

HUMAN DIGNITY –A HEURISTIC DISCIPLINE OF HUMAN RIGHTS

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Abstract:

Dignity is an appeal to human nature. Transposed in the juridical field, human dignity highlights the necessity to establish (in favour of the individual) a juridical treatment compatible with human nature. Our disquisition is destined to analyse the contributions brought by the concept of human dignity in the process of the juridical avowal of human rights and to study, at the same time, the category of relations between two frameworks of analysis: human rights and human dignity. We propose the thesis of conceptual correspondence human-rights-human dignity, in the attempt to demonstrate two fusing frameworks of analysis, that can almost mutually define one another. The intricacy, the hardship of legal reconnaissance, the variety of significance, give the precise nature of human dignity and human rights, pleading in favour of this conjugate study. The defining of man – as an analytical category – is seated within human dignity, pointing out, as natural consequences of this seating, the human rights.

Keywords: human dignity, human rights, conceptual correspondence, heuristic research

1. SOME PERSPECTIVES UPON THE IDENTIFICATION OF HUMAN DIGNITY

We realize that, by selecting a juridical framework of analysis, we assume the risk of defining a term upon which the juridical field did not go on record. Despite this fact, in order for our study to commence in logical parameters, we will assume the risk of exploring the scientific darkness and the fantasy of establishing some personal conclusions.

As we can forestall, the emergence of human dignity must be referred to man, to the manner in which he exists and evolves. It is also true that, raw human reality would fail in the process of immortalize such a broad dimension like human dignity. Thus, human reality is segregated in plans and paradigms that advance the illustration of the concept of human dignity.

For instance, philosophical reflections present human dignity in connections with the human status. Stocism presents dignity as a special possibility offered to all human beings which are gifted with reason and who live in compliance with nature. The followers of the kantian theory depict man in a cvasi-ideal manner: man is endowed with reason; moreover, he is the author an the addressee of universal moral laws. Kant's doctrine proscribes the instrumentation of man (he will be ogled as purpose and never

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only as a mean) and elicits respect for each human being¹. Clergymen estimate that dignity is the sacred right of Self, emanated from the eidos that man is the image of God. Dogma shows us that man is the sole being that was created after God's likeness; only man has soul, only he can be wrongful or virtuous².

Opposite the philosophical and religious reasons, the juridical conceiving of human dignity is more custom... Surprisingly or not, the juridical field does not monopolize the meaning of human dignity and is much reserved in clarifying the term. The encounter between law and dignity is dominated by the feeling that – regarding human dignity, everything has been already said (through philosophical, religious and sociological theories) therefore, the mention of dignity within law is sufficient and saviour in front of the requests of the civilized world³.

The law is taciturn where is its place to clarify the definition, the status and the juridical utility of human dignity. Speculations absorb our framework of analysis and advance multiple hypostasis: dignity as right, as juridical value, as juridical principle, as source of human rights. Each of these ideas can be genuine due to pauper and rough legal benchmark.

In front of this kind of situation, we would be tempted to peer human dignity as the possibility of each perspective that scientifically proves to be the most plausible and the most logically demonstrated. We would not make a mistake.

All the same, we choose to take a step back and to appraise more openly the subject. Human dignity is *summa scientia* because it operates like a revealing concept – like a concept that amasses significance from various fields and exposes them in an integrated way by restoring a higher meaning. The meaning of human dignity is valiant because it egresses from common patterns and it enforces an integration paradigm.

Hence, human dignity has a precious meaning because, within this meaning we can find the religious, philosophical, literary, behavioral or psychological facet by reporting to a specific field. It is peculiar that, the concept of human dignity, is simultaneously present in all these fields, without lacking a self-governing meaning – it masters this

¹ Ciucă Aurora, Conceptul de demnitate a ființei umane în bioetică și drept (The concept of the dignity of human beings in bio-ethics and in law), article published in The Romanian Journal of Bio-Ethics, no. 2, Iași, 2009, p. 6.

² Drăganu Tudor, Declarațiile de drepturi ale omului și repercusiunile lor în dreptul internațional public (Declarations of human rights and their consequences for the international law), Publishing House Lumina Lex, Bucharest, 1998, p. 84.

³ The Universal Declaration of Human Rights (adopted by the United Nations General Assembly on 10 December 1948) recognizes the importance of human dignity from the preamble: 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 (...) Also, the first article specifies: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The European Union Charter Of Fundamental Rights (proclaimed solemnly by the European Commission, the European Parliament and the Council on 7 December 2000 at The European Council of Nice and binding by the Treaty of Lisbon) evokes in its preamble: Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. Likewise, in the first Chapter, first article is stipulated: Human dignity is inviolable. It must be respected and protected. The European Convention of Human Rights and Fundamental Freedoms (signed on 4 November 1950 at Rome), determines in the third article: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

meaning beyond the enclosures of any particular field. All this recommends human dignity as an instrument of exploration and knowledge, that paradoxically, helps to the understanding of other concepts, but is reluctant to reveal itself to the scholar.

2. HUMAN RIGHTS-HUMAN DIGNITY. A CONCEPTUAL RELATIONSHIP

Human dignity cannot be isolated from human rights as we cannot isolate, within a logical argument, the premises from the final judgment. With regard to dignity, we cannot aver its status – that of premise or final judgment because the scarcity of practice is much experienced. The connection between law and dignity doesn't necessarily arise from the normative process but, the inclusion between those two concepts is indissoluble from the intuitive point of view. The insertion of the dignity concept in the framework of analysis of human rights is truly intuitive and impossible to reject.

Dignity is in juridical connection to human rights in light of two arguments: (I) universal vocation and (II) validation by means of the thesis of natural law. The universal vocation stands to reason: dignity and human rights are a priori notions⁴ that always existed in human life. So, the ancestral idea according to which human rights are privileges offered to man out of compassion, privileges that engage man to be obedient and humble – was bypassed. The ancestral idea was replaced with the idea of human rights which are independent and self-fulfilled.

The second argument is slightly more subtle. Like human rights, human dignity bears the symbol of natural law. Documents prior to the Universal Declaration of Human Rights make recurring notes to natural law. Also, in the period which followed the Declaration, juridical documents replaced the thesis of natural law with the idea of human dignity and human rights. Basically, the thesis of classic natural law comprised simple thoughts, in harmony with man's interests: (1) the law must express what is inbred for the individual; (2) human rights are applied independently of human nature/constitution; if we would particularize the application of natural law, it would be deprived of its perennial character and sentenced to transience; (3) the fulfillment of man's features is made in society, through social networking and self-control.

Selecting natural law to the detriment of positive law is a plausible thing to do. First, the positive norm is the product of human defective authorities, the norm itself is defective, dissimilar from state to state, with confined continuance (the positive norm can be abrogated, modified, completed), whereas the natural norm is universal and immutable, it results from perfect rationality and sensibility and remains unchanged. On the other hand, positive law has a vertical structure (it separates and doesn't incorporate; it establishes the hierarchy of legal norms and their importance); natural law has an horizontal structure (people must make common cause and embrace norms that enhance the value of equality)⁵.

The equation of three sizes: human dignity-human rights-natural law leads to the personalism dimension – hence the image of an unique, non-repeatable person that is

⁴ See Ungheanu Mihail, Dreptul natural clasic și cel modern: de la virtute și datorie la hedonism. Schițare a problematicei drepturilor omului. (Classic and modern natural law: from righteousness to hedonism. A sketching of human rights problem.) Etnosfera Journal, no 2, 2010, p. 30-40.

⁵ Sâmbuan Cristina, Cum a intrat demnitatea în drept și ce a adus demnitatea dreptului (How did dignity appeared in law and what did dignity brought in the juridical field), article published in The Juridical Platform Journal, vol. 2, no. 1, June 2012, p. 148-154.

irreducible to a simple social unit. In this context, we appeal to details. The first and the most relevant detail is the interrelation between concepts. If it is impossible to discuss the subject of human rights without invoking the concept of human dignity and if we cannot argue the subject of human dignity in absence of the subject of human rights, then the two notions are bound through an interrelation. The second detail is the mutual completion. Although in a certain juridical context, human dignity is indistinguishable, its presence is implicit if there are articulate references to human rights. The two details seem to fuse into a relation of juridical inclusion pursuant to which, the elisions enveloped within the law, that refer to human dignity, will be replaced by references regarding human rights and viceversa. Therefore, the relation of juridical inclusion law-dignity derives from the legislator's intention as the truth that lies in common cognitions and common sense. The reverse would speak the lack of perspective⁶.

3. HUMAN DIGNITY IN JURIDICAL PROVISIONS. THE EVIDENCE OF ITS REVEALING CHARACTER

By including the concept of human dignity in the attention of the legislator, the need to substantiate human rights is accomplished. The juridical formalization of human dignity brings a supplementary guarantee for human rights, enriching, at the same time, the afferent sphere of significance. The juridical reconnaissance of human dignity submits the individual to a doubly-addressed respect relation: each individual is entitled to claim respect and each individual is indebted to show respect towards others. At the moment, the notion of respect is ought to be assimilated in a specific way. The respect for human rights – induced by the inclusion of human dignity in the juridical field – subsumes the awareness of a special juridical value. Certainly, human rights must be postulated and protected on account of the humanity of each human being but, we must see that, by this means, it is opened the path of exploring and renewing the significance of the expression human rights. More plainly, when human dignity was regulated, the juridical protection of human rights was strengthened and the paradigm of research was widened.

Taking juridical action in the sphere of human dignity, the meaning of human rights was touched. The United States Declaration of Independence⁷ asserts as absolute truth some soulful ideas: 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. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of

⁶ We built the relation of juridical inclusion by re-interpreting the thesis of logical completeness of the law proposed by Hans Kelsen (Hans Kelsen, *Law's Pure Doctrine*, Publishing House Humanitas, Bucharest, 2000, p. 142-143, 236 and following.) In his thesis, Kelsen deems that the legal system is complete and coherent, as it is composed of juridical particles that are organically linked. There cannot be a lack in the law because there is a norm for any given situation. Even if at a formal level one cannot categorically detect the suitable norm, this doesn't mean that the norm is absent because it exists in the intention of the legislator. Due to the indissoluble link between the elements of the legal system, a non-suitable norm will show the proper juridical particle. The same reasoning is implemented when construing the relation dignity-human rights: the absence of the concept of human dignity from the legal provisions that regulate human rights does not necessarily mean that there is a legal gap, considering the closeness of the two concepts and the indestructible link that connects the particles of the legal system.

⁷ Legal document that was ratified by the Continental Congress in 1776, announces the independence of the thirteen North – American colonies of Great Britain.

the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Among all these, the right to the pursuit of happiness gives meaning to human dignity. It expresses the fact that man's spirit is given by his actions, that he must voluntarily achieve, according to his own morals and conscience. Self existence, the pursuit of personal ideas and their valuation as main orientations – all describe the actions attempted for the quest of happiness and human dignity.

The preamble of the Declaration of the Rights of Man and of the Citizen⁸ couch human rights under the palladium of a Higher Power, remembering religiosity and its implications in the matter of human rights. Article 2 identifies as natural and inalienable rights freedom, ownership, safety and resistance to oppression. The legislator leaves in abeyance the relation human dignity-human rights. The invocation of deity by means of legal texts (the preamble of the Declaration) underlines the status of man as a God-created-creature and, subsequently, the idea of human dignity as a source of human rights.

The Charter of the United Nations⁹ is much more stringent in ensuring the respect for human rights and human dignity. Article 1 of the Charter assumes as major purpose: promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 13 addresses to the General Assembly of the United Nations – it can initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Compliant with article 62, the Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

At three years difference, the release of the Universal Declaration of Human Rights¹⁰ signified the consolidation, at global scale, of an ideational-ethics frame of the individual protection. Bearer of a political and not juridical value, the Declaration refers to individual rights as they are projected in the theory of natural law. The institutional aspect is not used. The compulsoriness of this document springs from mental conception so, the binding force is indirectly incumbent – through conscience and not through constraint. In article 1, the right to life and the right to dignity are associated: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This enunciation inspires and organizes at the same time. If all beings are endowed with the same fundamental rights, than human beings will be the subject for the same respect and dignity regardless the numerous differences created by nature and by life circumstances.

⁸ The document was adopted on 26 August 1789 by the National Constituent Assembly, establishing a new constitution. Structured in 17 articles, the Declaration exceeds the concept of social iniquity, imposing equal rights for all.

⁹ Signed at San Francisco, on 26 June 1945 and juridical recognized on 24 October 1945.

¹⁰ Proclaimed on 10 December 1948 by the United Nations General Assembly.

Hence, equality exists in dignity and rights. Equality is not the equivalent of uniformity; on the contrary, equality allows the tolerance for differences, and for the free development of human personality¹¹.

The European Union Charter of Fundamental Rights and The European Convention of Human Rights and Fundamental Freedoms are less metaphorical, yet divergent concerning the relation law-dignity. The Charter makes direct references to human dignity from the first lines, meantime the Convention protects human dignity implicitly, by protecting the right to life or by prohibiting torture and slavery. We cannot deny an obvious truth: the European Convention of Human Rights and Fundamental Freedoms was the first international treaty in the field of human rights which brought into existence the first procedure and Court where one can address complaints regarding human rights; also, it is the most advanced and effective system of securing human rights¹². It is normal for the Charter to comprise a more elaborated display of human dignity, if we consider the reasons that caused its apparition.

In this direction, bear witness: the evolution towards an increasingly tighter union, the challenge of the single market, Europe's tendency to isolation, the insufficient adaptation to human rights standards –all these are the reasons that presents the discussion about human dignity¹³.

Sensitized in this direction, justice and equity-loving states intervened in the discussions about human dignity and inserted, in their fundamental acts, the value of human dignity. Japan regulates in article 13 of its Constitution: Every person will have the well-deserved respect that its existence requires. The Spanish Constitution provides in article 10: Human dignity, the inviolable rights inherent to human dignity, the absolute development of the personality, the compliance with the law and with human rights are the foundation of peace and social order.

The Romanian Constitution expresses specifically human dignity, without any subtleties. Title I – General Principles, article one – Romanian State, third paragraph draw the general framework of recognition of the human dignity: Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed. In Chapter II – Fundamental rights and freedoms, article 22 – The right to life, to physical and mental integrity, second paragraph mentions: No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment.

In the spirit of legal regulations, human dignity appears as the main component of human dimension, of civilization and progress, being a civilizator factor. That's the reason why the juridical environment considered as its essential mission to return to human dignity its recognition and appreciation. Mirroring the human dignity in legal writings coincides with the formal recognition of humanity. Here intercedes again the

¹¹ Voinea Maria, Bulzan Carmen, *Pentru o sociologie a drepturilor omului* (For a sociology of human rights), Bucharest, p. 33.

¹² Balahur Doina, *Protecția Europeană a Drepturilor Omului* (The European Protection of Human Rights), Notes, Alexandru Ioan Cuza University, Iasi, Centre of European Studies, p. 34.

¹³ Cassese Antonio, Lalumière Catherine, Leuprecht Peter, Robinson Mary, *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000*, AEL, Florence, 1998, p. 1-3.

relationship of respect. So, nothing prevents the fair guarantee of human rights, if we consider that each individual will receive what is asked by the humanity that he possesses. From this point of view, human dignity is a legal revealing factor which identifies human rights ensuring them against abuse. The defence of human rights by using human dignity can't get over the abusive exercise of human rights. Accordingly, dignity is the promoter and the limit of human rights – this summarizes its heuristic power.

4. THE DESILUSION OF CONCLUSION REMARKS

Human dignity is the starting point in the formation of human rights. As a potentiality, (in a non legal sense), human dignity enforces human rights in virtue of the greatness of the human being; as legal authority, dignity is founded upon the equality between individuals.

Indeed, equality is the common denominator that makes all differences disappear regarding social status, gender, race, ethnicity, productivity, etc. And yet, the full understanding of human dignity is not feasible. We can find associations, we can assign meanings, we can explore the most profound views concerning this subject and ultimately, we will arrive at the impossible solution. Because of this, we didn't aim to design a clear understanding of human dignity or to militate in favour of a specific regulation. Our stake has been observing, description of concepts, tracking the correlations dignity-law. The legal regulation of dignity was useful in rediscovering the individual inside of an artificial state-context and coincided with the cessation of explanations of the reasons and the relevancy of human rights. The individual requires rights in light of his dignity, from this point falls the development *de profundis* of human rights. The heuristic discipline of human rights – is not a purely stylistic expression, it expresses the double connotation of human dignity: from the formal point of view, dignity exists through institutional-juridical instruments that depict situations and identify problems, from the informal point of view, dignity is the tool used to scan and understand social reality in which human rights are installed. Human dignity leads human rights legislation beyond rules and regulations, transforming human rights in out-of-law, self-sufficient elements in perpetual evolution and rediscovery.

BIBLIOGRAPHY

Legislation

- The Charter of the United Nations;
- The Declaration of the Rights of Man and of the Citizen;
- The European Convention of Human Rights and Fundamental Freedoms;
- The European Union Charter Of Fundamental Rights;
- The United States Declaration of Independence;
- The Universal Declaration of Human Rights;
- The Romanian Constitution.

Doctrine

- Balahur Doina, Protecția Europeană a Drepturilor Omului (The European Protection of Human Rights), Notes, Alexandru Ioan Cuza University, Iasi, Centre of European Studies;

- Cassese Antonio, Lalumière Catherine, Leuprecht Peter, Robinson Mary, Leading by Example: A Human Rights Agenda for the European Union for the Year 2000, AEL, Florence, 1998;

- Ciucă Aurora, Conceptul de demnitate a ființei umane în bioetică și drept (The concept of the dignity of human beings in bio-ethics and in law), article published in The Romanian Journal of Bio-Ethics, no. 2, Iasi, 2009;

- Drăganu Tudor, Declarațiile de drepturi ale omului și repercusiunile lor în dreptul internațional public (Declarations of human rights and their consequences for the international law), Publishing House Lumina Lex, Bucharest, 1998;

- Hans Kelsen, Law's Pure Doctrine, Publishing House Humanitas, Bucharest, 2000;

- Sâmborean Cristina, Cum a intrat demnitatea în drept și ce a adus demnitatea dreptului (How did dignity appeared in law and what did dignity brought in the juridical field), article published in The Juridical Platform Journal, vol. 2, no. 1, June 2012;

- Ungheanu Mihail, Dreptul natural clasic și cel modern: de la virtute și datorie la hedonism. Schițare a problematicei drepturilor omului. (Classic and modern natural law: from righteousness to hedonism. A sketching of human rights problem.) Etnosfera Journal, no 2, 2010;

- Voinea Maria, Bulzan Carmen, Pentru o sociologie a drepturilor omului (For a sociology of human rights), Bucharest.