

FREEDOM AND HUMAN DIGNITY AS FUNDAMENTAL CONSTITUTIONAL VALUES: THE CHALLENGE OF MODERNITY

LIBERDADE E DIGNIDADE HUMANA COMO VALORES CONSTITUCIONAIS FUNDAMENTAIS: O DESAFIO DA MODERNIDADE

Svitlana Melnychuk

Departments of Justice General Institute Departments Luhansk Educational & Scientific Institute named after E.O. Didorenko of the Donetsk State University of Internal Affairs, Ukraine
smmelichyk@gmail.com

Ivan Zagorui

Departments of Justice General Institute Departments Luhansk Educational & Scientific Institute named after E.O. Didorenko of the Donetsk State University of Internal Affairs, Ukraine
isagor@ukr.net

Liudmyla Zagorui

Departments of Justice General Institute Departments Luhansk Educational & Scientific Institute named after E.O. Didorenko of the Donetsk State University of Internal Affairs, Ukraine
ludmula.kononova@gmail.com

Ihor Kravchenko

Departments of Justice General Institute Departments Luhansk Educational & Scientific Institute named after E.O. Didorenko of the Donetsk State University of Internal Affairs, Ukraine
inkravchnko2017@gmail.com

Nadiia Kuderska

Department of Fundamental and Private Law Disciplines Vinnytsia State Pedagogical University named after Mykhailo Kotsyubynsky, Ukraine
NaduyaKud@ukr.net

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Corresponding author:

smmelichyk@gmail.com



Abstract: In Ukraine, as in many other countries, regulating key legal values, which represent universal ideals of civilization and democratic standards, is important and necessary. Despite the change in social processes and state-legal phenomena, they act as a stabilizing factor that helps contain and prevent serious threats, accumulate the best achievements of legal development at the national and international levels, develop legal awareness, legal culture, in particular constitutional culture, national legal ideology and identity. Human dignity has a defining role in the system of constitutional values. Being the core of every constitutional right, it forms and broadcasts the idea of a person as a unique self-determined being who is not under the state's power. It forms respect for the inner world of a person, their place in society, and relations with the state. The right to respect for human dignity in almost all constitutional systems, including ours, is absolute, just like the right to life. This means that the state cannot restrict the right to exercise human dignity. The authors study the legislation and judicial practice to clarify the reasons for the introduction of the martial law regime. The article also pays attention to the potential restrictions on rights and freedoms under the conditions of martial law.

Keywords: Constitutional rights. Freedom. Human dignity. Martial law. Restriction of rights.

Resumo: Na Ucrânia, tal como em muitos outros países, é importante e necessário regulamentar os valores jurídicos fundamentais, que representam ideais universais de civilização e normas democráticas. Apesar da mudança dos processos sociais e dos fenômenos jurídico-estatais, estes actuam como um

factor de estabilização que ajuda a conter e prevenir ameaças graves, a acumular as melhores realizações do desenvolvimento jurídico a nível nacional e internacional, a desenvolver a consciência jurídica, a cultura jurídica, em particular a cultura constitucional, a ideologia jurídica nacional e a identidade. A dignidade humana tem um papel determinante no sistema de valores constitucionais. Sendo o núcleo de todos os direitos constitucionais, forma e transmite a ideia de uma pessoa como um ser único e autodeterminado que não está sob o poder do Estado. Forma o respeito pelo mundo interior de uma pessoa, o seu lugar na sociedade e as suas relações com o Estado. O direito ao respeito pela dignidade humana em quase todos os sistemas constitucionais, incluindo o nosso, é absoluto, tal como o direito à vida. Isto significa que o Estado não pode restringir o direito ao exercício da dignidade humana. Os autores estudam a legislação e a prática judicial para esclarecer as razões da introdução do regime da lei marcial. O artigo também presta atenção às potenciais restrições aos direitos e liberdades sob as condições da lei marcial.

Palavras-chave: Direitos constitucionais. Liberdade. Dignidade humana. Lei marcial. Restrição de direitos.

1. Introduction

Human rights are the fundamental basis of the legal reality of modern society. They are not only a central but also an integral category since any activity that violates the natural rights of a person is illegal, regardless of whether it is committed by the institutions of the social system or by individuals of the community. Human rights are related to the very existence of a person and the embodiment of priority ideological values that have been conquered by humanity and today are recognized as central in political and legal life, such as equality, freedom, and democracy.

Modern socio-political processes in Ukraine convincingly testify to the orientation of its development towards European integration. European integration involves common values, of which spiritual values that distinguish the human form from other living beings are extremely important for Ukraine. Dignity is an important basis of spirituality, which allows a person to maximally realize their personal potential among similar individuals based on partnership.

The armed aggression of the Russian Federation and its full-scale invasion of the territory of Ukraine forced all state bodies and society as a whole to switch to operative functioning under martial law in accordance with the legal regime.

Martial law is a special legal regime that is introduced in Ukraine or in some of its localities in the event of armed aggression or in other cases provided for by law and provides for the granting of powers to relevant bodies to counter armed aggression and ensure national security. In this context, it is possible to temporarily restrict the constitutional rights and freedoms of a person and a citizen with a specified period of validity of such restrictions due to a threat.

Despite the complexities of modern realities, human rights are subject to inviolable

protection, as the Constitution of Ukraine recognizes a person, their life and health, honor and dignity, and inviolability and safety as the highest social values.

Although modern world legal doctrine considers human rights and freedoms as the highest legal value, ensuring them has become the primary duty of the state. This follows from recognizing human dignity as the basis of rights and freedoms. The state must enshrine human rights and freedoms in constitutions or laws, establish mechanisms for their provision and implementation through the legislative process, and guarantee their protection in accordance with the legal procedure. Yet, it is worth emphasizing that even during hostilities, human rights remain an inalienable value, which is the main object of normative and legal regulation, particularly the constitutional one. Ukraine has chosen the observance of human and citizen rights and freedoms as a national priority, which indicates a high level of social development and democracy in the country, even during active hostilities.

The topicality of this theme is predetermined by the urgent need to preserve human potential during wartime through real observance of the basic rights and freedoms of a person and a citizen.

2. Literature Review

Ensuring respect for human dignity is one of the main issues in jurisprudence. The problem of a dignified human life has become especially topical in modern conditions, in particular during military operations. In this context, it is worth noting the scientific achievements of such scientists as O.V. Hryshchuk, S.P. Dnistrianskyi, B.L. Duchak, V.V. Kozhan, P.M. Rabinovych, N. Stetsenko, S. Shevchuk, and others. However, the issue of practical implementation of the right to respect for human dignity requires further study, as it is an important factor for recognizing the state as truly social. Both home and foreign scientists point to the emergence of a new generation of rights. Yet, a comprehensive legal analysis of these rights has not been carried out to date. In addition, questions about manifestations of human dignity in new rights arising in connection with the development of global society have not yet been the subject of research.

3. Methods and materials

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

4. Results

In order to realize human rights and freedoms, it is necessary to enshrine them in laws and other legal acts. Without the state-legal provision of human rights and freedoms, it is impossible to ensure their unhindered and conflict-free usage.

An important role in the legal provision of human rights and freedoms in every country is played by the Basic Law, that is, the Constitution. It is in the Constitution that the initial norms regarding the status of a person in society and their relations with the state are established.

Thus, Article 1 of the Constitution declares Ukraine a sovereign, democratic, and legal state. Article 3 affirms that a person, their life and health, honor and dignity, inviolability, and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and direction of state activity. This article is basic because it approves the foundations of the social and state system of Ukraine, which is enshrined in the Constitution. It is a normative and legal justification of the humanistic direction of the development of public and state life in Ukraine. Of fundamental importance here is the recognition of a person as a higher social value. It means that a person's personality is a value not only for themselves but also for the entire society. At the same time, since this value is "higher", no other phenomenon can be valued by society higher than a person and can outweigh the value of a person. All other social values should be subordinated to human values. Thus, human rights and freedoms are a strategic constitutional priority of the Ukrainian state.

The Constitutional Court of Ukraine proceeds from the fact that "among the fundamental values of an effective constitutional democracy is freedom, the presence of which in a person is one of the prerequisites for their development and socialization" (author's emphasis). The right to freedom is an indefeasible and inalienable constitutional right of a person. It provides for the possibility of choosing one's behavior for the purpose of free and comprehensive development,

acting independently in accordance with one's own decisions and ideas, determining priorities, doing everything that is not prohibited by law, moving freely and at one's discretion on the territory of the state, choosing a place accommodation, etc.

The right to freedom means that a person is free in their activities from external interference, with the exception of restrictions established by the Constitution and laws of Ukraine.

Ensuring human rights and freedoms means creating conditions for their implementation. It includes three elements (directions of state activity): promoting the realization of human rights and freedoms (through a positive influence on the formation of their general social guarantees); protection of human rights and freedoms (by implementing measures, in particular legal ones, to prevent and prevent violations of human rights and freedoms); and protection of human rights and freedoms (restoration of the violated legal status, bringing violators to legal responsibility).

In connection with the military aggression of the Russian Federation against Ukraine by the Decree of the President of Ukraine dated February 24, 2022 No. 64/2022 "On the introduction of martial law in Ukraine", approved by the Law of Ukraine dated February 24, 2022 No. 2102-IX, martial law was introduced in Ukraine from 05:30 on February 24, 2022, for a period of 30 days.

Article 3 of the Decree stipulates that in connection with the introduction of martial law in Ukraine, the constitutional rights and freedoms of a person and a citizen, provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, can be limited, as well as temporary restrictions on the rights and legal interests of legal entities can be introduced within limits and to the extent necessary to ensure the possibility of introducing and carrying out measures of the legal regime of martial law, which are provided for by the first part of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law".

Due to the armed aggression of the Russian Federation, Ukraine is currently experiencing one of the most difficult stages of its statehood and independence. All spheres of human existence, including social ones, are undergoing significant changes. Therefore, the issues regarding the recognition and implementation of the observance of human rights in the conditions of the martial law introduced in Ukraine remain open and in need of urgent research. It is important to emphasize that even during hostilities, human rights remain an inalienable value, which at the same time acts as a basic object of regulatory and, in particular, constitutional regulation. Ukraine has chosen the vector of respect for human and citizen rights and freedoms as a national priority, which indicates a high level of development of society and the level of

democracy in the country even during active hostilities. We consider it appropriate to recall the apt thesis that there is a direct connection between the development of the state, society, and the organizational and legal mechanism for ensuring the protection of human and citizen rights and freedoms, which in turn is reflected in the statement that in a totalitarian state with an unstable political and the economic situation, there cannot be a perfect organizational and legal mechanism for ensuring the protection of human rights and freedoms (Kovaliv M., 2021). Hence, it can be concluded that the quality indicator of life and well-being of citizens, even during martial law, is directly related to the perfection of the legal regulation of the rights of the aforementioned subjects. Attention should also be paid to the fact that martial law is one of the types of special legal regimes. Such a regime involves the application of a set of special legal instruments that define human rights, and provide citizens with certain permissions, prohibitions, or restrictions, while paying special attention to the regulatory functions of legal instruments or specific legal regimes (Bukhanevych O.M., Mernyk A.M., & Petryshyn O.O., 2021). Speaking about the rights and freedoms of a person and a citizen, it is worth mentioning the content of Article 3 of the Constitution of Ukraine, which contains the statement that a person, their life and health, honor and dignity, inviolability, and security are recognized as the highest social value in Ukraine. Therefore, it is worth noting that the state, as a direct participant in socio-economic relations, is obliged to bear responsibility to its citizens for its activities. Hence, the guarantee, provision, and affirmation of the rights and freedoms of man and citizen is the leading duty of the state even during martial law. As some scientists successfully emphasize, the actual relationship between the state and its citizens can change under the influence of various reasons and factors, in particular, such as global socio-economic trends, external factors, and internal changes, which, as a general rule, include states of emergency and martial law (Motsa A.A., Motsa V.V., 2022).

It is known that freedom and human dignity are values from different legal systems (traditions): American (Anglo-Saxon) and European (German), respectively. Just as the concept (principle) of the rule of law has different origins in the Anglo-Saxon tradition, and the concept of the “legal state” is in the Romano-Germanic legal tradition. Article 1 of the Constitution of Ukraine defines the Ukrainian state as a legal one, while Article 8 establishes the principle of the rule of law and declares the supreme legal force of the provisions of the Basic Law of Ukraine. The simultaneous recognition in the national organic law of the principle of the legal state and the principle of the rule of law, as rightly pointed out by V. Horodovenko, can be safely called a phenomenon of the Ukrainian legal system, in the formation of which both the Romano-

Germanic (“Rechtsstaat”) and the Anglo-Saxon (“Rule of law”) legal traditions played a significant role.

Human dignity as a constitutional value plays a dual role in law. First, it is a reference point, a kind of horizon for other constitutional values. It is a matrix for other constitutional values (for example, freedom, equality, and social justice). It makes it possible to understand the values and principles of law that express them. The constitutional rights of people and citizens without reference to dignity would lose their meaning and significance. Dignity is used to “order” them, apparently with reference to a specific case, so it regulates other rights and freedoms. Human dignity is used to measure individual rights and freedoms of people and citizens.

In conditions of martial law or in other difficult circumstances, it is hardly possible to remain tolerant of everything that is happening. Therefore, it is obvious that the proper implementation of some values is becoming more difficult, and their priority and significance are changing. At the same time, modern fundamental legal values are unchanged both in peacetime and wartime. For instance, these include the value of human life as a physical phenomenon, which is currently perceived by default, instead of ideological justification and legalization in a number of international legal documents, such modern modifications of the basic legal value of life as private life, human dignity, the right to life, the right to safe conditions for life and health, etc (Dzhuska, A., Kaminska, N., & Makarukha, Z., 2021).

It should be noted that the Constitution of Ukraine allows the possibility of setting restrictions on the exercise of certain rights and freedoms in conditions of war or a state of emergency, but only for the purpose of ensuring the safety of citizens, specifying the period of validity of such restrictions (Article 64). At the same time, the Constitution prohibits the restriction of those rights and freedoms that are natural and inalienable. Human dignity is one of these rights. Article 28 of the Constitution of Ukraine enshrines the provision according to which everyone has the right to respect of their dignity. No one shall be subjected to torture, cruel, inhuman, or degrading treatment or punishment. At the same time, the purpose of protecting dignity is also served by other norms of the Constitution: the right to a sufficient standard of living, the inviolability of private life, etc. In addition, no person may be subjected to medical, scientific, or other experiments without their voluntary consent. Before receiving such consent, a person cannot be subjected to any form of violence.

Human dignity is the main pattern of human rights of any generation. The law recognizes the dignity of a person, their rights and freedoms as a “humanitarian universal, a valuable reference point of universal human identification” (Hryshchuk O., 2007).

O. Hryshchuk, a researcher in this field, understands human dignity as a complex concept that can have two meanings; in the objective, as recognition and respect for a person by others, and in the subjective, as a person’s awareness of their social position (Hryshchuk O., 2007).

Today, it is accepted that the essential content of human dignity is the individual’s ability to self-identify, express themselves, and freely develop as an individual in all its manifestations. This is important for the characterization of human rights and fundamental freedoms, including whether they are universal in nature. The doctrine recognizes that dignity is a fundamental right that involves three key components: the individual’s right to self-determination, self-preservation, and public expression (Geiss E., 2013).

O.V. Hryshchuk believes that the dignity of a person should be understood in two meanings: in the objective sense, as recognition and respect for a person by others, and in the subjective sense, as a person’s awareness of their social position (Hryshchuk O., 2007). The scientist writes that “dignity here performs an important social function: it reflects not only those qualities that constitute the dignity of a person at the moment, that is, what they are now but also forms the ideal image of a person, that is, expresses what they should be. It is this function of dignity that is revealed in the relationship between human dignity and human dignity, when, on the one hand, the dignity of each specific person is the source of the formation of an ideal, human dignity, and on the other hand, this ideal affects each person, stimulating their desire for personal development and growth, focusing on this ideal” (Hryshchuk O., 2019). V.I. Rozvadovskyi proposes the following definition: dignity is a universal natural right that protects all other rights and freedoms of any person, and ensures proper treatment by state authorities, and other public and private persons. In essence, this is a human right that knows no bounds. Therefore, it cannot be equated to fundamental human rights or fundamental freedoms, although they coexist and interact with each other (Rozvadovsky V.I., 2018). V.M. Yakubenko writes that “the main goal of the social state is to guarantee human dignity in all its many aspects, and therefore the principle of human dignity should be considered decisive. This principle is the most abstract expression of the rest of the principles of the welfare state because only the welfare state leads to the affirmation of human dignity in its entirety” (Yakubenko V., 2005).

There are opinions among researchers that human dignity is one of the principles of the welfare state. According to V.M. Yakubenko, the main goal of the welfare state is to guarantee

human dignity in all its multifaceted aspects, and therefore “the principle of human dignity should be considered decisive. This principle is the most abstract expression of the rest of the principles of the welfare state because only the welfare state leads to the affirmation of human dignity in its entirety” (Yakubenko V., 2005). The scientist also believes that ensuring human dignity only in the classical aspect (personal freedom, protection from torture, inhumane treatment) does not guarantee actual inequality. Therefore, the dignity of a person in a broader sense is their internal self-esteem, which is based on the objectively existing value of this person for other people. Here, the author especially emphasizes that in this aspect, ensuring a decent level of human existence is of great importance.

According to R.O. Stefanchuk, the idea of human dignity as a high value, regardless of a person’s social purpose, defines “the moral value and social significance of an individual and their awareness of this significance” (Stefanchuk R.O., 2001). The author distinguishes two aspects of dignity: objective and subjective. The objective (social) side of dignity means that, like the moral value and social significance of an individual, it is determined by existing social and class relations and does not depend on a person. A person, just because he or she is a biological being, is endowed with a certain objective dignity. The subjective side of dignity is manifested in the awareness and feeling of one’s own dignity as a person, an individual, as a representative of one or another community, or social group, which is determined by the ability of a person to reflect not only the objective world but also themselves in this world, their role and place in it. It is the subjective side of dignity that performs a motivational function in human behavior. According to the researcher, “subjective and objective aspects of dignity are interdependent and mutually determined categories that characterize a single concept of dignity” (Stefanchuk R.O., 2001).

Thus, most authors support the dual nature of human dignity: as a phenomenon objective and common to all people (value, principle, source of human rights, their purpose or content) and as a subjective right or interest of a specific person (human dignity). Sometimes researchers, describing the essence of human dignity, use several of the above concepts at the same time. The duality of the usage of the concept of human dignity, related to the distinction between dignity as the basis of rights and dignity as a right, was very aptly outlined by Waldron J., who noted that on the one hand, we say that human rights “arise from inherent human dignity”, on the other hand, it says that people have the right to be protected from “humiliating treatment” and “insult to personal dignity” (Waldron J., 2009).

On March 22, 2023, at a plenary session, the Second Senate of the Constitutional Court of Ukraine adopted the Decision in the case of the constitutional complaint of Ihor Oleksandrovykh Lazurenko regarding the constitutionality of the prescriptions of paragraphs four and five of part two of Article 70 of the Law of Ukraine “On Executive Proceedings” dated June 2, 2016, № 1404–VIII (hereinafter Law № 1404), paragraphs three and four of part two of Article 50 of the Law of Ukraine “On Mandatory State Pension Insurance” dated July 9, 2003, № 1058-IV (hereinafter Law № 1058).

By this decision, the Court recognized the provisions of paragraphs four and five of the second part of article 70 of Law № 1404, paragraphs three and four of part two of article 50 of Law № 1058 as inconsistent with the Constitution of Ukraine (unconstitutional) in that they make it impossible to pay – in the amount not lower than the subsistence minimum – a pension, which is the main source of livelihood, assigned in the amount of the subsistence minimum established by law. By resolving the issues raised in the constitutional complaint, the Constitutional Court of Ukraine emphasized that “in a welfare state, human dignity is the core of the formation of social policy by the state, which must be carried out in order to protect a person from poverty and guarantee their basic social protection, minimum the standard of which is the living wage, which should really provide a person with a sufficient and decent standard of living”. The welfare state is responsible for the protection of human dignity, ensuring a sufficient and dignified standard of living for a person and, for this purpose, is obliged to create appropriate and effective national legal mechanisms for the realization of constitutional rights to social protection and a sufficient standard of living for them and their family. “Human dignity will be denied if the state does not provide a person with at least minimal social benefits,” the Court’s decision states.

The Constitutional Court indicated that the positive obligation of the state to provide unconditional protection of human dignity and minimum social protection of a person is defined by the prescriptions of part three of Article 46 of the Constitution of Ukraine. In particular, it refers to regularization of the appointment and systematic payment during certain periods determined by the law of pensions, other types of social benefits, and assistance, which is the main source of livelihood, in an amount not lower than the subsistence minimum established by law for the relevant category of persons. It means that as a result of such normalization, the amount of pensions, other social benefits and assistance paid to individuals, which is the main source of livelihood, cannot under any circumstances be lower than the subsistence minimum

guaranteed by the state, even if deductions justified by the state have been made from these payments to achieve a lawful (legitimate) purpose.

5. Discussion

In our opinion, numerous constitutional values, such as peace, freedom, justice, legal order, solidarity, general welfare, etc., are interconnected. Based on this, the importance of the key elements of the idea of law should be emphasized and it should be noted that the idea of peace is a relevant element of the idea of law, which is important both for the Ukrainian state and for the entire world community. This idea gives meaningful completeness to the concept of law. In addition, peace is not only a period between wars but also harmony and peace in the social and personal life of a person, in the interpersonal interactions of social subjects. This idea involves the creation of effective institutions and mechanisms for the prevention of new social contradictions and the effective settlement of existing social conflicts (Bandura, O.O., 2003).

6. Conclusion

Constitutional values cannot be unified into one category, since there is no clear list that indicates their dynamic development and the need for constant research taking into account foreign experience, home traditions of constitutionalism, philosophical and legal thought, and retrospective and prospective aspects.

It is possible to identify certain trends and regularities in the formation and development of the system of constitutional values, such as the interaction of European and national values, the processes of their integration and acculturation, distribution and implementation in various spheres of life, organization, and functioning of public power, as well as in the implementation of reforms, improvement of national legislation of Ukraine, development of post-war recovery and peacebuilding scenarios. Many constitutional and other legal values have turned into principles and foundations at the sectoral and inter-sectoral levels, acting as key guidelines or postulates of national and cross-border strategies and conceptions.

Summarizing the above, we can conclude that the introduction of martial law on the territory of Ukraine is an unprecedented phenomenon during the years of independence and sovereignty of the country. This causes a number of complications and problems related to the protection of human rights that need to be solved. With this in mind, in our opinion, special

attention should be paid to strengthening the protection of human and citizen rights and freedoms during martial law. It is recommended to reduce the formality of procedures for consideration of citizens' complaints related to the violation of constitutional rights and freedoms, which contradict the provisions of the Basic Law of Ukraine. It is also worth increasing access to free legal aid, legal support, informational and explanatory services, etc.

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