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The legal definition of human dignity

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Abstract

The article deals with issues of human dignity and the right to dignity. The basis of research is special literature, international legal normative acts, and national legislation of different countries. The content of the category of human dignity and the structure of the corresponding right were considered. The category of human dignity is interdependent with legal personal status. The right to human dignity has its own structure as well as any subjective legal right and it can be protected through different ways under legislation of the corresponding branches of law. Human dignity can be considered in two aspects. Firstly, it can be interpreted as the supreme value which is characterized through personal legal status including legal rights, freedoms and duties, citizenship, legal personality, legal guaranties of realization of rights, freedoms and duties, and principles of legal status. Personal legal status is determined by complex of factors, and so each person has general (constitutional), special and individual legal status. Therefore everybody has specific dignity. Secondly, human dignity can be understood as a non-material value which is identical to good name or reputation, or necessity of human treatment. Such non-material value is an object of personal legal right which is entrenched in statements of different branches of international law and national legislation. Respect for human dignity can be incorporated in legislation as the fundamental principle of state policy or as a principle of different branches of law. Such principle means priority of human rights and freedoms in relations between a person and a state.

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Introduction

No law contains definition of the category of human dignity. Different and contradictory definitions are formulated in legal theory. This fact entails unclearness of content of the right to human dignity and mechanism of its realization.

Legal interpretation of human dignity is scientific and practical problem. A lot of normative legal acts mention this category without its definition. In such situation definition of the category is formulated in practice or in doctrine. For example, Alfonsas Vaišvila writes, Lithuanian laws in force do not define the concept of dignity. This function has been left for the competence of legal doctrine and legal practice. The Senate of Judges of the Supreme Court of Lithuania defined honor and dignity in their Ruling No. 1 of 15 May 1998 as "person's self-evaluation that is determined by society's evaluation" [Vaišvila, 2009].

Besides, Christopher McCrudden notes, "There are significant differences relating to the extent to which dignity should be regarded as related to national liberation and self-determination [Arab Charter on Human Rights (2004), Art. 2(3)], as an appropriate limit on freedom of speech [Cairo Declaration on Human Rights in Islam (1990), Art. 22], as grounding a basis for protecting honor and reputation [American Convention on Human Rights (1969), Art. 11(1)], as grounding individual duties to the community as well as rights [Protocol of Buenos Aires (1967), Art. 43(a)], as requiring the provision of socio-economic rights in general (or particular socio-economic rights such as workplace rights, or the right to property) [European Social Charter (1996), Art. 26], as related to the role of dignity in the context of rights of women [Cairo Declaration on Human Rights in Islam (1990), Art 6(a)], and as relevant to freedom of religion" [Cairo Declaration on Human Rights in Islam (1990), Art. 1(a); McCrudden, 2008].

The another problem of legal defining the category of dignity was noted by Vaišvila. As the author notes, "dignity has often been inseparable from the right to dignity, the right itself is not differentiated in the terms of suability and subjective right; dignity and its origin has been rarely linked to the cultural human activity. It strengthens the indetermination of the concepts of dignity and of the right to dignity and makes their application in practice more difficult" [Vaišvila, 2009].

Russian law theorists Sergey Drobyshevskiy and Tatyana Protopopova formulated one of the modern definitions of human dignity. In the authors' point of view, "Human dignity as complex and many-sided phenomenon is a person's self-esteem, one's moral and fair self-concept, aspiration for pursuing respect from other people, and necessity to respect them" [Drobyshevskiy, Protopopova, 2016, 105].

It is necessary to define the content of the category of human dignity and the structure of the corresponding right. It is helpful for protection human dignity.

The concept of human dignity in international law and national legislation

There are different ways of recognizing the concept of human dignity in national legal systems of the world. Christopher McCrudden writes that the analysis of legal texts shows "significant differences in the ways in which human dignity has been incorporated into positive law."

In particular, "in many of the instruments, dignity is to be found in the preamble, whereas in others it is used to explicate particular rights. In some it is referred to as foundational in some sense; in others not. In some, human dignity is a right in itself (and in some systems, a particularly privileged right), whilst, in other jurisdictions, it is not a right but a general principle" [McCrudden, 2008].

The above conclusion is correct. Really, according to the Preamble of the International Covenant on Civil and Political Rights (1966) rights "derive from the inherent dignity of the human person" and whose animating principle is "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world" [Riley and Bos, 2017].

Preamble of the Universal Declaration of Human Rights (1948) states, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ... Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person..."

The similar provisions are contained in national legislation of different countries. The category of human dignity is entrenched in constitutions as the supreme value, and so protection of dignity is a general principle. In particular, Article 10(2) of the Constitution of Kenya (2010) states, "The national values and principles of governance include ... human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized." Also according to Article 19(2) "The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings." Article 20(4) states, "In interpreting the Bill of Rights, a court, tribunal or other authority shall promote – the values that underlie an open and democratic society based on human dignity, equality, equity and freedom."

Article 2 of the Constitution of the Russian Federation (1993) states, "Man, his rights and freedoms are the supreme value." This provision characterizes status of any person.

The similar provision is contained in the Constitution of South Africa (1996). According to Article 7(1) of Chapter 2 "This Bill of Rights ... enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."

Preamble of the Constitution of the Republic of Namibia (1990) states, "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace," and also "...we the people of Namibia ... desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world."

The category of dignity has the wide content which is interesting for many researchers. Different opinions on this issue are formed.

Alfonsas Vaišvila overwrites two levels of human dignity: "Relating dignity to the cultural activity of a person, a possibility to distinguish two levels of human worth appears: 1) worth that

originates from each person's recognition as a subject of law in general and that, as it has been mentioned, is the same to everyone because is acquired from the society without personal effort (performance of duties), and 2) individual social worth of a person that can be created by the person only through fulfillment of obligations in respect of one's neighbor which, following the logics of swap, commits other persons to reversible services". In the author's point of view "For the process of acquiring dignity it is important if, by fulfilling duties, the person acquires the proprietary right to the good that he or she has created by fulfilling duties and that would be by the right protected from other persons' infringement to gratuitously use or embezzle it". Thus, "The unity of rights and duties is a legal formula of human dignity" [Vaišvila, 2009].

As Christopher McCrudden notes, "Andrew Clapham has usefully suggested concern for human dignity has at least four aspects: (1) the prohibition of all types of inhuman treatment, humiliation, or degradation by one person over another; (2) the assurance of the possibility for individual choice and the conditions for "each individual's self-fulfilment", autonomy, or self-realization; (3) the recognition that the protection of group identity and culture can be essential for the protection of personal dignity; (4) the creation of the necessary conditions for each individual to have their essential needs satisfied" [Clapham, 2006:545-546; McCrudden, 2008].

In Christopher McCrudden's opinion, human dignity has "a basic minimum content", and its content includes three elements. "The first is that every human being possesses an intrinsic worth, merely by being human. The second is that this intrinsic worth should be recognized and respected by others, and some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth. The third element is "the relationship between the state and the individual. This is the claim that recognizing the intrinsic worth of the individual requires that the state should be seen to exist for the sake of the individual human being, and not vice versa (the limited-state claim)" [McCrudden, 2008].

As Michael Boylan notes, "Human dignity could be conceived as a *regulative idea*, providing the trajectory of politics but not necessarily central to its practice. Slightly differently, human dignity could be treated as providing a conception of good politics and implying practical side-constraint within political systems. More directly, human dignity might be identified with the good, which would give human dignity a more clearly normative and perhaps perfectionist role" [Boylan 2004; Riley, Bos, 2017].

Stephen Riley and Gerhard Bos write, "the idea of human dignity seems an ideal candidate for a kind of *Grundnorm* or secondary rule in law: a norm giving validity to legal systems as a whole or a principle governing the application of all norms within a system. However, this is difficult to defend as anything other than a loose generalization. In principled terms, legal systems treat justice as their foundational norm and this means that consistency, rather than moral defensibility, guides adjudication. And, in practice, it is not at all clear how human dignity can or should function as a "higher" norm. There is, in other words, something of a mismatch between the putative function of the concept and its actual potential" [Riley and Bos, 2017].

It seems to be evident that the category of human dignity as a fundamental principle includes all other human rights. In particular, according to Article 22 "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

As Catherine Dupré notes, "EU's charter of fundamental rights (2000) contains dignity's clearest textual definition in title 1, including the right to life (Art. 2), the right to physical and mental integrity (Art. 3), the prohibition of torture and inhuman or degrading treatment or punishment (Art. 4), and the prohibition of slavery, forced labor and human trafficking (Art. 5)" [Dupré, 2011].

The above analysis demonstrates that the category of human dignity includes several elements. The first element is personal rights and freedoms.

The rights are divided into human and civil and realized in relations between persons and between person and the state. Civil status is determined by citizenship, and it is not identical to human status. Therefore the second element of dignity is citizenship, i. e. belonging a person to a concrete state with its legal and political systems and culture.

Furthermore, as Vaišvila truly noted, individual social worth of a person that can be created by the person only through fulfillment of obligations in respect of one's neighbor. Besides, it should be noted that specific duties as well as rights are immanent to different personal legal statuses. For example, according to Article 142 (3) of the Brazilian Constitution (1988) "an officer shall only lose his post and rank if he is judged unworthy of or incompatible with the dignity of officership by decision of a permanent military court, in times of peace, or of a special court, in times of war." Also Article 23 of the Peruvian Constitution states, "No working relation can limit the exercise of constitutional rights, nor disavow or disrespect the dignity of workers." Under the Colombian Constitution "Education shall be in the care of individuals of recognized ethical and pedagogical fitness. An Act guarantees the professionalization and dignity of the teaching profession" (Art. 68). In according to Article 229 of the Ecuador's Constitution "Public servants shall consist of all those persons who in any way or under any category, provide services or hold an office, function, or dignity in the public sector." All people who belong to the mentioned groups such as officers, workers, teachers or public servants realize specific complex of rights, powers, functions, and duties. Realizing it they must protect rights and legal interests of other people and also they can protect their own rights and reputation, i. e. their dignity. For this reason duties characterize dignity too.

Everybody has specific legal status. Such status can be general, based on international law and on a state constitution, special which is determined by profession or social position, or individual which is determined by different factors such as age, sex, marital status, etc. [Kamishanov, 2012]. Specific rights, duties, legal interests and needs characterize each kind of legal status and so determine personal dignity. In particular, according to Article 227 of the Brazilian Constitution "It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect,

freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression." Also Article 230 states, "It is the duty of the family, society and the State, to assist the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing their right to life."

The above statements demonstrate peculiarities of children's and elderly people's dignity. At the same time, legal constitutional status is common for all citizens of the concrete state.

Thus, the category of human dignity as the supreme value is characterized through personal legal status. In particular, general (constitutional) personal legal status includes constitutional legal rights, freedoms and duties, citizenship, legal personality, legal guaranties of realization of rights, freedoms and duties, and principles of personal legal status [Nevinskiy, 2000, 20]. Other kinds of legal status determine specific dignity of persons who have such status.

Also the respect for human dignity can be recognized in legislation as a principle of different branches of law. For example, according to Article 16 of the Civil Code of France (2013) "Legislation ensures the primacy of the person, prohibits any infringement of the latter's dignity and safeguards the respect of the human being from the outset of life. Article 2 of the Civil Code of Japan (1896) states, "This Code must be construed in accordance with honoring the dignity of individuals and the essential equality of both sexes." According to § 3 (2) of the Civil Code of Czech (2012) "private law is based mainly on the principle that everyone has the right to protect their life and health, as well as freedom, honor, dignity and privacy." Article 2 of the Labor Code of the Russian Federation (2001) states, "Proceeding from the generally accepted principles and norms of international law and pursuant to the Constitution of the Russian Federation, the main principles of the legal regulation of labor relations and other relations directly associated with them shall be ... ensuring the right to employees to protect their dignity in the period of their work." According to Article 1.6(3) of the Code of Administrative Offences of the Russian Federation (2001) "When taking administrative coercive measures, decisions or actions (failure to act) abasing human dignity shall not be allowed."

The right to human dignity and its role in the system of personal rights

The right to human dignity is recognized in national legislation. For example, the Constitution of the Russian Federation (1993) contains the considered right as one of the basic (constitutional) human rights. According to Article 21(1) "Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation."

The similar provisions are included in Israeli basic legislation. One of the Basic Laws is named "Human Dignity and Liberty" (1992). The purpose of the Basic Law is "to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state." The named Law is preserves and protects life, body, dignity, property, personal liberty, right to privacy and intimacy, and right to leave Israel and right of entry into Israel from abroad.

Article 28 of the Constitution of Kenya (2010) states, "Every person has inherent dignity and the right to have that dignity respected and protected." Article 10 of Chapter 2 of the Constitution of South Africa (1996) states, "Everyone has inherent dignity and the right to have their dignity respected and protected." According to Article 8(1) of the Constitution of the Republic of Namibia states, "The dignity of all persons shall be inviolable."

The problem of the place of the right to human dignity in the system of human and civil rights is discussed in theory. In Aharon Barak's point of view, the right to human dignity is a daughter-right of some other constitutional rights. For example, "in Canada human dignity could have been derived as a daughter-right of the right to life, liberty and security of the person," [Canadian Charter of Rights and Freedoms (1982), Art. 7; Barak, 2015] and "in the United States human dignity could have been derived as a daughter-right of the independent right to liberty" [the 14th Amendment of the US Constitution; *Griswold v. Connecticut*, 1965; Barak, 2015:141].

As Alfonsas Vaišvila notes, "The right to dignity is nowadays accepted as "the highest human right", "the source of rights." [Segado, 2001:179; Vaišvila, 2009] Thus, the right to human dignity is "foundation legitimating and creating the system of human rights" [Vaišvila, 2009]. Moreover, "The Helsinki Final Act 1975 says that human rights "derive from the inherent dignity of the human person", and "recognition of dignity (...), equal sovereign rights shall be foundation for freedom and justice" [Human Rights. Collection of regional international documents, 1993: 232; Vaišvila, 2009].

It should agree with Vaišvila's opinion under the follow reason. The right to human dignity is derived from the category of dignity as the supreme value. The named category is characterized through personal legal status the basic element of which is rights. So the category of dignity is realized in person's life through human and civil rights. It means that any person has the right to life in keeping with human dignity. This fundamental right includes all other rights. In particular, Article 23 of the Belgian Constitution states, "Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules ... guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others: 1) the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation; 2) the right to social security, to health care and to social, medical and legal aid; 3) the right to decent accommodation; 4) the right to the protection of a healthy environment; 5) the right to cultural and social fulfilment." So far as the fundamental constitutional right to human dignity includes all other human rights, protection of any of those rights means protection of the right to dignity. So the right to human dignity is not a daughter-right but other human rights are daughter-rights of the considered right.

In the above mentioned Canadian and American jurisdictions human dignity and the corresponding right are protected through the principle of equality. In particular, the idea of equality

is expressed in preamble to the unanimous Declaration of the thirteen United States of America (1776): "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness." Also the Canada's Constitution Act (1867) states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability" (Art. 15(1)). Thus, every person with one's rights and freedoms is the highest value, and all people are equal.

By the way a lot of national constitutions incorporate the principle of equal dignity. For example, according to the Constitution of Bolivia (2009) guarantying "the welfare, development, security and protection, and equal dignity of individuals..." is essential purpose and function of the state (Art. 9). Article 1 of the Constitution of Chile (1980) states, "Men are born free and equal, in dignity and rights."

Furthermore, the right to human dignity can be considered as a subjective personal right in different fields of social relations, i. e. as a right to dignity as a non-material value. Such right is entrenched in international law and in national constitutions or in codes. In particular, Article 10 (1) of the International Covenant on Civil and Political Rights (1966) states, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Article 32 (1) of the Constitution of Bulgaria (1991) states, "The privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any unlawful interference in his private or family affairs and against encroachments on his honor, dignity and reputation." The similar provisions are contained in the Constitution of Croatia (2010) according to which "any arrested and convicted person shall be accorded humane treatment, and the dignity of such individual shall be respected" (Art. 25); "respect for and legal protection of each person's private and family life, dignity, reputation shall be guaranteed" (Art. 35).

The constitutional provisions are concretized in federal codes. For example, Article 150 (1) of the Civil Code of the Russian Federation (Part One, 1994) states, "The life and health, the personal dignity and personal immunity, the honor and good name, the business reputation ... and the other personal non-property rights and non-material values, possessed by the citizen since his birth or by force of the law, shall be inalienable and nontransferable in any other way." According to Article 152 the citizen shall have the right to claim through the court that the information, discrediting his honor, dignity or business reputation be refuted, unless the person who has spread such information proves its correspondence to reality; by the demand of the interested persons, the citizen's honor and dignity shall also be liable to protection after his death.

The Criminal-Procedural Code of the Russian Federation (2001) protects human dignity of the participants in the criminal court proceedings. During the course of criminal court proceedings shall be prohibited the performance of actions and the adoption of decisions, degrading the honor of the participant in the criminal court proceedings, and treatment humiliating his human dignity or

creating a threat to his life or health. No one of the participants in criminal court proceedings shall be subjected to violence or torture or to other kinds of cruel or humiliating treatment, degrading his human dignity (Art. 9). In obtaining the samples for a comparative study, the methods presenting a threat to the life and health of a person or humiliating his honor and dignity, shall not be applied (Art. 202 (2)). Conducting the judicial proceedings in camera shall be admissible on the ground of a court ruling or resolution, if ... an examination of the criminal cases on the offences of the sexual immunity and sexual freedom of the personality and on other crimes may lead to an indulgence of the information on the intimate aspects of life of the participants in the criminal court proceedings or of information humiliating their honor and dignity (Art. 241 (2)).

The Civil Code of the Socialist Republic of Vietnam (1995) states that an individual's honor, dignity and reputation shall be respected and shall be protected by law. No one may infringe on the honor, dignity and reputation of another person (Art. 33). Where a party participates in a civil transaction in order to avoid damage to life, health, honor, reputation, dignity, [it] shall have the right to request a court to declare such civil transaction to be invalid. (Art. 142 (1)).

Human dignity as the supreme value is not identical to dignity as a non-material object of a subjective legal right. The difference between the named categories is reflected in legislation. For example, the Constitution of Bolivia contains separated provisions on human dignity as the supreme value and as an object of a subjective right. In particular, the Preamble to the Constitution states that Bolivia is "a State based on respect and equality for all, on principles of sovereignty, dignity, interdependence, solidarity, harmony, and equity in the distribution and redistribution of the social wealth..." Article 21 (2) in its turn states, "Bolivians have the ... rights ... to privacy, intimacy, honor, their self image and dignity." The past statement entrenches dignity as a synonym of reputation or good name, or as freedom from inhuman treatment.

The right to human dignity is an independent right which can be protected separately from other rights and freedoms. The considered right has its own structure which will be considered further.

The structure of the right to human dignity and its place in the system of human rights

The structure of the right to human dignity is similar to structure of any subjective legal right. Structural elements of a subjective right are possibility for the subject to implement a right at his will by his own actions; presence of the corresponding obligation to a right; presence of the possibility to obtain protection by claims to competent bodies regarding violations of rights on the part of the person having this right [Glushkova, 2015, 87].

The first element of the subjective right to human dignity includes possibility for the subject to implement a right at his will by his own actions. It includes right to self-identification i.e. indication personal gender, age, nation, religion, use of native language etc. Also this element includes right to self-actualization and self-expression.

The second element is presence of the corresponding obligation to the right. Such obligation can be understood in a narrow sense and a wide sense. In such sense it belongs to other persons and includes nonhumiliation the dignity. A person can require nondiscriminatory conduct from other people. Besides, this element includes possibility to pursue respect of others.

Corresponding obligation of a state includes making and protection living conditions that are necessary for dignified existence. Such conditions are guarantying equitable cost of labor for satisfaction of basic needs such as nutrition, clothes, housing, and also protection of family, maternity and childhood, guarantying safety, protection of enabling environment, respect of political rights and freedoms, making conditions for self-development.

The third element is presence of the possibility to obtain protection by claims to competent bodies regarding violations of rights on the part of the person having this right. The following fact should be taken into account. The right to human dignity can be determined by court as a constitutional principle or as a subjective right, and as an independent right, or as a daughter-right [Barak, 2015]. If a court recognizes human dignity as a right, the right is enforced, and if dignity is recognized as a principle, it is necessary to identify breaking a specific right. If the right is recognized as an independent, it can be protected separately from other rights. If it is recognized as a daughter-right of any another right such as the right to life or freedom [Barak, 2015], only an independent right is protectable.

Under Russian legislation the right to human dignity is independent, and it may be protected through three ways: under constitutional law when unconstitutional law is abrogated, under civil law when compensation for breaking the right is paid to person, or under administrative or criminal law when subjects who break the right are punished. For example, item 4 of the first part of Article 24 of the Criminal-Procedural Code of the Russian Federation states, that a criminal case cannot be instituted, and or instituted criminal case shall be subject to termination on the ground of death of the suspect or of the accused, with the exception of cases when the proceedings on the criminal case are necessary for the rehabilitation of the deceased. According to the first part of Article 254 the court shall terminate the criminal case in a court session if during the judicial proceedings are established the circumstances, pointed out in Items 3-6 of the first part, second part of Article 24. These provisions were ruled unconstitutional by the Constitutional Court of the Russian Federation inasmuch as the considered provisions allow terminating a criminal case on the ground of death of the suspect or of the accused without consent of his (her) immediate relatives because a fact of termination of a criminal case upon non-rehabilitating ground can humiliate human dignity of the suspect or of the accused [Postanovlenie Konstitutsionnogo Suda RF, 2011].

The Code of Administrative Offences of the Russian Federation (2001) provides for responsibility for slander and insult. Slander is the dissemination of wittingly false data besmirching the honor and dignity of another person or assaulting the reputation thereof (Art. 5.60 (1)). Insult, that is, abasement of honor and dignity of another person demonstrated in an indecent manner (Art. 5.61 (1)).

Article 128.1 of the Criminal Code of the Russian Federation states punishment for slander, i. e. "dissemination of information known to be false which impugns the honor, and injures the dignity of another person or damages his/her reputation [Criminal defamation, 2017].

Article 1100 of Part Two of the Civil Code of the Russian Federation (1996) states, "The moral damage shall be compensated regardless of the guilt of the inflictor of damage in cases where ... damage has been inflicted by the spread of information denigrating the honor, dignity and business standing; in other cases provided for by the law." Entrenching the right to human dignity in civil legislation makes material compensation for moral damage possible. Under this reason the opinion about importance of human dignity protection under Civil law (Protopopova, 2001) is correct.

According to Article 310 (3) of the Civil Code of the Socialist Republic of Vietnam (1995) "A person causing mental suffering to a person by infringing upon the life, health, honor, dignity [and] reputation of another person must provide monetary compensation to the injured person in addition to terminating the violating acts, making a public apology [and] effecting a public retraction." Also Article 609 states, "Anybody who intentionally or unintentionally infringes upon the life, health, honor, dignity, reputation, property, [or] other legal rights and interests of an individual, infringes upon the honor, reputation, [or] property of a juridical person or other subjects and thereby causes damage [and/or] injury, must compensate."

Article 26 of the Civil Code of the Philippines (1949) states, "Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief: prying into the privacy of another's residence; meddling with or disturbing the private life or family relations of another; intriguing to cause another to be alienated from his friends; vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition."

Conclusion

Dignity and the right to dignity exist. Human dignity can be considered in two aspects. Firstly, it can be interpreted as the supreme value which is characterized through personal legal status including legal rights, freedoms and duties, citizenship, legal personality, legal guaranties of realization of rights, freedoms and duties, and principles of legal status. Personal legal status is determined by complex of factors, and so each person has general (constitutional), special and individual legal status. Therefore everybody has specific dignity.

Secondly, human dignity can be understood as a non-material value which is identical to good name or reputation, or necessity of human treatment. Such non-material value is an object of personal legal right which is entrenched in statements of different branches of international law and national legislation.

Respect for human dignity can be incorporated in legislation as the fundamental principle of state policy or as a principle of different branches of law. Such principle means priority of human rights and freedoms in relations between a person and a state.

The structure of the right to human dignity is similar to the structure of any subjective legal right and contains three elements. The first element is possibility for the subject to implement a right at his will by his own actions. The second element is presence of the corresponding obligation to the right. The third element is presence of the possibility to obtain protection by claims to competent bodies regarding violations of rights on the part of the person having this right.

The subjective legal right to human dignity can be protected through three ways, i. e. under constitutional law when unconstitutional law is abrogated, under civil law when compensation for breaking the right is paid to person, or under administrative or criminal law when subjects who break the right are punished. Concrete ways of protection of the right are incorporated in national state legislation.

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Нормативное определение человеческого достоинства

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Аннотация

В статье рассматривается соотношение человеческого достоинства и права на человеческое достоинство. Основой исследования выступают специальная литература,

международные нормативные правовые акты и законодательство различных государств. Анализируются содержание категории человеческого достоинства и структура субъективного права личности на достоинство. Обосновывается вывод о взаимосвязи достоинства и правового статуса личности. Право на человеческое достоинство имеет собственную структуру и подлежит защите различными способами, предусмотренными отраслевым законодательством государства.

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Ключевые слова

Человеческое достоинство, право на человеческое достоинство, нематериальное благо, диффамация, правовой статус личности.

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