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**CURRENT DEBATES ABOUT DIGNITY AND HUMAN RIGHTS.
LEGAL AND PHILOSOPHICAL CONTEXTS**

Nowadays one can observe many different conceptions of human dignity. Dignity employed in current social, philosophical, medical and bioethical debate, and corresponding legal instruments. It develops a view of human dignity as a foundation of human rights. Placing dignity in axiological order in human rights does not solve all the problems. The question who is a person in the light of human rights still provoke a certain axiological and ethical discourse, in which they wish to engage with their own interpretation of the law, as well as to decide on certain anthropology, from which they acquire a particular concept of a human. Also European jurisprudence is trying to find the right answer to such sensitive question, but the courts left the question open, so the conflict continues.

Key words: human dignity, person, human rights, personalization of law, inviolability of human life.

Disputes which revolves around human dignity, about its meaning and lots of implications of the idea of human dignity, has probably never been so complicated and omnipresent in the modern world. It is a concept which is deeply embedded in political, philosophical, social, medical, scholars and legal discourse and it is not only a frequent faecture of debate but also, and increasingly of legal argument. Courts tell us that human dignity is the foundation of all human rights, but in other hand they still missed the chance to express its clear opinion on the legal status of who is being protected by human rights. Maybe a clear decision of the court statement in this area would bring a new prism into this situation, which is more desirable given current developments in the field of biotechnology, and medical developments. One need to answer to the most fundamental question who is protected by human rights? Moreover, is an unborn child a person with dignity and the right to live? The spirit of this has been passed on the European Court of Human Rights cases, where for e. g. in the July 8 2004 (*case of Vo v. France*), court dealt with the question of whether the unborn child (fetus) enjoys the protection of the right to life provided by Article 2 of the European Convention on Human Rights.

Human Dignity

The phenomena of human dignity has inspired anthic thinkers and philosophers, and inspires till now. This area is spreading over bioethics, phisycians and lawyers, where human dignity is the ground of the value of life, the foundation of human rights and freedom. In recent time, in world there has been a real big increase in the interest of human rights issues. More over, the types of using the words of “human rights, human dignity” and its contexts, where human rights occur are being analyzed. Because a person and its dignity is the main focus, the reflection upon human rights engages not only historical, ethical and philosophical studies, but also lawyers and bioethics. Finding the answers to the fundamental question: “Who am I as a person, in the light of my rights?” is needed, and the methodical analysis must be holistic.

The reflections and practical conclusions around human dignity are examined by the philosophy of human rights where human rights play the key role [1]. Besides such

point of view, the majority of the authors, and the scholars, lawyers, physicians who dealt with these problems, are often aware of the philosophical contexts in which their thought must be conducted. Such a situation provokes a certain axiological and ethical discourse, in which they wish to engage with their own interpretation of the law, as well as to decide on certain anthropology, from which they acquire a particular concept of a human.

In the early 1980s, these problems were undertaken by the European Council, especially expressed in Recommendation of the Council of Europe Parliamentary Assembly from 1982 to Article 934. 1, also known as “genetic engineering”. The Assembly acknowledged the right of a person to inherit a genetic structure, and also one should focus on the axiological order for the protection of human rights. Using the example of European Convention on Bioethics (ECB) [2], which is in its essence a development of so-called records of “hard law”, outlining the protection of human rights in the Universal Declaration of Human Rights [3], the Convention for the Protection of Human Rights and fundamental freedoms. In its preamble, the protected values are: dignity and identity of human being in the postnatal stages of development of a human [4]. Placing dignity in the center of axiological order of ECB and referencing it to all human beings is a procedure especially momentous, but not leveling all the problems, which we can find in following cases.

The European Court of Human Rights (“ECtHR”) dealt with the aspect of human dignity of unborn child and the sacredness of human life. ECtHR focus on the question of whether the unborn child (“the fetus”) enjoys the protection of the right to life which is provided by Article 2 of the European Convention on Human Rights [5].

In the first presented case, *Vo v. France* the ECtHR said that: “The case of *Vo v. France* has significant implications for women’s reproductive rights” [6]. The Court is being asked to grant for the first time an unborn child the status of a person with rights under the European Convention. While this case relates to a medical doctor’s liability under a criminal statute, the precedent set by a ruling in favor of the applicant would have consequences for pregnant women throughout the Court’s jurisdiction. It would lay the theoretical foundation for a claim that the rights of an unborn foetus may take priority over those of a pregnant woman. Such a claim, if upheld, would reverse the long-established jurisprudence of the European human rights system and render the abortion laws of most member states of the Council of Europe invalid under Article 2 [7]. When the Cour de Cassation—the French last instance court—acquitted the doctor of involuntary homicide on the grounds that a fetus (unborn child) is not a person within the meaning of the French Criminal Code, mother of unborn child claiming a violation of her child’s right to life under the meaning of the Convention, so she appealed to the ECtHR. Finally, the ECtHR left open the question whether or not a fetus (unborn child) falls within the scope of Article 2. The court stated that, even assuming Article 2 was applicable to a fetus, there had been no failure by France to comply with its obligations under Article 2, because the ECtHR deemed the institution of criminal proceedings unnecessary [8]. The ECtHR gave to the applicant possibility to bring an action for damages as sufficient, because in courts opinion there was no violation of the fetus right to life. The Court stated that European Convention, unlike the American Convention on Human Rights (the article 4th of the Convention), does not expand explicitly on the scope of Article 2 as applied to unborn children [9]. So that, assuming that Article 2, it declared that there had been no violation of the right to life and the unborn child is not a person protected by Article 2 of the Convention.

The spirit of this judgement has been passed on the case, *X v. Norway*, *Boso v. Italy* [10], *Bruggemann and Scheuten v. Germany* [11], where for e. g in the case *Boso v. Italy* [12] the ECtHR stated that there was no violation to the European Convention since Italian law on the voluntary termination of pregnancy strikes a fair balance between the woman's interests and the need to ensure protection of the unborn child [13].

In case *H v. Norway* in the opinion of Commission, while explicitly not excluding the possibility that a fetus (unborn child) falls within the scope of Article 2 [14], because an abortion made in the 14th week of pregnancy did not violate the Convention [15]. In such a serious conflict between the mother's rights and those of the unborn child, Commission and the national court led to the duty to balance the interests of mother and fetus.

One need to focus once again on the question "who is a person, what is human dignity, who is protected by human rights. One need to understand that in the prism of the courts statements the world reach a fundamental crisis revolves around the concept of "human dignity", "human rights", and the concept of being a "person".

Sources of the crisis of the sense of dignity

By reaching deep into the history of philosophy, one finds a close relationship between the functioning of the concept of a "person" and the concept of "dignity". Weak interest with the personal dimension of human existence, as a consequence alters the recognition of dignity itself. These links will be presented by analyzing several cases of medieval and modern history.

At first the dignity as an individualism, will be analyzed. Medieval reflection on the phenomenon of a person begins with the works of Boethius (480-524), who first formulated his definition. In one of his major works he wrote that "persona est naturae individua substantia." In this case, analysis of the essence of human dignity refers to defining the concept of human individuality. For Boethius, to be a person means to be an individual being, separate from others. Thereby Boethius faces the problem of the relationship, which can not answer to. The interpretation of the experience of dignity places dignity in the right context; dignity truly is an expression of human individuality, an individuality which is relatively absolute. At the same time, falsely understood individuality distorts the concept of dignity, which is only dignity of a being (person), and even a "private dignity" (in fact, it is detached from others, from culture and society).

Recalling these few remarks, one of the current sources of the crisis of experiencing dignity should be more closely examined. It is the individualistic form of dignity that takes the form of "my dignity", "your dignity", "our dignity". In fact, most frequently, it is about "my_self", "your_self", and "our_self". With such an attitude bio-ethical or intercultural discourse is absolutely impossible.

Then dignity as "being somebody" will be analyzed. Philosophers and theologians of the Middle Ages (Richard of St. Victor and Thomas Aquinas), analyzing the reality of the human person, pointed out the fact that to be a person means to be "somebody". That further meant that a man as a person is by its very nature incommunicable. From the beginning, it needs to be highlighted that thinkers meant ontological incommunicability, not a personal one. In this light, dignity of a person is the dignity resulting from the existence, however it is also "incommunicable dignity" (in a personal sense). Incommunicability of dignity means to recognize the ontological fact that every human is himself, that he is independent in experiencing of who he is, and that he relives who he is in a unique and a special way [16]).

In the twenty-first century, despite the fact that so much is being said and done about interpersonal communication, its fundamental principles are notoriously violated.

Communication is understood as freedom and openness to another person, freedom in establishing and developing relationships without clear boundaries that determine person's world. In fact, it is not about interpersonal communication, but a violent intrusion into the world of another person. Fading boundaries (determined by the physicality and spirituality) weaken the sense of personal dignity, to the extent that the individuality and privacy are accounted for as a "closing", whereas an "opening" is a betrayal of who one really is for himself. Therefore, instead of dignity of existence, we speak of dignity of the non-existence; it is better not to be (yourself) than to be (yourself).

While in the Middle Ages the reality of a person, and therefore human dignity, was a very firm foundation for developing natural, theological and philosophical sciences, in the modern era, the fascination with this internal dimension of human is much smaller. Man radically abandons the metaphysical and maximalist attitude to, in accordance with the laws of history, develop his fascination in the spirit of extreme individualism and voluntarism. "Ego" takes the place of "a person", and "I think" is replaced with "I want". This approach significantly changes the status and interpretation of dignity.

The critical period began John Duns Scotus (1266 – 1308). He was neither an intellectual, nor an existentialist, but but voluntarist and essentialist (formalist). He proclaimed that the reality is made up of independent individuals, separate entities and substances, related to each other only externally, by the will of God (fideism). In the philosophy of a human, he stressed that the most important thing is the will ("I want") which makes a man independent and free from another man. Ontically, nothing connects one person with another; there is a gap between individuals that only God can bridge.

This kind of philosophy not only takes away the sense of dignity, but also distorts its very essence. No one knows where dignity leads a man, and which way it directs his life. Also, talking about a man in the categories of will, deprives him of the dimension of rationality. Man does not ask about the meaning of life or truth of action, but he only functions because he simply wants or does not want to. Dignity, however, is the reality in man, which refers in his existence and action more to the realm of rationality than the will.

John Duns Scotus by distorting the image of man, also distorted the image of human dignity. Dignity is not a fixed parameter of the human being, but a mysterious game of God, to whom a person is addicted, whether he wants it or not. This approach is found in many texts, in which the issue of dignity is present. Recognition of God as the only subject of dignity is a form of fideism, which resigns from rationality and critical thinking. By introducing the existence of God in the depths of reflections on dignity, one does not have to make God the only one who grants it. Dignity does not need a transcendental source; it is enough that one recognizes the human in all his humanity, and feels the dignity standing face to face to another human.

The reference to the nominalism of William Ockham (1300 – 1349) allows to examine the source of yet another crisis of the sense of human dignity. According to nominalism represented by Ockham, such terms as a person, human nature, dignity, are the only names, empty concepts. They do not have the characteristics of reality. This means that the mind can neither investigate nor speak about the individual and the nature of dignity, as they belong to the domain of faith (religious one). A person is the way he is because of God's will. Without going into details on Ockham's reflections, it needs to be said that this view is both naive and dangerous. Firstly, based on the main thesis of nominalism, metaphysical and spiritual depth of the person simply does not exist. Secondly, man is taken away the

opportunity to question the meaning of life, his value, and therefore, his dignity. Nominalism is today one of the arguments against metaphysical, maximalist and religious thinking.

It seems that this way of thinking is present even today which contributes to the crisis focused around the issues of dignity. Nowadays, philosophers of law proclaim that the concept of dignity depends on a worldview, or a religious faith – typically, it is Christianity. The construction of argument is as follows: person-God-dignity. And to put it more descriptively, dignity is a kind of a ‘trace’ of God in a man; it comes from God; the divine dignity is the divine hallmark given to the man by God. If one agrees to this type of solution, the issues of dignity are reduced to the level of faith, and even replaced by the religious faith. The difficulties with dignity and its importance for human life begin when one does not develop a personal relationship with God. In this case, the legal and anthropological reflection loses the concept of dignity, or at least, it becomes vague and irrelevant.

For pantheism, represented by Baruch Spinoza (1632 – 1677), human is only an epiphenomenon of God’s person. According to Spinoza, all one can think and say about a man is illusive. Illusive is freedom and dignity. Man illusively creates the meaning of his life; illusive are values and goals. Everything comes from God and aims towards God; human merges with God. Meanwhile, the critical philosophy of dignity presents a completely different way of thinking: the idea of dignity (human, personal and individual dignity) protects human against this type of naive pantheism. Dignity, one could say, not only protects a man against another man, but also “protects” the man against God. Dignity, as suggested by the contemporary philosophy of the Christian religion, makes man a partner of an encounter and a dialogue with God. It is not about leveling a person with God, but it is about an agreement to communicate with God on “the principle” of dignity. By developing such a way of thinking, one deepens the importance of immanent dignity, and drafts its transcendent lines. The history of religions shows that the false immanence creates false transcendence (the illusion of dignity).

The dignity of moral life

I. Kant’s moral philosophy focused on the category of “transcendental personality” [17]. A person is a metaphysical structure in a man, which he pursues and which he embodies, especially in moral and ethical activities, which are the goals of his life. Although the idea of a person cannot be fully comprehended, it expresses itself in acts of cognition, decision and freedom. To the concept of transcendental personality scholars eagerly incorporate the concept of dignity. Dignity, in the context of Kant’s discourse, is this kind of a vision of a man which disagrees to regard him as a means, because the man in himself is already an aim. However, such an interpretation of the concept of dignity, and especially the concept of a person, is incomplete. Man is, on one hand, an individual being, but on the other, he is also a member of the human community. As an “element” of the collectivity he may be some kind of “means”, however, he always remains a person, with all his personal domain (absoluteness). As the element of the collectivity, he is not reduced to it (as totalitarian regimes dictated), but he remains “at the service” of the community; he serves the community using to his skills and abilities. With reference to the above statements, this type of dignity is a value, and even a norm that regulates the internal references of the individual person to the community.

The work of Kant’s philosophy of man clearly introduces a metaphysical element, which is unknowable and transcendental. As mentioned above, in addition to a perfect person, there is an equally perfect being which is dignity. Such an approach provides some inspiring conclusions, especially the ones, thanks to which one can diagnose the crisis of

the idea of dignity. The idea of dignity, similar to the idea of the person, manifests itself in certain human moral decisions. While examining the concept from this standpoint, dignity is set to act as a target. Meanwhile, from the point of view of the maximalistic philosophy, dignity is also the source of man's moral activity; and not only a moral activity, but all kind of spiritual and existential activity, into which category fall questions such as: "who am I?", "what is the purpose and meaning of my life?", "am I finite or infinite being?" etc. In this sense, dignity cannot only be a perfect being which "manifests" itself, but is an ontological, "real being", from which man and society thrive.

Thanks to the work of German idealist J G Fichte (1762 – 1814), dignity can be analyzed from a different perspective. The focus remains within the reflection centered around a person, and more precisely, self. Fichte develops the science of a man based on three principles: 1) the basis of everything is my "thinking I"; 2) when my consciousness is focused on "ego", it then discovers a "non-self"; it is important to distinguish here between subject (which I am), and the object (which also I am); being a subject and object is happening at the same time, it is the same experience; 3) by reliving myself as a subject and an object at the same, I find that I am one person with two images: "thinking I" and "absolute I"; in other words, as a person I am someone unrealized, undiscovered, unexplored to the end. In addition to the above conclusions, there is another, particularly interesting one, which says that a man is a still a "becoming" being" (in statu ferii), a being of infinite aspirations and desires. Desires and aspirations are based not so much on a reason, but on the will, which is the weakness of the presented concept of man [18].

Man as a subject of rights. Anthropological error of the concept of a Man-Creating a specific model of human

The anthropological foundation of human rights pay attention to the constitutional fact: being a human is a foundation of all rights, but one can see that particular studies devoted to this statements. Moreover, there is a kind of an emphasis on human's dignity. In the light of the statute that characteristic of dignity is its innateness, followed by universality, dignity to often is treated as a reference point to further indicate that it is the foundation of freedom, justice. Such concept of dignity one can found in the International Bill of Human Rights in the preamble which says: "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". Consistently, the comments on the issue of dignity include the theme of the rational and critical thinking so they called intellect, and conscience [19].

This type of reasoning is sufficient and reasonable, but in the anthropological prism, one can see here a significant error "anthropological error". Such an error fundamentally changes the way one thinks about a person and human dignity, so that one changes the way of reading and interpreting the law itself, where we get a specific model of human. Moreover, it can be defined as "a human of rights". One need to avoid such "error" by building a reflection on adequate structure of personal being, where all rights are derived from the depths of the human being [20].

The essence of such thinking determined that "human is a foundation of rights", and "human life" as the source of human dignity. And on the contrary by using a personalistic anthropology, we believe that "the person is the foundation of dignity". Following that thought, we are trying to highlight the fact that dignity, just like intimacy of a person or his holiness, does not characterize the being of a human(its essence), but rather belongs to its internal structure.

Following the modern personalisms, which in fact perceive a person as an end, however, not the one the sciences discuss. We need to support the idea of Aristotle, and its entelecheia.

That means if “I”, “You”, “someone” exists and develops on the basis of entelecheia, already has reached starting point, “I am me”, “you are you”, and “someone is someone”. The foundation on such point is that every man at the beginning of his existence (personal existence), is a fully defined being. We truly believe that Who I am, does not depend on anyone or anything, nor does it depend on any attributes written. “To be a human” means to be the fullness of the being.

The idea of human rights, as long as it is recognized in the light of personal dignity reveals many new meanings. We also reject the utopian visions contained in the formula “the man of the law”, and proclaim that not only someone who is a foundation of these laws, but its source. In the same time we support the still-growing trend of personalization of law.

Such personalization of law is needed in “biotechnological revolution”, where technological developments instead of being a blessing to a man, may prove to be one of the most disastrous achievements in science [21]. Human is not a person, human is a subject. So that this forces us to deal with extremely grave problems in terms in legal aspects. It also shows the most ordinary and tough problems which revolve around the basic values of being a human with its freedom, sacredness of life, the autonomy of the person. One can notice that human dignity play the critical role here.

Conclusion

Analyzing dignity as the foundations of human rights, the authors want to demonstrate that, despite the many changes that have occurred in recent decades, especially in new technologies in medicine, the idea of dignity is essential to human rights. For these reasons, we believe that humans should be perceived holistically, with his drama, joy, with his full existence. And above all, human always has rights, regardless of the stage of the biological or physical development. Human is always “someone” and not “something”, and in any situation cannot be reduced to any of the subjective categories. Being a human implies the need for the existence of specific rights for him and protection. Trying to understand dignity aims to help us make sense of current debates about the meaning and implications of the idea of human dignity and human rights.

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СУЧАСНІ ДЕБАТИ ЩОДО ГІДНОСТІ ТА ПРАВ ЛЮДИНИ. ПРАВОВИЙ ТА ФІЛОСОФСЬКИЙ КОНТЕКСТИ

Сьогодні спостерігаємо багато різних концепцій людської гідності, які використовувались в сучасних соціальних, філософських, медичних та біоетичних дебатах, та відповідних правових інструментах. Це породжує погляд на люську гідність як на основу люських прав. Розміщення гідності в аксіологічному порядку в правах людини не вирішує усіх проблем. Питання щодо того, ким є людина в контексті прав людини досі спричиняє певний аксіологічний та етичний дискурс, у якому прагнуть зайнятись власною інтерпретацією права, а також ухвалити рішення щодо відповідної антропології, з якої отримують певну концепцію людини. Європейська юриспруденція теж намагається знайти правильну відповідь на таке делікатне питання, але суди залишають це питання відкритим, отже конфлікт триває.

Ключові слова: людська гідність, людина, людські права, персоналізація права, непорушність люського життя.