of personal action only if they are supported primarily by inner conviction of a person in their usefulness, utility, value both for that person and for others.

Also, the right to human dignity is the subject of many academic studies. In particular, constitutional recognition, historical development, connection with religion and morality were investigated by such scholars as S. Vdovichenko, A. Vlasov, V. Holovchenko, O. Gryschuk, T. Kovalchuk, I. Lutsky and others.

The main results of the study. Contemporary philosophical and legal thought quite differently interprets the concept of dignity. Based on the fact that human dignity, as a multifaceted value of a person, deeply penetrated the essence of law, in legal plane there are various approaches to disclosure of nature and content of the concept of "dignity". After analysis of the main theoretical approaches to legal content of human dignity, attention should focus on the following scientific generalizations and conclusions. V. Bliumkin distinguishes several understandings of the concept of dignity, namely: the value of a person or community of people; set of moral qualities; awareness of self-worth; sense of self-respect and outward manifestation of dignity; cost; value of banknotes; title, rank¹

According to V. Khvostov, dignity is "the wisdom of person, his\her higher Self, capable of perpetual expansion and raising it above all other empirical reality"². S. Bratus defines the concept of dignity as a reflection in the person's mind his\her evaluation by society, i.e. personal self-esteem of social evaluation³.

¹ Блюмкина, В.А. (1964). *Категории достоинства и чести в марксистской этике*. Москва, 47.

² Хвостов, В.М. (2007). *Этика человеческого достоинства: Критика пессимизма и оптимизма*. Изд. 3-е. Москва, КомКнига, 165.

³ Братусь, С.Н. (1963). *Предмет и система советского гражданского права*. Москва, Юридическая литература.

N. Malein indicates that a person is aware of his\her position in society; a person has inherent self-esteem and the need for respect from others. This internal self-esteem of own skills, abilities, outlook and social value is dignity¹.

M. Korzhanskyi defines dignity as the right for public respect, based on recognition of value of this person by civil society². He considers dignity as a public value of a person. In general, human dignity is an absolute value of society, which is inherent to a person, as a social being, throughout the history of its existence and development. Human development is impossible without recognition of a person as higher social value that determines the need for personal respect and, therefore, respect for dignity and rights.

According to A. Vlasov, respect for human dignity "is the nature of relations based on the norms of law and morality, on the principles of freedom and mutual responsibility between a state, society and an individual, between individuals and social groups"³.

According to T. Kovalchuk, the difference between secular and religious understanding of human dignity lies in the question: which phenomenon is preferred - God or a person, the highest supra-material substance or society. Religious doctrine has specific concepts, absent in moral consciousness, namely: heaven and hell, sin (as a violation of the God's commandments), repentance toward God, redemption of guilt before God and so on. Moreover, believers are experiencing such specific feelings as love for God, fear of God, dread before the torments of hell. Religion has developed organization, includes worship (prayer, sacraments, rituals, dogma) that cause special moral experiences of a person. Instead, according to secular beliefs, moral has not any institutions and relies solely on conscience and on public opinion⁴.

Some authors understand "dignity" as the possession of certain moral and intellectual qualities that meet generally accepted moral values⁵.

N. Koliesova notes that dignity is recognition by society of social value, uniqueness and originality of a person, importance of each person as a part of human community⁶.

Ukrainian researchers V. Holovchenko and A. Holovchenko, noted that dignity in terms of a legal system is not just a constitutional principle, but the natural, inalienable right of every human being. Based on the principle of dignity subjective human right for dignity emerges⁷.

In general, after analysis of domestic and foreign scientific literature, we may distinguish three basic concepts of the right to human dignity:

- the first one – normative-positivist - is that the right to human dignity is seen as a formally recognized right to be provided by appropriate legal protection;

- the second one – sociology-positivist - considers the right to human dignity as a right enshrined in non-normative sources (social and judicial practice, etc.). This right may be protected by means of social and legal practices; thus a violation of the right to human dignity is the only basis for its legal protection;

- the third concept is natural-law – which considers the right to human dignity as a moral imperative that has supra-legal, value. This natural value is protected in legal order (in democratic countries), through peaceful or armed revolutions (in the era of absolute monarchies, etc.) or not protected (in totalitarian states)⁸.

In public life of Ukraine theme of human dignity sounds very rare. This is due to rule of normative-legal concept in social and legal life, which considers this right only on paper, focusing on its legislative fixation.

Thus, the right to human dignity is violated when citizens actually buying faulty goods in supermarkets, suffer illegal dismissal, non-payment of wages, imposing of illegal fines by supervisory staff

¹ Малейн, Н.С. (1985). *Охрана прав личности советским законодательством*. Москва, Наука, 32.

² Коржанський, М.Й. (1998). *Кримінальне право України: Частина Особлива*. Київ, Генеза, 223.

³ Власов, А. (2000). *Проблемы судебной защиты чести, достоинства и деловой репутации*. Москва, Изд-во им. Сабашниковых, 7.

⁴ Ковальчук, Т. (2007). Світські та релігійні аспекти уявлень про людську гідність. *Філософські обрії: Науково-теоретичний часопис*, 17, 136.

⁵ Авакьян, С.А. (2000). *Достоинство личности. Конституционное право. Энциклопедический словарь*. Москва.

⁶ Колесова, Н.С. (1999). *Личные (гражданские) права и свободы*. Москва, Права человека, 144.

⁷ Головченко, В.В., Головченко, О.В. (2012). *Правозастосування і захист прав людини в суверенній Україні: моногр.* Чернігів, Видавець Лозовий В. М., 55.

⁸ Вдовіченко, С., Кампо, В. (2012). Право на людську гідність: українська теорія і практика у контексті європейського досвіду (Продовження). *Вісник Конституційного Суду України*, 5, 61, 62-63.

and others. But the abuse of this right is claimed neither by people, nor by their defenders, because they take these violations with indifference, because of the lack of a modern justice, based on philosophy of natural law. And as long as customs appear that shape positive attitude to the right for human dignity as a social value in a state and society, people will not protect this right¹.

Article 28 of the Constitution of Ukraine establishes positive individual's right to human dignity, which has a clear meaning. But, in most cases, scientists and practitioners ignore that the right to human dignity as fixed in Articles 3 and 21 of the Constitution of Ukraine; this right is part of the rights and freedoms but "stands before them".

Indeed, Article 3 of the Constitution of Ukraine contains provisions that give reason to believe human dignity, along with life and health and others, part of a leading human rights - the ability to freely, in own discretion to form development of a personality. Similarly, Article 21 of the Constitution of Ukraine guarantees freedom and equality of people in dignity and rights. That is, since the moment of birth the dignity of everyone is equal with others. Understanding all of this contributes to individual dignity, expectation of respect from other people, desire to defend their rights and recognition of equal rights of others.

German Basic Law in articles 1 and 2 as the top right of an individual declares inviolability of human dignity and guarantees everyone the right for free development of his\her personality if this does not violate the rights of others, constitutional order or moral principles of society. That is, according to researchers, is leading statutory rights of a person in German law.

To illustrate the concept of leading individual right we will turn to the German legal system, where this concept is most clearly reflected. Supporters of the idea of "allgemeine pers nlichkeitsrecht" (the leading right of an individual) believe that because the whole sphere of manifestation of personality is impossible to cover by separate rights, and in addition there are also gaps in law, it must constitutionally consolidate only the leading right of an individual, which will guard all legally significant manifestations. However, according to representatives of ideas of the leading individual right, along with this right a range of rights should be singled out, as they often require legal protection².

In fact, if we apply to Ukrainian Constitution the German concept of the right to human dignity as a leading individual right which protects all legally significant acts of individuals, it can be argued that the provisions of Article 3 and Article 21 of our Basic Law fix the same right in Ukraine, with aims to provide freely determine development of his\her personality. The elements of free development of Ukrainians are, respectively, life and health, honor and dignity, integrity and security of a person³.

Thus, the right to human dignity actually exist in Ukrainian legal system in two dimensions, as specifically defined or positive (article 28 of the Constitution of Ukraine), and as part of a leading individual right (articles 3, 21 of the Fundamental Law of Ukraine).

However, for better understanding of the right for human dignity we will analyze the nature of this right in terms of religion, because they are inextricably linked.

As for the religious approach to understanding the category of "dignity", religion understands the concept of dignity as a key aspect of religious morality. Dignity acts as embodiment of human nature. Dignity advocates as a kind of intermediary in the process of interaction between law and morality. Actually law ensures secular type of human dignity, and religion - spiritual.

Secular consciousness, formed by justification of self-sufficiency of human personality as the "measure of all things", often perceives human rights for granted, as something not requiring special consideration (as analogy of generally accepted rules of decent behavior). Instead, religious understanding of human dignity is based on the fact that "a person can not be self-sufficient. This would mean that a person does not exist. It is the mystery of human existence"⁴.

Moral problems take important place in religious doctrine that proves cogency of significant contribution that religious thinkers contributed to development of ideas about human dignity. Actually, in

¹ Конституція Федеративної республіки Німеччина 1949. <http://legalportal.am/download/constitutions/83_ru.pdf>.

² Посикалюк, О.А. (2010). Загальне особисте немайнове право («allgemeine pers`nlichkeitsrecht») за німецьким цивільним правом. *Право України*, 3, 255.

³ Вдовіченко, С., Кампо, В. (2012). Право на людську гідність: українська теорія і практика у контексті європейського досвіду (Продовження). *Вісник Конституційного Суду України*, 5, 64.

⁴ Ковальчук, Т. (2007). Світські та релігійні аспекти уявлень про людську гідність. *Філософські обрії: Науково-теоретичний часопис*, 17, 140, 142.

the teachings of theologians: Tertullian, St. Augustine, St. Thomas Aquinas – we find address to the issue of human dignity. Scholastic, religious teachings also often operate by basic concepts of moral consciousness.

In the religious sense, the main components of dignity are the categories of good and evil, justice, moral freedom and responsibility, conscience, honor and so on. In addition, most ideas and works of theologians were later the basis for interpretation of moral categories by secular thinkers. In particular, by conviction of medieval theologians, obedience and service to God is the primary duty of a man. This "philosophy", on the one hand, made people passive instrument with slave consciousness, but on the other, this understanding of human existence implies the need for self-reflection, self-awareness of personal virtues, dedication of earthly life according to Christian commandments in order to approach the ideal of God-man, because "a person can have salvation only through Christ and in the body of Christ"¹.

Thomas Aquinas found a compromise between divine predestination and free will of man, otherworldly aiming of a man and his addiction to happiness in the earthly life. He believed that everything that can not be decided by morality finds its solution in religion².

Human dignity in the light of religious ideas derived from the concept of God's creation of man in the image and likeness of God³. A man from the standpoint of Christian ethics is something quite special; a person is the soul and body together, especially in its essence, vocation, work, dignity, difficulties and purpose.

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Morality, as it is known, is principles and norms regulating behavior, activities of communities and associations in terms of universally accepted notions of good and evil, honesty and dishonesty⁵. Morality includes guidelines and requirements aimed at maintaining at least minimum unity, integrity, humanity, for support of self-preservation, survival and reproduction. Universal morality of these rights is that their implementation should not harm, aggravate, complicate life of a single person, no matter when and where this person lives. From a moral standpoint, the act of Abraham⁶, who was willing to sacrifice his son, absolutely unacceptable, it contradicts to any understanding of human dignity. Instead, for the believer's willingness to sacrifice in the name of God is a manifestation of decent human behavior.

Biblical principles are ideal behavior based on forgiveness, sacrifice, asceticism and faith in the fact that by changing ourselves, we can change the world. However, religion brings spiritual ideal outside a person man, which to some extent, complicates its implementation. The principles of morality are secular by nature, available and possible to implement during life.

But there are not only differences but also similarities between religion and morality. In particular, the Church firmly declares that everyone - regardless of personal convictions - bears the image of God and therefore every person should be treated with respect. Because "Christ taught about a man, as about the image and likeness of God, and this approved dignity of a man as free spiritual being"⁷.

In summary, we note that legal definition of "human dignity" does not exist and should not exist, because it would narrow the scope of protection of a source of moral rights - the right for human dignity. Inviolability does not mean, unfortunately, that human dignity can not be abused; it means that human dignity should not have restrictions and is forbidden to violate.

¹ Ковальчук, Т. (2007). Світські та релігійні аспекти уявлень про людську гідність. *Філософські обрії: Науково-теоретичний часопис*, 17, 142.

² Гусейнов, А.А., Ирлитц, Г.Г. (1987). *Краткая история этики*. Москва, Мысль, 251, 260.

³ *Біблія або Книги Святого Письма, Старого й Нового заповіту* (1990). Київ.

⁴ Ковальчук, Т. (2007). Світські та релігійні аспекти уявлень про людську гідність. *Філософські обрії: Науково-теоретичний часопис*, 17, 137.

⁵ Андрущенко, В.П., Горлач, М.І. (1997). *Короткий енциклопедичний словник*. Харків, Рубікон, 246.

⁶ *Біблія або Книги Святого Письма, Старого й Нового заповіту* (1990). Київ.

⁷ Луцький, І.М. (2014). Правовий та релігійний підхід до поняття людської гідності. *Науково-інформаційний вісник Івано-Франківського університету права імені Короля Данила Галицького*, 9, 23.

The analysis of legal norms in this area and practice of their application in Ukraine and foreign countries shows that natural right for human dignity is a leading right, which has not enough attention in domestic theory and practice.

Indeed, during violation of any human right personal dignity is also diminished. This kind of illegal moral damage is clearly the most common, although requirements for compensation are not always put forward by victims, at least in domestic jurisprudence. Since there are no criteria or basic principles, that qualifies a particular act as that which violates human dignity. And this is a complex controversial issue and a big problem.

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3. *Bibliya abo Kniga Svyatogo Pis'ma, Starogo i Novogo zapovitu* (1990) [Bible or book of old letters, old and new covenant]. Kyiv [in Ukrainian].
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