

# ESSENTIAL FEATURES OF THE PRINCIPLE OF HUMAN DIGNITY

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## Abstract

This paper aims to offer a synthetic analysis on the features of human dignity from a legal approach. Human dignity is one of the most important fundamental human rights and an element of a democratic society enshrined in many legal instruments that recognize its absolute nature. However, defining human dignity is a very complicated process considering the lack of international or constitutional provisions in this matter. As it appears, there is a moral imperative to protect and assure respect of human dignity and it is considered determinative for the principle of human rights and in particular for the principle of equality and non-discrimination. Despite this position, the legal concept of human dignity remains an abstract and vague one.

**Key words:** human rights, international protection, constitutional value, legal protection

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The concept of human dignity is an extremely complex one having profound philosophical, political and legal resonances. It combines both the philosophical conception of the immeasurable and inherent value of the individuals as their status and position in society (J. Waldron, 2012). From the perspective of the social status to be recognized to a person, defining human dignity is a difficult burden as it implies participation of all members of society in social relations based on equality and without undermining the dignity of other persons (J. Waldron, 2012).

## MATERIAL AND METHOD

Constitutional protection of human dignity is often submitted in controversial legal issues such as capital punishment, prohibition of discrimination, abortion, hate speech (J. Waldron, 2010; J. Waldron, 2009; Jackson, Vicki C., 2004; McCrudden C., 2008).

## RESULTS AND DISCUSSION

### Human dignity as a fundamental value

National constitutional regulations of many States consider directly or implicitly human dignity as the top fundamental right in an hierarchy of fundamental freedoms (Germany, Romania, France - where this role is recognized in the jurisprudence of constitutional judges).

However, In Europe, the European Convention on Human Rights contains no express

provision of this fundamental right, yet its importance is recognized by the European Court of Human Rights (Mathieu B., 2005) as one of the core values of the European Convention, although there is no consensus about its content (C. Girard, 2004).

Respect for human dignity, however, is not a universal value as not all legal systems share the thesis that we are not allowed to treat a person in such a way as to cause its transformation into an object (Andriantsimbazovina. J et al, 2008) in pursuing an aim that is extraneous to the human nature.

The affirmation of the principle of human dignity happened quite recently and it was not expressly provided by statements of fundamental rights adopted in France and the United States in the eighteenth century or by the following instruments whose main concern was to provide the notions of "equality" and "freedom" (Andriantsimbazovina. J. et al, 2008).

Respect of human dignity is enshrined in mandatory terms in the Universal Declaration of Human Rights of 1948, which in its preamble states: *"Whereas recognition of the inherent dignity of all members of the human family and their equal rights and inalienable foundation of freedom, justice and peace in the world."*

The same value is recognized in the Declaration of Philadelphia of 1944 which redefines the objectives of the International Labour Organisation and in the International Covenants on Civil and Political Rights and the social, economic and cultural of 1966.

Human dignity is the main subject of the Convention for the protection of human rights and

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human dignity with regard to biological and medical applications, adopted in Oviedo in 1997 (Andriantsimbazovina. J. et al, 2008).

Under Article 17 paragraph 1 of the International Covenant on Civil and Political Rights, "*no one shall be subjected (...) to unlawful attacks on his honor and reputation*". Paragraph 2 of the same article provides that "*everyone has the right to the protection of the law against such interference or attacks*."

### **Connections between human dignity and other fundamental rights**

Human dignity performs a dual function: it is matrix principle and an autonomous principle.

The feature of matrix principle of human dignity derives from the wording of the Charter of Fundamental Rights of the European Union. This instrument provides a series of principles and fundamental rights: the right to life, the right to personal integrity, the prohibition of torture and inhuman or degrading treatment, prohibition of forced labour and slavery, the last two condemning denial of an individual's humanity and treating it as an object (Mathieu B., 2005).

The feature of an autonomous principle of human dignity results from placing it at the beginning of the Charter even since the first version of its consecration in 2000. The purpose of wording this principle was primarily, but not exclusively to cover issues related to bioethics. The vision of the Charter's editors was that human dignity was a principle that prevailed over other fundamental rights.

On the philosophical level dignity and personal freedom are correlative instead from strictly legal terms the two concepts are likely to be in opposition (*exempli gratia*, if a person exercising her freedom wishes to dispose of an organ of her body) (Mathieu B., 2005).

A significant trait of human dignity is given by its non-derogatory nature compared with other fundamental rights or freedoms. This is the conclusion derived from the use of the term "*inviolable*" in the Charter. But either the Charter does not contain a definition of human dignity. Article 1 states: "*Human dignity is inviolable. It must be respected and protected*."

In the legal order of the European Union, it the crucial role of human dignity as part of the EU law was recognized by the judgements of the Court of the European Union. (Judgment of 9 October 2001 - Case C-377/98 Netherlands v European Parliament and Council [2001] ECR I-7079).

In applying human dignity provisions some judicial bodies reconcile this principle with other

principles and fundamental rights. An example is the French Constitutional Council (CC no. 2001-446 du 27 juin DC 2001) which provided a reconciliation between the right to dignity of the embryo and the mother's freedom on the issue of voluntary interruption of pregnancy (Iftimiei A., 2014).

The 2000 version of the Charter stated in its Article 1 that dignity must be respected and protected the use of the term "inviolable" occurred in the final version which highlights the preeminent nature of preeminent of the principle of human dignity that should not without any prejudice for any reason.

Express recognition of the principle of human dignity also has a symbolic value: it fills the formal void of the provisions of the European Convention on Human Rights (Mathieu B., 2005).

### **Legal consequences of the respect of human dignity**

Defining human dignity is a very delicate matter as its content derives from an evolutive judicial interpretation which varies from a national legal order to another (Andriantsimbazovina. J. et al, 2008).

The principle of human dignity enjoys an express recognition in the Charter of Fundamental Rights, which states: "*Human dignity is inviolable. It must be respected and protected*".

It is also provided by the Preamble to the Charter of Fundamental Rights as a value alongside freedom and equality and it is recognized as the founding principle of the legal order that justifies the existence and respect for fundamental rights.

One feature of the Preamble of the Charter is the difference between rights, principles and freedoms. In this trichotomy the human dignity is included in the category of principles which signifies a subjective right and an objective one at the same time.

On the one hand, every person enjoys the right for its dignity to be protected which is subject to judicial proceedings, if necessary. On the other hand, it is a constitutional requirement that may impose protection of the human embryo, the becoming person and the deceased entities that usually are not considered as right holders.

From this perspective human dignity appears as a principle to be recognized both by the public power and by third parties. Criminalizing insult and defamation did not have as a main concern the intricate details of the person's reputation or its entry and exit to the social ladder, but had as central concern the foundation of the person's reputation (J. Waldron, 2010).

As a general view authors identified the civic dimension of human dignity that should not be seen as a decoration but it should be supported in order to provide the foundation of a general decent treatment and respect for the persons (J. Waldron, 2010). In this respect the influence criminal law has a special relevance in matters of fundamental rights and freedoms. National authorities have the obligation to define offenses in a very precise manner and this obligation is reduced to the responsibility to keep the project of human plurality by providing a shared space of values that allows every citizen to subject its actions to judgment (Claes E., 2007).

### **Legal means of protection of human dignity**

One of the most controversial issues in the protecting human dignity as a fundamental value is represented by the legal means by which the effectiveness of this right should be ensured. In general terms, the concrete ways to safeguard constitutional values are either civil or criminal law means. In Romania a large number of doctrine opinions expressed points of view according to which the criminalization of actions detrimental to human dignity thus constituting limits on the normal exercise of freedom of expression constitutes an unjustified interference with freedom of expression.

From a legal point of view human dignity is a subjective civil right a fundamental attribute of the person. From the object of protection provided by the 1969 Romanian Criminal Code one may affirm that the respect of human dignity can only be provided for a living person as the hypothesis of granting this right for a legal entity or for a deceased person is not yet generally accepted. In some foreign legal systems there are encountered quite frequently the broad interpretation of this notion which also affects the legal person and in terms of time it can stretch over time after the death of the holder.

One of the reasons or which the Romanian Constitutional Court has ruled on the constitutionality of criminalizing offenses of libel and slander was the effectiveness of protection offered by specific means of criminal law compared to those of civil law.

Human dignity is expressly provided under Article 1 of the Romanian Constitution thus being established its supreme value and ensuring its protection has been a sensitive issue. Redress of damages caused to dignity, honour and reputation by an abusive exercise of freedom of expression may be achieved by applying tort law, the common law on compensation for moral damages. In this context one should not put into question the lack of a regulatory

framework to allow compensation of moral damages caused to human dignity as a fundamental value. Instead, nor the doctrine and case-law of the courts in this matter is not consistent.

Debates on the possibility of pecuniary redress for moral damage are caused by the lack of express provisions on damages and objective criteria for determining the amount of compensation, as a consequence this task returns exclusively to courts in the absence

Although currently redress of moral damages including those relating to dignity, honor or reputation of a person is admitted both by doctrine and case-law (which has always supported the application of this principle) courts may encounter difficulties in applying this rule and granting compensation that acknowledges actual violation of the fundamental right. Fall into this category those psychiatric damage, intimate pain that can accompany people for a long time (I. Albu, 1996; Ifimiei A., 2014) and may occur even if the person defamation.

On the other hand another difficulty that courts must solve concerns the amount of compensation granted that must reflect a balance and must not constitute excessive fines for the authors nor unjustified income for the victims as the effect of these amounts must be a compensatory one (I. Albu, 1996). From this point of view the doctrinal and judicial approach to this matter is one characterized by balancing the two opposing interests in conflict.

Unlike the Romanian law, in the legal system of the United States the amount of damages awarded by the courts in case of violation of fundamental values such as reputation or dignity of the person is not symbolic instead it may be high which may seem contradictory for a system in which the right to freedom of expression is at the top hierarchy of fundamental freedoms.

### **CONCLUSIONS**

A person's dignity is not only a decorative aspect but is a matter of status therefore it is a normative dimension and is an attribute that requires mutual respect from others and from the state.

It is our opinion that the civil specific means provided to obtain compensation for moral damages suffered by violations of dignity, reputation or honor of a person are not sufficient and effective. Romanian law as other European provisions does not contain objective criteria established by the legislator on which compensation should be granted in cases of violation of human dignity. Setting the damages rests solely with the judges and therefore may have purely subjective nature.

It is our opinion that for the future, it appears as a necessity that redressing moral damage done to dignity, honour and reputation of the person should be accomplished also by means of criminal law in view of the supreme constitutional value of human dignity in the structure of the Romanian Constitutional and the general aim of criminal law to ensure the protection of various categories of social relations in a climate of tolerance and security.

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