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## THE RIGHT TO DIGNITY: TERMINOLOGICAL ASPECTS

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**Abstract.** *The article construes a modern concept of human dignity and factors influencing it. On the grounds of the Antique Greek-Roman notion of a human being as *individuus* (Lat. not divisible, integral) and *per-sona* (Lat. mask, role played by an actor), the ambiguity of the human dignity is revealed: on one hand, every human being enjoys an unchangeable and non-deprivable dignity of the human being, on the other hand, the human being, as a creature and participant of social relations, himself/herself creates the dignity of a person. On the grounds of the hermeneutical attitude, it is shown that that human dignity (within the meaning of *individuum*) may be protected only by means of the guarantees of particular human rights and, vice versa, only by ensuring particular human rights one may also guarantee the protection of human dignity.*

**Keywords:** *dignity of a creature, dignity of the human being, dignity of a person, honour, right to dignity.*

## Introduction

Law is a product of the culture of the society aimed at protecting material and non-material values of human beings and nature. One of these values is human dignity. The community of the democratic world of the twentieth century recognized that human dignity is an object of law; therefore, it is necessary to define its characteristic features and indications, so that the protected object becomes effectively regulated. The analysis of the legal practice and the science of law reveals that dignity is usually considered to be an intuitive and self-explanatory notion. The mainstream says that the violation of human dignity may be established even if no abstract definition of it exists. According to Dworkin, anyone who professes to take rights seriously must accept ‘the vague but powerful idea of human dignity’<sup>1</sup>. In the international law, human dignity is often referred to as a source of human rights and freedoms, an axiom of human quality;<sup>2</sup> in the constitutional law it is usually treated as a fundamental norm of a state under the rule of law;<sup>3</sup> in the civil law—as personal self-appreciation based on social recognition<sup>4</sup>. This attitude creates a problem in the legal practice, because in the absence of a clear definition of the notion of a protected object, the issue of the protection and defence of its limits arises. Is human dignity of all persons equal? Does human behaviour influence dignity or does it become lost? In the course of the examination of such and similar questions, several inter-contradictory concepts related to the category of static and dynamic dignity arise in the science of law,<sup>5</sup> and this once again proves the existence of a need for a precise definition of ‘human dignity’, as it is not clear whether to protect it from development, or should it develop, and how should it be differentiated. The said topics are important today, especially while adopting decisions on the legal protection of life, cloning, euthanasia and solving other similar issues related to the protection of human rights. The modern science recognized that in order to ensure a safe environment for human existence, which may be called both natural and social, one must solve social problems. The protection of human dignity is one of the steps towards this objective.

*The object of the present research* is the notion of dignity and the content of the right to dignity.

*The purpose* is an integrated examination of the notion of dignity and its definition as a legal category.

*Methods.* It is noted that our cognition is possible only by means of integrating various branches of knowledge. However, one strives to avoid integralism, where the knowledge of only one particular branch is stressed and discoveries related to the same

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- 1 Dworkin, R. *Taking Rights Seriously*. Cambridge: Harvard University Press, 1977, p. 198.
  - 2 The principle of respect for human dignity: European Commission for Democracy through Law. *Science and Technique of Democracy*. 1998, 26: 18.
  - 3 Ehrenzeller, B., et al. *Die schweizerische Bundesverfassung: Kommentar*. Zürich: Dike Verlag, 2002, p. 83.
  - 4 Supreme Court Senate Ruling No. 1 of 15 May, 1998. *Teismų praktika* [Case-law]. No. 9 Vilnius, 1998.
  - 5 Venckienė, E. The importance of historical discourse for the legal protection of human dignity at present. *Jurisprudencija*. 2010, 1(119): 149.

object in other sciences are ignored. Due to the complexity of the human being, there is a need to purify the notion of dignity by applying the knowledge of various sciences, for example, embryology, psychology, sociology or philosophy. Therefore, having assessed the inter-disciplinary type of the subject, in the course of the construction of the theoretical model of human dignity as a legal category various scientific methods and the knowledge of various sciences are applied. The methods applied for the research include the philosophical, systematic analysis, historical, synthesis, comparative, abstract methods of scientific research. A combined application of these methods is important for the reliability of the results and conclusions of the research.

## 1. Meaning and Significance of the Term *Dignity*

Law has a recursive link to philosophy, ethics, theology and philology. They assist in providing a more detailed definition of the meaning as well as the significance of the term ‘dignity’, i.e. information that the notion of dignity contains and the object that is described thereby.

*Meaning* is the information about the object which is defined by a certain term. The term ‘dignity’ in various languages means: value (Russian *достоинство*, German *das Würde*, English *dignity, respectable, worthy*), self-esteem (Latin *dignitas*), suitability (Polish *godność*). In the legal view, it is a person’s self-appreciation that is influenced by the society’s appreciation.<sup>6</sup> The verb ‘respect’ is related to the core meaning of dignity. However, neither the noun ‘dignity’ nor the verb ‘respect’ provide an answer. They only mark a trend towards the question ‘why’: why is one valuable, why does one respect himself/herself, what is he/she suitable for? For example, whether a human being has value in himself as a physical creature in the natural world or as a particular individual due to his/her social functions in the society?

Etymological examination shows that this term originates from the Latin noun *dignitas*, which had a triple meaning in the old Roman culture: (1) worthiness, accrued recognition, something that may be assessed; (2) magnificence, authority, feeling of pride, sedateness as respectability; (3) great achievements, value of an expensive item.<sup>7</sup> In this case, it is extremely important that a derivative *dignus* has a meaning of compliance, which indicates a special quality of the relation, a certain link between external and internal aspects of value. Therefore, self-esteem is not only the appreciation of a person but also appreciation in terms of the suitability criteria. There are no values as such in the world. Value is attributed to an object by a subject. Only after relating the meaning of value to a meaning as an object that reflects the notion of dignity one may carry out a full analysis of the category.

6 Supreme Court Senate Ruling No. 1, *supra* note 4.

7 *The Oxford Encyclopedic English Dictionary*. New York: Routledge, 1996, p. 398; Beauchamp, T. L.; Childress, J. F. *Principles of Biomedical Ethics*. 3rd ed. New York: Oxford University Press, 1989, p. 144.

*Significance* is an object that is marked with a certain notion. In legal practice, this notion is used to describe creatures as representatives of certain biological species and human beings.<sup>8</sup>

Contrary to human dignity, the *dignity of creatures* is interpreted as the basis for the creation of the protection of biological identity and proper conditions of existence. For example, the European Convention for the Protection of Pet Animals of 1987, which recognizes that pet animals are valuable as they improve the quality of human life, provides for respective duties of owners related to taking care of pets.<sup>9</sup> The dignity of creatures differs from human dignity in a way that an individual representative of a biological species is not granted an independent right to dignity. It means that the main difference from human dignity lies in the fact that the recognition of dignity in respect of several living creatures may not create an absolute right to life, which is contrary to human dignity. Attention should be drawn to the fact that the human duty to take account of the dignity of the creatures is applicable to several animals and plants, and the fundamental principle of requirement is respectful and protective treatment of animals and the recognition of their self-contained value. Animals and plants may serve a human being; however, this process is possible only by following the principle of proportionality between the human self-protection interest and the self-contained value of a creature (both individual and species). Thus, the dignity of the human being and the dignity of other creatures coincide at the level of their basic principles (which means the protection of a biological species as a whole) but are different at the level of individual rights.

The human being characterized by the term ‘dignity’ may also be perceived as a representative of the homo sapiens species and as a single individual of the society. The basis of our humanity, our human dignity is the fact that we are ultimately the same but our dignity as persons is rooted in the fact that none of us—not even genetically identical twins—is exactly like any other.<sup>10</sup> This idea on the dichotomy of the human being is illustrated by the Antique Greek–Roman notions of the human being as *in-dividuus* (Lat. not divisible, unary, integral) and *per-sona* (Lat. mask, role played by an actor). These two antique notions of a person—human being as a biological–spiritual creature (static feature) and as a social creature (dynamic feature)—proves the ambiguity of the human being and human dignity: on one hand, every man has unchangeable and inalienable human dignity, on the other hand, a human being, who is a social creature and participates in social relations with other human beings, himself/herself creates the so-called social capital and, alongside, the dignity of a person.

The notion of value is the fundamental provision of this research, which is important in respect of the concept of the right to human dignity, and the definition of the aspects of a person is the basis of the value of a person as such. It is obvious that the notion of dignity is rather wide and may not be described in an unambiguous way be-

8 Ehrenzeller, B., *et al.*, *supra* note 3, p. 80.

9 European Convention for the Protection of Pet Animals, No. 125 of 13 November, 1987 (entered into force on 1 May 1992).

10 Sacks, J. *The Dignity of Difference: How to Avoid the Clash of the Civilisations*. London: Continuum, 2007, p. 47.

cause of the very object—the ambivalence of the human being. It describes the value of the human being as a creature and defines the value of the human being as a person from the point of view of others. Both of these aspects condition personal self-esteem as self-appreciation. We may perceive a human being as a representative of homo sapiens and as a social person, a part of the society. However, we must remember that the human being is an indivisible entirety. Thus, we may feel self-esteem and be treated valuable in the society both as exceptional creatures and socially useful personalities. The following aspects of human value must be stressed: 1) physical and spiritual integrity, when we speak about human dignity; 2) physical and social identity of an individual, when we speak about the dignity of a person. In this case, the humiliation of dignity is the materialization of the human being as a violation of his/her physical and spiritual integrity, and de-personalization is the denial of the social importance, personal interests and rights of an individual. Such a polysemy of the notion of the human being results in the multiple meaning of the right to human dignity.

## 2. Aspects of the Right to Dignity

At the phase of law-making, the sociology of law demands that one understands what social objectives are pursued by adopting legal norms and assesses whether the newly adopted legal norms are going to be effective. The wordings of a legal act must embody all important practical pre-conditions that are necessary in order to achieve the objectives of the legal act. One of such pre-conditions is the necessity to use the same meaning of various concepts in the legal acts.<sup>11</sup> In view of the aforementioned different aspects of the treatment of the human being, it is no surprise that at present this concept is used in a sense that is too broad, without due analytical strictness, in law as well. In the course of the hearing of cases related to the right to dignity, one uses terms that are obviously not unambiguous and may get different meaning when defining them. For example, in the cases on the human being and his/her right to dignity, which are heard by the U.S. Supreme Court, the following different concepts are used: human dignity, dignity of human personality, dignity of a person, dignity of an individual, dignity of every individual.<sup>12</sup> It is possible that due to the fact that the human being is a multi-aspect creature, the existence of which is a process that should be divided into periods of time, legal practice faces the multiple meaning of the right to human dignity, for example, when speaking about the right to dignity of an embryo and a human being in the post-natal period. The status of the human being as the central subject of the legal system, the importance of human rights as well as the interest of all social sciences demands an answer not only to the question as to what a human being is and what the aspects of his/her value are but also to the question when the human life begins and ends.

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11 Šlapkauskas, V. *Teisės sociologijos pagrindai* [Fundamentals of the Sociology of Law]. Vilnius: Mykolo Romerio universitetas, 2004, p. 591.

12 Paust, J. J. Human dignity as constitutional right: jurisprudentially based inquiry into criteria and content. *Howard Law Journal*. 1984, 27(1): 154.

Neither law nor morals may provide a competent answer to these questions, because these objects are examined only by special sciences—natural sciences.<sup>13</sup> Embryology, the science that examines the development of the human being, indicates that the following phases of human development can be specified: zygote, embryo, foetus and child. Actually, a continuous development of individual and autonomous organism starts from the very conception, ending approximately at the age of twenty years.<sup>14</sup> It takes fourteen days for the zygote to become formed and embed in an uterus; therefore, some scientists propose to call this period pre-embryo phase and to start calculating the beginning of life only after the expiry of this phase. However, for example, in the case of cloning, the embryo does not embed anywhere and does not change its internal characteristics; therefore, the potency to change into a human being commences from the moment of its formation. This knowledge is important not only to medicine, its practice, but also to many other sciences, including law. May we state that discrimination on the grounds of development is less evil than discrimination on the grounds of race or sex? ‘All human beings are born free and equal in dignity and rights’,<sup>15</sup> reads the Universal Declaration of Human Rights. This legal act does not provide any (neither physiological, psychological nor developmental) criteria for the establishment of human value; therefore, we may assume that the task of law in a democratic state is to protect all aspects of human living. The development of the human being shows that the human being is not only a representative of the homo sapiens species: supposing a human creature and a social personality are not identical tasks, one defines the following aspects of the right to human dignity: the right to dignity of a human being and the right to dignity of a person. Then the right to human dignity is the right to equal treatment of the value of all human beings (for example, non-discrimination on the grounds of development), where every human creature has a possibility to become a person. It is the human being as a person that enters into society; therefore, the right to dignity of a person is a possibility to act on an equal basis, become socially valuable and gain the right to respective appreciation by the society.

## 2.1. Right to Human Dignity

The Universal Declaration of Human Rights contains a provision that ‘recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’<sup>16</sup>. This statement probably means that:

1. the concept of human dignity is the fundamental basis for perhaps all democratic values;

13 Andrulionis, G. *Asmens autonomija sveikatos teisėje*. Daktaro disertacija. Socialiniai mokslai, teisė. [Autonomy of a Person in Health Law. Ph.D. dissertation. Social Sciences, Law]. Vilnius: Mykolo Romerio universitetas, 2006, p. 166.

14 Kavoliūnaitė, E. Žmogaus gyvybės teisinės apsaugos pradžios koncepcijos [The conceptions of the beginning of the legal protection of human life]. *Teisės problemos*. 2005, 2(48): 7–8.

15 UN Universal Declaration of Human Rights, GA Res. 217A(III), U.N. Doc.A/810 at 71 (1948).

16 *Ibid.*

2. all individuals should be treated as holding inherent dignity only due to the fact that they belong to the human kind.

Such a concept of dignity means that the right to human dignity is in a way self-justifying, something that needs no demonstration or proof but rather a sole recognition. Every human being must be appreciated, respected and recognized not due to any merits or exclusive characteristics but due to the sole fact that he/she is a human being. The human being is inseparable from human dignity.<sup>17</sup> It should be noted that in developing the protection of human dignity, one must define the human being as a multiple object, because a sole bodily or spiritual identity is not a human being yet, its value is created only by the combination of the two. The right to human dignity may be defined as:

- the right to claim physical and moral integrity and ensure the possibility of self-expression;
- the duty to respect the same right of other human beings.

Thus, the norm of dignity indicates a direction for law-making, the construction of legal texts and all legal order. Article 1 of the Universal Declaration of Human Rights reads: '[a]ll human beings ... are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.<sup>18</sup> The equality of the right is based on human dignity and is a criterion of the fundamental equal treatment of persons. The formulation of this legal norm enables the interpretation of a horizontal relation between human beings as well: we have the right and duty to respect each other and alongside to protect our dignity—this is a condition for the common existence of free people in a free community. Respect to his/her right to dignity may be demanded from a democratic state and legal community by every human being on the grounds of his/her existence, without any preliminary conditions, without differentiation related to citizenship or any other aspect. The right to human dignity is absolute, it may not be taken away due to a person's behaviour that is not in line with the requirements of social norms, because the very object of the right—humanity as a physical and spiritual aspect—may not be lost. It may only be infringed.

In the practice of international law, a tendency to define the protection of human dignity through its violation has formed. The notion 'humiliation of dignity' aims at equating the subject with a tool, instrument. The Federal Constitutional Court of Germany defines dignity through 'object-formula', i.e. stating that the norm of human dignity prohibits the treatment of a human being as an object.<sup>19</sup> Thus, we may state that the protection of the dignity of the human being as a representative of the homo sapiens species prohibits his instrumentalization, and the human right to dignity means the right to not being treated as an object or the right to humane treatment. The latter in the legal practice is defined as the treatment of behaviour, which recognizes bipolarity, does not treat human beings only as biological bodies that may be used as objects for meeting

17 Ehrenzeller, B., *et al.*, *supra* note 3, p. 86.

18 UN Universal Declaration of Human Rights, *supra* note 15.

19 The principle of respect for human dignity: European Commission for Democracy through Law, *supra* note 2, p. 40.

the needs of other persons, society and the state.<sup>20</sup> While following the position that the human being is an *individuus*—integral physical and spiritual identity—its value may be infringed by denying this integrity:

a) *by the instrumentalization of physical identity*

Modern medicine recognizes that genetic data attributable to the human being are identical both in the post-natal and the pre-natal phase in respect of a healthy individual or the one who has physical or mental disorders. Human dignity, if graded according to health, the phase of development, loses its particular content of orientation, introduces a mess in legal interpretation. One thing is clear: euthanasia, abortion, cloning are extreme cases in respect of the biologicness of the homo sapiens which originate from consumer needs of the society, and it is namely extreme cases that create the bad law. Rawls states that justice does not permit even thinking that a sacrifice of a part of human beings may be compensated by top welfare of the majority.<sup>21</sup> Democratic state brought up the human being whose spiritual nature enables a choice of values—declaration of every human being as unconditionally valuable and dignified. Biological nature does not choose value. It fights for survival, follows the principle of benefit, it may deprive a person who does not meet certain social criteria of the right to life, what results in the life of a society based on the principle of ‘an eye for an eye’. The factor of the creation of a state under the rule of law is the moral quality of the society, says Vaišvila. This is an internal ability of the members of the society to recognize the right of one’s close person without any external pressure.<sup>22</sup> The nature of life becomes expressed through biological and spiritual autonomy of the human being. Only due to the fact that the human being is considered to be valuable, he/she is recognized as having the fundamental right to life, and the right to human dignity is its precondition. However, the problem lies in the fact that both international and national (Lithuanian) legal acts avoid defining the right to life in respect of time, although this is one of the major issues when dealing with the protection of the human being as a creature. Article 6 of the International Covenant on Civil and Political Rights reads: ‘[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (emphasis added).’<sup>23</sup> On 4 April 1997, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine was adopted in Oviedo.<sup>24</sup> Article 1 of the Convention defines the purpose and the

20 Paust, J. J., *supra* note 12, p. 179.

21 Rawls, J. A. *Theory of Justice*. Cambridge: Belknap Press of Harvard University Press, 1972, p. 3–4.

22 Vaišvila, A. *Teisinės valstybės koncepcija* [Concept of a Law-Governed State]. Vilnius: Litimo, 2000, p. 129.

23 International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR].

24 European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 4 May 1997 (ETS No. 164), entered into force on 1 December 1999. *Official Gazette*. 2002, No. 97-4258. Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, 12 January 1998 (ETS No. 168), opened for signature on Jan. 12, 1998, not in force. *Official Gazette*. 2002, No. 97-4259.



object of the legal act: '[p]arties to this Convention shall protect the dignity and identity of *all human beings* and guarantee *everyone*, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine (emphasis added).'<sup>25</sup> The European Court of Human Rights (the ECHR) in none of its rulings has interpreted what the meaning of the notion *everyone* in the aforementioned legal acts is and whether a human embryo is recognized as having the right to life. It has been held in the ruling of 8 July 2004 in the case *Vo v. France*<sup>26</sup> that on the European level there is no common consent on the nature and status of an embryo and a foetus; however, due to scientific progress, the possible results of genetic engineering research, procreation and experiments with embryos it slowly gains certain protection. According to the ECHR, it is impossible to answer a question whether a child in the pre-natal phase is considered to be a human being as per Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; therefore, it follows the position that the beginning of the right to life is not only a legal but also a medical, philosophical, ethical or religious issue.<sup>27</sup> On the grounds of medical science, an embryo in one or another way is an expression of one and only life, which commences at the moment of the conception and passes through all phases up to death. There is no exact information when a zygote becomes an embryo and an embryo turns into a foetus; however, there is one indisputable fact—the process of life starts with the conception.<sup>28</sup> The issue of the right to life is related to human dignity and the threats of its violation. Abortions are one of the examples of manipulating human life; thus, a human being and his/her dignity are instrumentalized and the interests of another person, in this case—a mother, are treated as the most important and, consequently, it may be called discrimination on the grounds of development. Euthanasia is dividing the life of an individual into the one that is worth and the one that is not worth living, by treating the right to health as the one that supersedes the right to life. Euthanasia, abortions—these are examples when a human being may be turned into an instrument without changing his/her identity. It is the protection of the latter that clone-making is related to. Article 11 of the Universal Declaration on the Human Genome and Human Rights established that '[p]ractices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted. States and competent international organizations are invited to co-operate in identifying such practices and in taking, at national or international level, the measures necessary to ensure that the principles set out in this Declaration are respected.'<sup>29</sup> Clone-making is a process where a human being as a creature is used for

25 European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 4 May 1997 (ETS No. 164), entered into force on 1 December 1999. *Official Gazette*. 2002, No. 97-4258. Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, 12 January 1998 (ETS No. 168), opened for signature on Jan. 12, 1998, not in force. *Official Gazette*. 2002, No. 97-4259.

26 Case *Vo v. France*, No. 53924/00, ECHR, 8 July 2004.

27 *Ibid.*

28 Kavoliūnaitė, E., *supra* note 14.

29 The Universal Declaration on the Human Genome and Human Rights, 11 November 1997, GA Res. 53/152 of 9 December 1998.

respective public purposes, and speaking about the right to life, on the international level the status of a human embryo is not established; besides, it is not clear to what extent the clone-making for therapeutic purposes complies with human dignity. Under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.'<sup>30</sup> The destruction of a human embryo in order to extract stem cells should be obviously treated as cruel and humiliating behaviour. Is the right to life infringed when human creatures—embryos—are created for the purpose of extracting stem cells? Their life is sacrificed in order to save the life of a particular individual, whose health is considered to be more important than the right to life of the human being who is at an early stage of development. Cloning also infringes the right to equality. First, one man, in this case the scientist, dominates in respect to the other man by applying a selective eugenic scheme of actions; second, the selection of human creatures is made according to the principle 'good' and 'bad', because for the period of fourteen days from the insemination the embryo is not legally protected. For example, scientists say that they doubt whether it is possible to call human clone-making a process that is humanely important, because therapeutic cloning of embryos is not necessary in order to extract stem cells, as there exist alternative and unimpeachable in moral respect methods of their extraction from the cells of adult tissue.<sup>31</sup> The purpose of democracy is the protection of human beings. May we state that this protection is applicable only to those who live at present? Human rights protect the natural process of human life instead of attempting to make it eternal. One should feel responsible against the forthcoming generations, as it is impossible to forecast the consequences of some scientific experiments and their effect upon the ecological and social environment.

b) *by denying spiritual identity and stressing the human being as a body:*

- as a tool for the implementation of government interests

Human dignity in its essence obliges all government institutions to refrain from the measures of the implementation of power that may infringe human dignity. It may be summarized as a negative duty not to treat the human being as an object of attaining other needs of national level. Human dignity must be protected by means of law-making, and legal norms may not also be interpreted as if they permit the infringement of human dignity.<sup>32</sup> For example, it is prohibited:

- to apply capital punishment. Under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its additional protocols,<sup>33</sup> the regional system of human rights, which is called one of the most advanced systems, was

30 European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222, E.T.S. No. 5 (entered into force 3 September 1953) [CPHRFF].

31 Bojarskas, J. *Ave vita*. *Ave vita*. 2002, 12: 2.

32 Gewirth, A. Human dignity as the basis of rights. *Constitution of Rights: Human Dignity and American Values*. Ithaca, 1994, p. 147.

33 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, 3 May, 2002.

developed. Article 2 of the Convention reads: ‘[e]veryone’s right to life shall be protected by law (emphasis added)’. Such a wording means that there is no act of positive law that may deny the human right to life. When deciding the issue of capital punishment, the Constitutional Court of the Republic of Lithuania held that ‘life and dignity are inalienable properties of an individual, therefore they may not be treated separately.’<sup>34</sup>

– to apply physical punishment, to humiliate human beings in the course of criminal procedure and the places of detention. For example, when in 1978 the ECHR investigated the case *Tyrer v. UK*, the legitimacy of using switch by police officers was put at issue. The ECHR indicated that institutionalized application of force is an infringement of human dignity and the physical immunity of a person, because the very nature of physical punishment is that one person is engaged in the application of physical violence and force against another. The applicant did not suffer any grave or continuous effect; however, such punishment infringed his right to dignity due to the fact that he was treated as an object of power used by the authorities.<sup>35</sup>

– to create inhuman conditions. In the case-law of various courts, dignity is mentioned in the cases related to the conditions of detainment of the arrested and convicted persons. For example, in the case *Darvish v. Prison administration* (1980), a prisoner claimed that prisoners have no beds, they sleep on mattresses placed on the floor. Prison administration explained that if the prisoners were supplied with beds, they might dismantle them and use as weapons. The court ruled in favour of the prisoner and reasoned the decision on the fact that despite the administration’s fear to supply prisoners with beds, human dignity must be protected.<sup>36</sup>

One may state that human dignity protects everyone from inhuman and humiliating treatment that takes a form of the denial of the human being as an integral physical and spiritual creature, the treatment of the human being only as a physical body, which may originate not only due to the actions of national authorities but also from the personal needs of an individual himself/herself or other individuals.

– to satisfy personal needs

Examples could be prostitution, slavery, exploitation of persons with physical disorders. In many countries one can see plays with dwarf people. They are thrown into the air by physically healthy actors; thus, they participate in an unequal fight and, in the majority of cases, with a public watching the scene. Administrative courts in Germany have prohibited these plays irrespective of the argument that dwarf people participate there on their own will and this is an opportunity for them to earn money. The main motive of the courts was dignity, because dwarf people were used as shells, the objects that awake low instincts of the public.<sup>37</sup> In this way one solves the issue of the existence of social threats to an individual, by bringing up the necessity of solving the primary

34 Constitutional Court Ruling of 9 December 1998. *Official Gazette*. 1998, No. 109-3004.

35 Case *Tyrer v. the United Kingdom*, No. 5856/72, ECHR, 25 April 1978.

36 Kretzmer, D. Human dignity in Israeli jurisprudence. *The Concept of Human Dignity in Human Rights Discourse*. Hague: Kluwer Law International, 2002, p. 163.

37 Klein, E. Human dignity in German law. *The Concept of Human Dignity in Human Rights Discourse*. Hague: Kluwer Law International, 2002, p. 158.

problem: how we should limit the freedom of the individual actions of an individual so that they pose no threat to the freedoms of his/her own or other persons. In order to avoid turning the freedom of the actions of an individual into a potential threat to the very individual, he/she must start to perceive himself/herself as the one who always exists in between his body and the perception of having a body.<sup>38</sup>

The protection of human dignity is an obligation of each democratic state, it is protected equally, irrespective of age and sex<sup>39,40</sup> as well as irrespective of race<sup>41</sup> and citizenship. Moreover, any attempt to dignity means an infringement. According to the case-law of various courts, there is no way to create a balance between the legal interests of other persons and human dignity. The principle of proportionality does not apply there; thus, the protection of the fundamental right is the basis of all rights.<sup>42</sup> Not even war or other threats to the survival of a state justify the restriction of human dignity, says the Geneva Convention relative to the Treatment of Prisoners of War (1949)<sup>43</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)<sup>44</sup>. Thus, although new issues are raised, the concept of dignity ‘indicates the limits within which the human being agrees to make a compromise with both the environment and his/her own pragmatic interests and intentions.’<sup>45</sup>

## 2.2. Right to the Dignity of Personality

Biological value/dignity of the human being becomes the basis for the rights that are necessary in order to create other—social—value of the human being. In other words, different dignity of personality blooms in all human beings on the grounds of equal human dignity. Thus, the dignity of personality, contrary to human dignity, permits the differentiation of human beings. The dignity of a person means the suitability of a human being to live in harmony with his/her neighbours. According to Vaišvila, in case of the dignity of personality, a person is valuable not in himself/herself, but in view of other persons and only due to the rendering of services that are important to the needs of other people. Persons perceive the reason why they are useful not only to themselves but also to others, and this perception enables proper self-esteem and ones’ ‘rise’ on the scale of

38 Šlapkauskas, V., *supra* note 11, p. 391.

39 Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force on 3 September 1981) [CEDAW].

40 Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force on 2 September 1990) [CRC].

41 International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force on 4 January 1969) [CERD].

42 Ehrenzeller, B., *et al.*, *supra* note 3, p. 89–90.

43 Geneva Convention relative to the treatment of prisoners of war of 12 August 1949 (Geneva Convention III) 6 UST 3316. Entry into Force: 21 October 1950.

44 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment GA Res. 39/46 of 10 December 1984. Entry into Force: 26 June 1987.

45 Stoškus, K. *Etiketas ir žmonių bendravimas* [Etiquette and Human Communication]. Vilnius: Mintis, 1981, p. 34.

value.<sup>46</sup> Thus, dignity is not only self-esteem but also an entirety of objective characteristics that define the value of personality in the society, which may include education, life style, moral properties, ability to communicate and help others, etc.<sup>47</sup>

Speaking about independent right to the dignity of a person, we often use the term *honour* and define it as the right to honour and dignity. The application of this term in respect of the social value of a personality was probably caused by the development of social regulation:

1. Pre-legal, when human behaviour was regulated by such moral norms as manners, traditions, moral norms that establish certain duties; their fulfilment is not compulsory but usually causes the society's recognition/condemnation, respect/contempt. The honour does not depend on a certain act of a person or his/her self-esteem. For example, a person may get concerned, condemn himself/herself for rescuing a child from fire, although he/she might have rescued (in his own opinion) two of them. However, other people would probably treat him/her as a hero in any case, because he/she fulfilled his/her moral duty, and in this case nobody would say that he/she could have fulfilled it better. It is impossible to refuse honour, as it is impossible to refuse human dignity, because the society decides what action is valuable; therefore, the very personality is honourable. Honour may be lost only after acts that are considered evil by the society. Thus, honour is an inseparable property of the human being and should be treated as a moral rather than legal category, because it is gained on the grounds of the moral norms of a particular society within a particular period. However, in the modern world honour is defended by legal means and is defined as a positive public opinion about a person, good reputation.<sup>48</sup>

2. Legal, when human behaviour is regulated not only by social norms but also by the rules of behaviour established by the state. An individual becomes socially valuable by following all social norms—not only moral norms but also legal imperatives. Thus, honour becomes one of the constituent parts of social value.

When protecting the social value of a person, one must take into account the entire moral context of the society and its relation to the protected person, which (we must note) is changing subject to place and time. Social value must be assessed in view of all human factors, not only the scope of legal obligations undertaken by a person and the subjective rights gained by him/her. For this reason we sometimes face a question whether the one who did not rescue a sinking man but properly paid taxes, or the one who did not pay taxes but donated money to hospital for a purchase of medicine for kids suffering from cancer is more valuable. This proves that law should not always follow logics, because sometimes logical thinking may not provide reasons for specifying the rules that are the most beneficial to the society. Thus, the dignity of personality is a multiple concept. It is created by following not only legal norms but also moral princi-

46 Vaišvila, A. Žmogaus orumas ir teisė į orumą teisinio personalizmo požiūriu [Human Dignity and the Right to Dignity in Terms of Legal Personalism]. *Jurisprudencija*. 2005, 71(63): 56.

47 Pavilionis, V. Konstitucijos 21 straipsnio komentaras [Commentary on Article 21 of the Constitution]. *Teisės problemos*. 1999, 1-2(23-24): 54.

48 Supreme Court Senate Ruling No. 1, *supra* note 4.

ples. Vaišvila, a professor of law, specifies two levels of the right to dignity of a person: right to dignity in view of legal capacity and in view of subjective law. He presents the following method of the protection of this right:<sup>49</sup>

– *At the level of legal capacity* every human being enjoys equal rights to dignity: this is an equal possibility for every personality to create aptitude for existing within the society. The right to dignity at the level of legal capacity is absolute and is acquired from the moment of birth. It obliges the members of the society allow every person to use the abilities of the human being and in this way create his/her own social value.<sup>50</sup> It means that at the level of legal capacity the right to dignity of a physical person becomes infringed in case of infringement of any right of him/her as a human being, because it is a measure of the creation of social value. When protecting any infringed subjective right of a person, the right to dignity of the level of legal capacity is protected alongside.

*At the level of subjective right* the dignity of personality differs, because due to unequal properties persons use their rights of the level of legal capacity in different manners, they create individual social value which differs from that of other members of the society, feel respective self-esteem based on the latter, and this self-esteem is not only a subjective self-assessment of the person; it is caused by public esteem—the society establishes what standards of behaviour are positive and negative, and for this reason it is public opinion that should be the criterion of personal self-esteem.<sup>51</sup> Meanwhile public opinion, as already mentioned, is based not only on legal imperatives but also on all social norms. Legal practice of defending the dignity of a person should also take this factor into account. The right to dignity of the level of legal capacity may not be withdrawn or limited; however, by applying justice only the subjective right to dignity of the person who has committed a breach may be narrowed, i.e. in respect of the level of the value of the person as recognized by the society, which was attained by the person while fulfilling his/her duties and gaining respective rights on the grounds of these duties.<sup>52</sup> Speaking about the defence of the right of a person to dignity we should note that neither subjective rights gained by the person nor honour as recognition by the society as a result of following moral norms, if taken separately, create the level of the social value of a person, which we use to call the dignity of a person; it is created only by the combination of the two. Honour is a constituent part of the subjective right to dignity; therefore, having infringed honour, one infringes the subjective right of a person to dignity as well, and it is defended at court as the right to honour and dignity. The dignity of a person, as an object of independent law, is infringed in cases where one unreasonably claims that the biological quality of a person has reduced (for example, due to a physical or mental disease, which may influence proper/dignified existence of the person in the society that recognizes certain values). For example, in the *Bock v. Germany* (1989) divorce case, the process lasted for nine years. It took so long because the wife, the defendant, expressed a doubt concerning the mental health of the husband, the plaintiff. When the plaintiff

49 Vaišvila, A. *Teisės teorija* [Theory of Law]. Vilnius: Justitia, 2009, p. 166–167.

50 *Ibid.*, p. 168.

51 Meškauskaitė, L. *Žiniasklaidos teisė* [Law of the Media]. Vilnius: Justitia, 2004, p. 258.

52 Vaišvila, A., *supra* note 49, p. 173.

commenced the divorce procedure, his wife started an unsuccessful procedure of the assignment of care during which the husband was hospitalized in a mental institution. The ECHR recognized that the German court made a serious examination of the issue of legal capacity; however, the case has not been solved within a reasonable period of time. One may not leave aside the situation of the plaintiff, who was subject to doubts in relation to his mental health for nine years without proving that he was mentally incapable. This was treated as a serious threat to the dignity of the plaintiff.<sup>53</sup>

Dignity as an object of independent right is also infringed in cases when one denies or questions individual value that was gained by a particular person by his/her true actions, by means of public actions or words intended to offend or expressing opinion about the person or his/her actions, where the form of expression is obviously humiliating, or disseminating information that does not comply with reality and humiliates the dignity of the person. In a democratic state, law protects the value of a person which was gained by his/her own actions and deeds. ‘The right to honour and dignity is the right of a person to claim that the public opinion about him/her is formed on the grounds of knowledge that complies with his true merits, and moral assessment reflects the real situation of his/her compliance with the requirements of laws and universal moral norms’.<sup>54</sup> Thus, social value is obtained in the course of living in the society, and it differs due to different individual properties and abilities of every person. An infringement of the honour and dignity of a person places a burden on the very victim ‘to rinse clean’, which is an individual decision of every person, contrary to the defence of human dignity, which is the purpose of democratic society and the duty of a state.

## Conclusions

1. It is the need for an effective protection of the human right to dignity that implies a requirement to provide a more detailed notion of dignity as a legal category. One may separate the dignity of the human being and a person.

2. Human dignity is the value of the human being, the representative of the homo sapiens, the protection of which means the recognition of the exclusiveness of the physical and spiritual integrity of the human being in the natural world. This is the foundation of the legal subjectivity of every person, which may not be withdrawn in a democratic society and lost due to improper behaviour.

3. Human dignity may be infringed when a person is treated as an object, a tool for the achievement of a national, public or individual objective. An individual may not resign of human dignity and the legal subjectivity which stems from it. The defence of human dignity is the task of the entire democratic community rather than a decision of a particular subject.

4. Democratic states recognize every physical person’s independent right to create his/her own individual social value—personal dignity. Having violated any subjective

53 Case *Bock v. Germany*, No. 11118/84, ECHR, 29 March 1989.

54 Constitutional Court Ruling of 9 December 1998. *Official Gazette*. 1998, No. 109-3004.

right, one infringes the right to dignity of a person of the level of legal capacity, which is a tool for an individual to create his/her social value. The court defends a particular infringed right of a person.

5. The dignity of a person as a social value is created by following public social norms. Honour becomes its part. Every individual creates his own personal dignity, which may differ due to different individual properties and abilities of every human being.

6. A subjective right to the dignity of a person could be infringed in a case of total denial of the suitability of the individual for the life in society, and it must be defended in view of both legal requirements and the moral context of a particular society at a particular period of time.

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## TEISĖ Į ORUMĄ: TERMINOLOGINIAI ASPEKTAI

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**Santrauka.** Žmogaus orumo terminas demokratinės valstybės teisės sistemoje vartojamas dviem aspektais: kaip žmogaus teisių sistemą pagrindžiantis principas ir kaip savarankiškos teisės objektas. Tačiau sąvoka „orumas“ lieka tuščia formuluotė, neįvardijant to vertingumo pagrindo, žmogaus orumo susiejimas su žmogaus teisėmis lieka deklaratyvus, o orumas kaip savarankiškos teisės objektas atrodo kaip asmeninė, jokių pareigų nesaistoma, individo moralinė vertybė. Straipsnyje siekiama teoriniu ir praktiniu aspektais kompleksiskai iširti žmogaus orumo sąvoką, apibrėžti ją kaip teisinę kategoriją. Aiškinamos ir interpretuojamos normos tų tarptautinių dokumentų ir valstybės vidaus teisės aktų, kurie įtvirtina teisę į orumą ir jos apsaugą, analizuojami tokie su žmogaus orumu susiję klausimai, kaip skirtingi teisės į orumą įgijimo, apsaugos aspektai, kurie iki šiol apskritai nebuvo mokslinio tyrimo objektas, bet padedantys atskleisti orumo sąvokos turinį, probleminius terminologijos aspektus. Jei laikomasi pozicijos, kad demokratinės valstybės pagrindinė vertybė yra žmogus, tai teisė – jo interesų įgyvendinimo ir gynimo priemonė. Jos pagalba žmogus kaip integrali fizinė ir dvasinė būtybė XX a. a priori pripažintas vertybe. Tai demokratinio pasaulio susitarimas, bet ne empiriško įrodinėjimo dalykas, kad nepriklausomai nuo individualių fizinių, moralinių arba kitokių savybių visi žmonės laikomi lygūs savo orumu/vertingumu dėl savo išskirtinumo gamtos pasaulyje. Kad žmogus galėtų įgyvendinti išskirtinius savo sugebėjimus, kiekvienas pripažintas teisės subjektu. Taigi galima sakyti, kad sąvokos „orumas“ pirmasis aspektas yra „žmogaus orumas“ kaip integralus biologinis ir dvasinis jo vertingumas, pagrindžiantis visą žmogaus teisių sistemą. Žmogaus orumo apsauga reiškia žmogiškosios būtybės kaip subjekto apsaugą nuo jo pavertimo objektu. Antrasis „orumo“ sąvokos aspektas yra „asmens orumas“ kaip individualus socialinis vertingumas. Jo išėities pozicija yra koncepcija, kad žmogus – socialinė būtybė, kuri per bendravimą ir bendradarbiavimą su kitais visuomenės nariais kuriasi kaip asmenybė. Asmens orumas, kaip ir žmogaus orumas, – tai moderni koncepcija, susiformavusi XX a. Iki tol šis terminas labiau vartotas apibūdinti aukštesnio socialinio sluoksnio atstovą. Socialinis vertingumas šiulaikine prasme kuriamas laikantis ne tik dorovės normų, bet ir kitų socialinio elgesio taisyklių, iš jų – ir teisės normų. Tarptautiniuose ir valstybių vidaus teisės aktuose kiekvienam asmeniui pripažįstama savarankiška teisė jį kurti ir ginti. Paprastai ši teisė įvardijama kaip teisė į garbę ir orumą. Naudodamasis teisėmis, laikydamasis kitų visuomenės socialinių normų, asmuo įgyja subjektinę teisę į garbę ir orumą – į savo susikurtą, skirtingą nuo kitų visuomenės narių, individualų socialinį vertingumą. Jį ginant privalu atsižvelgti į konkrečios visuomenės, konkretaus laikmečio dorovės normas, nes asmens orumas kaip teisinė kategorija turi neginčijamą dorovinių aspektą, kuris nėra konstanta. Jis kinta priklausomai nuo vietos, laiko ir jo apsauga yra

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*valstybės vidaus teisės uždavinys, priešingai nei žmogaus orumas, kuris yra demokratinės bendruomenės tikslas, todėl jo apsauga yra ir tarptautinės teisės uždavinys.*

**Reikšminiai žodžiai:** *būtybių orumas, žmogiškosios būtybės orumas, asmens orumas, garbė, teisė į orumą.*

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