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DIGNITY AS THE MAIN DIRECTION FOR COMBINING THE RULE OF LAW AND THE PRINCIPLES OF A SOCIAL STATE

This article focuses on the problematic issues of dignity and its role in resolving the conflict between the rule of law and the principles of a social state. The conceptual definition of dignity is offered, and its general and legal criteria are considered. The problem of objectivity of the concept of dignity and the subjectivity of its substance is highlighted. The emphasis is put on the importance of providing equal opportunities by the state to guarantee decent living. The article studies the possibility of consolidating the basic requirements to ensure human dignity at the legislative level. The urgency of economic and material criteria of dignity, with the increasing role of environmental criteria in the near future, is addressed.

Keywords: dignity, the dignity of life, rule of law, social state, conflict of principles, criteria of dignity.

The history of our civilization has shown that market economy combined with democracy based on the principles of the rule of law, in spite of its shortcomings, has the most effective influence on the development of mankind at present. It refers to economic, technical, and scientific progress. The reverse side of this evolution is the growing global economic inequality. The following question has become urgent: how can the social component be integrated into the current economic and political order without hampering the market economy (an economic component of states), democracy (political component), and the rule of law (legal component). All attempts to integrate the social component are reduced to attempts to socially balance such concepts, as dignity, equality, justice, and freedom, which must be balanced by applying the principles of reasonableness, rationality, solidarity, and others. These concepts set the direction for combining the principles of the rule of law and social state. All four concepts are subjective and different social groups may see them in dramatically different ways. Therefore, ideal would be the solidarity of society in its support of different views of these concepts, provided the reasoned and rational implementation of the latter is provided by the state.

Nevertheless, it is human dignity that is the flagship which defines the direction for the legal state in conflict-free implementation of the principles of a social state. "Consistent and unconditional observing human dignity as the ontological basis of all human rights and freedoms¹ is obviously the most optimal and promising way of harmonizing relations between the rule of law and the principles of a social state, including social and economic rights"².

The conflict between the principles of the rule of law and the social state is, to a certain extent, a conflict between private and public interests. The notion of the dignity of the existence of society and the dignity of human existence should be separated, as well as the concepts of private and public interests. Private and public interests include an interest in decent life. Ideally, a private interest would include the desire to achieve a decent life for society, and a public interest – the desire to achieve a decent life for every person.

It is in the criteria of the dignity of human and society where we can find a way to resolve contradictions between the principles of the rule of law and the social state, as a conflict between public and private interests. At the same time, the recognition of the dignity of man as the highest social value, in the legal sense, does not mean that all other human values are less important.

I will explain my own understanding of dignity below. Dignity is the concept of awareness of one's own value, which is always related to interaction with other people, with the awareness of one's own value by others, and with the perceptions of the value of a person in a particular society in a certain historical period. Accordingly, it may be similar for certain social groups. Dignity is dynamic, and it originates in human consciousness.

¹ Гришук, О.В. (2008). *Людська гідність у праві: філософський аспект*: Автореф. дис. докт. юрид. наук. Харків, 5.

² Козюбра, М. (2010). Верховенство права і соціалізація держав. *Наукові записки НаУКМА*, 103, 3-8.

Table 1

**Conflicts between principles of the rule of law and social state
are observed in the following cases**

| Rule of Law | Social State |
|--|---|
| Principle of privacy and freedom of the individual | Interference with privacy and limitation of personal freedom for the sake of public interests |
| Restriction of state power over a person | Installation of state power in various spheres of life of a person |
| Inviolability of individual rights in relation to the public interests | Limitation of individual rights for the sake of public interests |
| Protection of private property | Ability to restrict private property rights for the sake of public interests |
| Legal equality | Economic equality |

The criteria of human dignity and the dignity of society are interrelated and inseparable. Sometimes they are classified into material and moral criteria, although it is difficult to attribute them to only one group. For example, the material criteria of human dignity include income, quality of housing conditions, adequate nutrition, economic stability in the state, and others. However, when we begin to compare, for example, the sufficient income of one person with higher incomes of other people, from the material sphere this category also shifts to the moral area, as it will no longer be a matter of sufficient satisfaction of the minimum material needs for a decent life of a human. It will then be questions of the economic value of a human in a particular society, of productivity, level of qualification, professional position, and other factors. Of course, life, health, and security of humans should be regarded the highest value by the state, but if the economic component is measured, the dynamic and subjective components of the substance of dignity will depend on the quality of life in society. The notion of decent living belongs to different social categories, and only when we consider dignity as a subjective right, it becomes a legal category. And since human rights are inseparably linked to morality, the danger of substituting the legal criteria of decent life with ethical and moral ones increases significantly.

There are many criteria of human dignity, therefore we will list several general criteria which are typical in most cases: respect to personality, the presence of a social elevator, the right to own property, affordability of housing, the level of material security, availability of education, the conditions for realization of human potential, and many others. The criteria of the dignity of society can also encompass the phenomena which affect the subjective awareness of the dignity of each individual member of society, part of society, or society as a whole. These include culture, customs, politics, economics, education, the level of comfort in urban areas, the quality of administrative services, ecology, and others. The general legal criteria for decent life can be attributed to the rule of law, developed social legislation, mechanisms for judicial protection of rights, including social rights, physical and social protection from the state, and the protection of fundamental human rights.

The right to respect for human dignity is stipulated in the Universal Declaration of Human Rights, which states that “all human beings are born free and equal in dignity and rights” (Article 1), “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”(Article 10)¹ The International Covenant on Civil and Political Rights states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”² The notion of dignity is mentioned in the preamble of the United Nations Charter, and Antonio Guterres, Secretary-General of the UN, believes that one of the central elements of his work should be the protection of human dignity³.

¹ The Universal Declaration of Human Rights, Article 1 and 5.

² International Covenant on Civil and Political Rights (ICCPR), Article 10.

³ Guterres, A. (2016). Statement by Mr. António Guterres on his appointment by the General Assembly to the position of Secretary-General of the United Nations. *United Nations Secretary-General*. <<https://www.un.org/sg/en/content/sg/speeches/2016-10-13/appointment-general-assembly-position-secretary-general-united>> (2018, September, 17).

The criteria of the dignity of the existence of society and human constitute a unified system since they are inextricably inter-related, as long as private and public interests are interconnected. The alliance of the criteria of the dignity of human and society, both private and public ones, is manifested in situations which have no conflict of interest. This may be issues of the welfare of society, a strong family institution, public safety, healthcare, developed infrastructure, and other issues which positively contribute to the quality of life of the entire society and do not conflict with private interests. Nevertheless, if a conflict does appear, for example, when building a road through private land, the state must settle it with a decent compensation or using an alternative solution. I think we will not be able to resolve this dilemma once and forever, but we can create methods for addressing it, for instance, by applying mediation or case law.

The criteria of dignity, both for a human and for society, could not be sought in positive law, since such a right does not always objectively reflect the existing reality, including generally recognized social ideals. A person who has created his or her decent life by one's own efforts, perhaps even with the help of the state or the conditions created by the state (due to negative law), will perceive and realize one's own dignity more intensively than the one whose dignity was granted by the state without any personal effort (due to positive law). In any case, social policy should be assessed with the help of criteria which are determined by the specific nature of society. "Without ensuring socio-economic rights, human dignity will be simply declarative, and the rule of law may turn into an idle doctrinal abstraction"¹.

The utopian ideal of a social state means economic equality and equal redistribution of economic benefits ("take it from the rich and give it to the poor"). But an equal redistribution of economic wealth may have nothing to do with fair distribution, and economic equality does not guarantee social welfare. Here we can see a conflict between the principle of equality and the principle of justice. The emphasis needs to be shifted from redistribution to creation of favorable conditions for gaining economic benefits. It is not economic equality, but the equality of opportunities which eliminates the conflict of the principles of equality and justice. If redistribution is exercised, the redistribution itself would be supposed to become a source of decent existence of the human; in other words, the state would become the source of dignity. However, the substance of dignity is a subjective notion. Therefore, it is a person, not the state, who will always be its source, and the ability to independently acquire material goods, albeit with the help of the state, to a large extent contributes to the implementation of human dignity.

According to the philosophy of Immanuel Kant, "the devotion to the law" brings people closer to the welfare and the personal moral value of their own being within society. Everyone should have an opportunity to view themselves in relation to the laws. The moral values which, by means of laws, become universal, must be considered by a human in terms of their own values and values inherent in society, which will allow for a deeper understanding of the content of dignity. In the philosophy of Kant, dignity becomes the denominator which directs human behavior taking into account the moral views of society. Freedom, as the autonomy of a human, is the basis of dignity and it implies an understanding of one's individuality and a reflection of its outcome (or process). However, autonomy as a freedom should not be transformed into arbitrary behaviour, which may result in negative consequences. Moral freedom of a person means the realization and fulfillment of one's responsibility to oneself and other people when there is a free will and a will subordinated to the moral law. Freedom is the natural right of a human. All people are equal in their natural autonomy, and morality demands respect for everyone who is capable of such autonomy. People should enjoy equal respect for their autonomy, which is one of the essential features and foundation of dignity. Therefore, dignity is an exclusive prerogative of a human as a person compared to other living beings, and it is connected, first of all, with the continuity of reflection. A human must constantly consider one's moral axioms in two directions: from the point of view of oneself and in relation to another person, whose rights are also sovereign and must be taken into account. Dignity is independent of empirical conditions and is significant in itself because it corresponds to and its content is oriented at the moral law. A human is characterized by innate human dignity. Dignity is a specific universal category which has a complex content and embraces the world of man and the results of one's activities (decent work, decent life, etc.). Dignity is a value that is based on mind, not instincts².

Dignity is an unconditional and absolute value, proportional to the value of the moral law itself. To understand the nature of dignity, the commitment to the moral law determining its specific nature is

¹ Козюбра, М. (2010). Верховенство права і соціалізація держав. *Наукові записки НаУКМА*, 103, 3-8.

² Kant, I. (2003). *Criticue of practical reason*. Dover Publications Inc. New York, United States, Co, 71-86, 132-155.

essential. The devotion to the law determines the rational and intellectual nature of dignity. At the same time, the dependence of dignity upon the "logic of the heart" and virtues remains. In this regard, practical reason is the most effective to comprehend this sphere. It is a practical reason, enriched with intuition, which is considered as a tool and the human inherent capacity for decent being¹.

People are equal in their dignity, which is universal². We can consider people equal in their dignity according to both the legal category and the category of inalienable human features. Yet, the substance matter of dignity, as a concept born in the mind of a particular person, can radically differ from the concepts of dignity of other people. If the substance of dignity were the same for all people, it would not be problematic to determine to what extent dignity is satisfied in a particular society. One could develop a unified state social policy that would fulfill the substance of the dignity for all people. Unfortunately, this is impossible. The desire to satisfy the requirements of one's dignity is a human need, and different people have a different understanding of its substance matter and ways to achieve it. For example, the substance of dignity for people with disabilities will include the satisfaction of those needs which do not need to be satisfied for physically healthy people. People are equal in their right to dignity which is unquestionably related to natural human rights. And the substance of human dignity will be objectively recognized when the mechanisms of judicial protection of this right are established.

Based on the above-mentioned, one can understand that the problem of dignity lies in the subjective nature of its substance. If the basic requirements to ensure human dignity, common for the majority of people, are stipulated at the legislative level, then such legal understanding of the substance of human dignity can claim to be objective. That is, the substance of dignity can be objective only as a legal category. If such requirements of the substance of dignity are not satisfied, it will signal a possibility to apply positive law by the state. In order for the state to provide help to the extent required, it needs to intervene in the private life of an individual. Therefore, the application of positive law can only take place on condition of the person's consent so as not to violate the principles of privacy and inviolability. In other words, people should know that they can receive help from the state and that they themselves take initiative if they wish to receive it.

Certainly, we cannot achieve an ideal satisfaction of human dignity in the state. Still, the state can create necessary conditions so that people can individually provide decent existence for themselves or receive the necessary amount of assistance to ensure the minimum requirements of human dignity.

Looking into the future prospects of human development, one can see that for a social state it is necessary to create jobs and increase production in order to ensure employment of the population and have resources for social programs. However, global climate change, warming and environmental pollution will require reduction of harmful production and introduction of green technologies that are less economically profitable. If the states take this path, their resources for social support will reduce significantly. If they do not, humanity will perish in an effort to satisfy its appetites against the growing demand for dignity. In the past, the dignity of life was emphasized exclusively in the legal field. Today it covers the economic field, and the environmental requirements for human dignity will become a priority in the future. As a result, either unhealthy ambitions or common sense will take a win. So far, the ambitions have been overpowering.

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¹ Kant, I. (2003). *Criticue of practical reason*. Dover Publications Inc. New York, United States, Co, 149-165.

² Kant, I. (2003). *Criticue of pure reason*. Dover Publications Inc. New York, United States, Co, 190.