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THE IMPORTANCE OF HISTORICAL DISCOURSE FOR THE LEGAL PROTECTION OF HUMAN DIGNITY AT PRESENT

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Abstract. *Human rights stem from community values; therefore, even today they may develop only on the basis of the values of a particular community. When the interests of a society change, new threats to the same value originate. A constant scientific dialogue is necessary in order to neutralise these threats effectively. The current socio-cultural context reveals the problems related to the legal protection of human dignity through a contraposition of instrumental and teleological attitude towards the human dignity. The article discusses ideological provisions theological ideas of Judaism, Christianity, natural rights, especially the provisions of the Stoa, and the concept of I. Kant which became the grounds for declaring every person to be equally respectable and for recognising every person as a subject of law. This enabled people to create individual social value under the conditions of dignified existence. The author also discusses the extent to which the ideological excursus allows filling in the gaps of legal protection and serving the present universal consent on the common value human dignity.*

Keywords: *dignity of a person as a creature, dignity of a person as a social person, right to dignity.*

A modern man has become 'unhistorical' in the deepest sense. Worlds of previous steps of mind disappeared to him... in front of him – Nothing that may become everything...¹

Carl Gustav Jung

Introduction

The instrumental attitude towards a man, which was dominant in politics in the twentieth century was the reason for recognising that not all persons are subjects of law. The outcome was the insecurity of society manifesting through social conflicts of various extent. One needed lots of time to rethink and perceive the social effect of colonialism, imperialism and racism, to start talking in the middle of the last century, after the two world wars, about equal value of all people. The Universal Declaration of Human Rights entrenches this idea in the provision that the 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.² In this way the democratic states recognised that a person as such is a special value which must be protected by law; this proves the recognition of the teleological attitude towards a person. The equality of law was based on human dignity and became the fundamental criterion of equal treatment of all men.

The current political, economic and socio-cultural context proves that the conflict between the teleological and instrumental attitudes towards a person becomes even more acute. For example, a struggle for the recognition of the human and social equality of people forcing individuals or their groups to become objects that are used in order to achieve somebody else's objectives both in terrorist and anti-terrorist fight proves that a person as such is not considered to be a value and not every person is recognised as having the non-deprivable right to dignity.³ An interest in making a person an instrument is caused also by the principle of liberal capitalism which became dominant in the twentieth and the twenty-first centuries, i.e. economic welfare creates the consumer society. Consumption is especially significant in gene engineering⁴ in the course of solving the issues of the legal protection of life⁵ and euthanasia as a possibility of a 'dignified

- 1 Jungas, C. G. Šiuolaikinio žmogaus sielos problema [Modern Man in Search of a Soul]. *Problemos*. 1997, 51: 96.
- 2 UN Universal Declaration of Human Rights, GA Res. 217A(III), U.N. Doc.A/810 at 71 (1948).
- 3 Vaišvila, A. Terorizmas ir kova su terorizmu – dvi grėsmės žmogaus teisėms [Terrorism and Fight against terrorism – Two Threats to Human Rights]. *Jurisprudencija*. 2005, 68 (60): 11.
- 4 For example, extraction of stem cells from embryos, after which the embryo dies. For more information see: Buika, M. Krikščionių reakcija į žmogaus klonavimo proceso pradžią [Christian Reaction to the Beginning of Cloning of a Human Being]. *Pro vita*. 2001, 12(13) [interactive]. [accessed 10-02-2007]. <http://www.xxiamzius.lt/archyvas/priedai/provita/2001_12_13/p2_1.html>; Zemlickas, G. Klonavimas ir žmogaus teisės [Cloning and Human Right]. *Mokslo Lietuva*. 2002, 5(251) [interactive]. [accessed 05-12-2007]. <<http://www.lms.lt/ML/200205/200205.htm>>.
- 5 See: Andrulionis, G. *Asmens autonomija sveikatos teisėje* [Autonomy of a Person in Health Law]. Ph.D. diss. Vilnius: Mykolo Romerio universitetas, 2006.

death' or a denial of human dignity⁶. Is it not a discrimination in the course of striving for individual health and welfare which is based on different levels of the maturity of a human creature (an embryo is less valued than an already formed foetus; the foetus is less valued than a baby; the baby is less valued than an adult) or on certain biological standards which, if not met by a representative of the homo sapiens species, make him less valuable? History proved that under 'bad' circumstances any culture may start behaving in a pathological way and reach a risky level. For example, an attempt to define human value through a biological approach reminds of a recent experience of nazi policy when the euthanasia program was applied to those 'who are not worth living', i.e. persons terminally ill or babies with serious disorders.⁷ Scientific and technological breakthroughs, their possible influence on the biological development of a human being, political fight against terrorism and other social processes assign new problematic tasks to the law, the result of which shall decide the development of the future world. On the basis of the present situation and the current needs, the legal protection may take a turn towards the needs of the consumer society. Would it not be a degradation of law? Thus, law constantly faces dilemmas. One of them today is the question which attitude to assume: the instrumental, i.e. to allow the technologisation of a human being, or to strengthen the teleological attitude towards a human being as a purpose and referring to the fundamental values that formed the Western law tradition. Or maybe a coexistence of these two attitudes is possible?

Concepts of modern science. In the course of the examination of issues related to human dignity, several concepts that reflect teleological and instrumental attitudes towards a human being, which exist in the socio-cultural context, become more distinct in the science of law. The majority of authors follow the aspects of static dignity which were formed by the teleological and secular natural law.⁸ Both the teleological and the biological attitude coincide in their view that dignity does not depend on the will and actions of the very person, its content comprises biological characteristics of a human being; therefore, one may state that dignity is not of social nature. While explaining the concept of dignity etymologically (as a 'value'),⁹ the representatives of the said attitudes

6 See: Gumbis, J. Eutanazija žmogaus teisių ir autonomijos kontekstu [Euthanasia in the Context of Human Rights and Autonomy]. *Teisė*. 2003, 47: 40; Čekanauskaitė, A. Eutanazija ir savižudybė su pagalba [Euthanasia and Assisted Suicide]. *Bioetikos problemos*. 2003 [interactive]. [accessed 27-01-2008]. <<http://bioetika.sam.lt/index.php?~1178489916>>.

7 Also see: Rogers, A.; Durand de Bousinger, D. *Bioetika Europoje* [Bioethics in Europe]. Vilnius: Kultūra, 2001; Freeman, M. *Human Rights: an Interdisciplinary Approach*. Cambridge: Polity Press, 2002.

8 Weisstub, D. Honor, dignity and the framing of multiculturalist values. In *The Concept of Human Dignity in Human Rights Discourse*. Hague, 2002, p. 263–296; Eckert, J. Legal roots of human dignity in German law. In *The Concept of Human Dignity in Human Rights Discourse*. Hague, 2002, p. 41–54; Frowein, J. A. Human dignity in international law. In *The Concept of Human Dignity in Human Rights Discourse*. Hague, 2002, p. 121–132. Kretzmer, D. Human dignity in Israeli jurisprudence. In *The Concept of Human Dignity in Human Rights Discourse*. Hague, 2002, p. 161–178; Englard, Iz. Human dignity: from antiquity to modern Israel's constitutional framework. *Cardozo law review*. 2000, 21: 1903–1927.

9 The term 'dignity' originates from the latin noun *dignitas*, the primary meaning of which is worthiness, reasonable recognition, something that may be evaluated. See: *The Oxford Encyclopedic English Dictionary*. New York: Routledge, 1996, p. 398.

would consider a human being valuable due to congenital characteristics: in the biological view—due to the rational mind and creative abilities, in the teleological view—due to the fact that it is created as a reflection of God (*imago dei*); therefore, equal dignity is recognised in respect of every person and the right to dignity is interpreted through its objectively understandable origin, i.e. the fact that it belongs to every person as an innate right rather than due to public recognition. In this way one stresses the teleological view regarding human beings and the protection of dignity.

In scientific literature one may find another concept which states that human dignity and the right to dignity originate from public relations.¹⁰ It begins with the statement that a human being is the creator of his own social worthiness; he/she is not valuable only because being born as a human being. Scientists who are in favour of this concept name the static, equal to all persons and not changing dignity as the basis of legal subjectness; they do not consider it to be subject to separate branches law. They stress the social feature that enables a human being to exercise his exceptional human characteristics and to gain an individual public worthiness, thus, the subjective right to dignity. Human dignity is related to the ability of a particular individual to live in harmony with the family, which is manifested through the performance of obligations in relation to other persons. Therefore, in the view of the subjective right to dignity, people are no longer equal.¹¹ Still, it becomes obvious from the current socio-cultural context that it is not only the dignity of a human being as a social creature, but also the dignity of a human being as a biological entity that can be degraded (for example, clone-making, abortions, etc.).

Making the teleological or the instrumental attitude towards human beings absolute proves that the science of law does not precede practise, but lags behind it and carries a bunch of problems related thereto. In order to make law effective, it must be followed; therefore, with no doubt an important role is played by traditions and virtues. A human being strives for a secure and reliable life, thus, according to Arlauskas, is in search for the models of his behaviour in the tradition.¹² However, this is possible only when one joins a dialogue that takes place since the very beginning of the tradition of the Western law. It is possible to state that in the course of solving problems related to human dignity and creating a universally acceptable concept of human dignity, it would be possible and meaningful to ‘discover’ this idea anew by coming back to the ideological source, because it is the historical interpretation of law that helped to establish the need of turning human dignity into an object of law as an attempt to preserve human beings from instrumentalisation.

10 Gewirth, A. Human dignity as the basis of rights. In *Constitution of Rights: Human Dignity and American Values*. Ithaca, 1994, p. 12; Ritschl, D. Can ethical maxims be derived from theological concepts of human dignity? In *The Concept of Human Dignity in Human Rights Discourse*. Hague, 2002, p. 97; Statman, D. Humiliation, dignity and self-respect. In *The Concept of Human Dignity in Human Rights Discourse*. Hague, 2002, p. 212.

11 Vaišvila, A. *Teisės teorija* [Theory of Law]. Vilnius: Justitia, 2004, p. 170–173.

12 Arlauskas, S. *Turiningieji teisės pagrindai. Pagrindinių subjektinių teisių teorijos metmenys* [Essential Bases of Law. Outline of Theory of Basic Subjective Rights]. Vilnius: Mykolo Romerio universitetas, 2004, p. 90.

The object of the present research is the ideological basis that made influence on the formulation of the idea of the legal protection of dignity.

The purpose is to examine the development of the concept of human dignity in order to investigate the extent to which the ideological discourse allows filling in the gaps of legal protection with reference to the universal consent on a common value—human dignity.

The methods applied for the research include the philosophical, systematic analysis, historical, synthesis, comparative, abstract methods of scientific research. A combined application of these methods is important for the reliability of the results and conclusions of the research.

1. Ideological Grounds for the Legal Protection of Human Dignity

The Western tradition of law was formed by antique and Christian ideas of the innate human rights. They did not form the theory of human rights in the present-day meaning but the ideological argumentation is significant because one may not decide the issue of the content of the worthiness of a human being only by recognising the equal worthiness of all persons without indicating its content. A critical analysis of the ideas on the origin of human dignity may become the grounds for the legitimacy of the right to dignity. Having reviewed the drafts of the first document that consolidated the right to human dignity, i.e. the Universal Declaration of Human Rights¹³, one may distinguish three respective concepts of human dignity which are quite clear in the present-day science of law as well:¹⁴

- the first is based on the Christian tradition set forth by the U.S. catholic bishops in line with the ideas of the writings of St. Thomas Aquinas. In this context the basis of human dignity as a reason of feeling more worth and exceptional among other creatures was the fact that the human being was created as a reflection of God;
- the second concept is based on the Jewish tradition of the Old Testament. In 1944, the American Jewish Committee adopted a document named “Declaration of Human Rights” in which it states that everything that we cherish must be based on human dignity which must be recognised by the modern world that strives for democratic values, and this is the cornerstone of civilisation and culture;
- the third, the concept of innate right, is based on the statement of stoic philosophers that nature endowed all people with reasonable mind and in this sense we are all equal.

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

14 Dicke, K. The founding function of human dignity in the Universal Declaration of Human Rights. In *The Concept of Human Dignity in Human Rights Discourse*, supra note 10, p. 113.

These ideas of the primary versions of the Universal Declaration of Human Rights in 1945 convinced the participants of the San Francisco Conference to declare every human being a subject of law. By declaring that the human right to dignity is universal, the authors of the Universal Declaration of Human Rights believed that this idea should be nourished by all people around the globe. They appealed to philosophic ideas to prove that there exist differences as well as features common to all persons. The idea was to declare every human being a value without associating him/her with social criteria or biological aspects and the purpose was to ensure equal possibilities for everyone to become a valuable member of the society. The Preamble of the Declaration is based on the statement that the ‘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’¹⁵. The protection of dignity gives a feeling of trust in relations between people which is important in the process of the creation of the welfare of a country and the security of a society. Dignity as an absolute and fundamental characteristic of human beings was included in the new, modern constitutions of democratic states having taken into account of the ideas of I. Kant as well. For this reason the scientific discussions on human dignity which still continue, require an expansion of the said concepts. Disassociation from other thinkers does not mean that they are not significant to the development of the idea of dignity. However, one examines the works of the thinkers who made the greatest impact on the legal protection of this value and whose argumentation makes the least impact on the removal of the idea’s legal element.

2. Theological Perception of Human Dignity

In the Old Testament in the Hebrew language the term ‘kavod’ is used for describing God, the fundamental meaning of which is related to the noun ‘dignity’.¹⁶ The verb ‘kavod’ in the Hebrew language means paying respect (to the parents, holy items), as well ‘glorifying’, as a synonym of the notion ‘to glory’ when one speaks of God.

In the views of both Judaism and Christianity a human being is dignified due to the divine origin, i.e. creation of the human being as a reflection of God (*imago dei*). In rabbinical literature *imago dei* is linked to human intellect, and in Christian with reincarnation of Christ, by explaining *imago dei* as a representation of God in a human body. The intellectual advantage and rationality of the human being, if compared to other creatures, is based on the immortal soul. Due to *imago dei*, a human being feels his worthiness—a sense of pride, reverence and respect.

And Thou, O Jehova, art a shield for me, My honour,
And lifter up of my head.¹⁷

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

16 Safrai, Ch. Human dignity in a rabbinical perspective. In *The Concept of Human Dignity in Human Rights Discourse*, *supra* note 10, p. 99–110.

17 Psalmė 3: 5. *Naujasis Testamentas ir Psalmiai* [The New Testament and Psalms]. Vilnius, 1996, p. 350.

Another reason of the self-esteem of a person is the creation of the world for a single reason—the human being: ‘[y]ou put everything under his feet...’.¹⁸ All oeuvre is directed to the human being, everything is made to obey him: ‘fill the earth, and subdue it, and rule over ... all living creatures that move upon the earth’.¹⁹ The meaning of this idea is to be the purpose in itself rather than an instrument. It is not the human being that is an object of self-realisation to each other, but the remaining world of nature, the worthiness of which is revealed through a person. In Judaistic-Christian theology a human being is not an instrument to God, but the purpose aimed at Him. The idea is amplified in the concept of Thomas Aquinas. According to him, a rational soul of the human being does not only distinguish him from among other living creatures, but also obligates him to imitate God with his love and knowledge: ‘gratiam supponit naturam et perfecit eam’²⁰ (the grace implies the nature and makes it perfect). St. Thomas praises a decisive, knowable and active mind as a common indicator of the dignity of every person, in which an ability of an individual to distinguish and assess good and evil, as well as the intellect as a power of spiritual cognition, which differs from soul to soul, becomes prominent. In the philosophy of St. Thomas the human being as an intelligent and responsible creature is able to make a free decision on being good. There lies the meaning of his concept—the bipolar perspective of human dignity. God is recognised as the source of the entire existence, meanwhile an individual—as a particular exceptional creature—is stressed as a self-expressing and exercising object.²¹ From this link with other people a need for self-defence originates. It obligates one to recognise the self-defence, life and happiness of other persons as the right to which they are entitled as human beings.²² The role of the regulator of this process is assumed by Christian moral norms; the positive law is a sort of aid which helps people to choose an ethically impeccable way of behaviour. The idea expressed by St. Thomas that dignity is possible only in a mutual relation with others is developed in the encyclical letters of popes.²³ After the second meeting of Vatican they are defined as personalistic and as edlevating human dignity as the supreme premise. They state that in his nature a human being is not only *homo individualis*, but also *homo socialis*; therefore, he should foster the welth of other people as well. Moreover, a human being should strive for a common understanding. This means that ‘everyone must contribute to creation of common social environment, in which human rights become more protected and obligations fulfilled on equal scale’²⁴. Divine human nature determines not only the care of God for the one created as his

18 Psalmè 8: 5-7. *Ibid.*, p. 354.

19 Pradžios knyga, 1, 28. *Šventasis raštas* [The Bible]. Vilnius: Katalikų pasaulis, 1999, p. 9.

20 Thomas von Aquino. *Summe der Theologie*. Stuttgart: Kröner, 1985, s. 497.

21 Korff, W. *Wie kann der Mensch glücken? Perspektiven der Ethik*. München, Zürich: Piper, 1985, s. 40–42.

22 Baublys, L. *Antikinė teisingumo samprata ir jos įtaka Vakarų teisės tradicijai* [Antique Notion of Justice and Its Impact on the Tradition of the Western Law]. Vilnius: Mykolo Romerio universitetas, 2005, p. 36.

23 For example, Jonas Paulius II. Enciklika. *Laborem exercens*. AAS 73, 1981 [interactive]. [accessed 10-02-2008]. <www.lcn.lt/b_dokumentai>; Jonas XXIII. Enciklika. *Pacem in terris*. AAS 55, 1963 [interactive]. [accessed 10-02-08]. <www.lcn.lt/b_dokumentai>.

24 Jonas XXIII. Enciklika. *Pacem in terris*. AAS 55, 1963 [interactive]. [accessed 10-02-2008]. <www.lcn.lt/b_dokumentai>.

reflection, but also the expectation of the same care from the human being himself by inviting a man to take care of his family.²⁵

Thus, according to the theological concept, a human being is granted not only the image of God, but also the liability for other creatures, including people. When investigating the biblical origin of human rights and the influence of the notion of a human being as a reflection of God on the Western concept of human rights, Baublys indicates that the major attributes of human rights are immunity, dignity and being protected from any violence.²⁶ The theological concept does not state that dignity is solely the innate characteristics of a man. The creation of the human being as a reflection of God is a mandate to the positive law to ensure the immunity of human body and to provide a possibility to develop himself as a social personality. This means that society may treat the human being as value and create conditions for self-realisation in relation to its other members. *Imago dei* is the basis of the equal value of all people but, due to differences in intellectual abilities as well as other abilities, a wish to master biological sensual instincts and abilities of the soul, human beings as personalities are morally different and this is reflected in the entire biblical concept of saving. Many branches of religious philosophy exist, but all of them have a common characteristic—they assess the human being as a creature and a social personality. The theological notion of law indicates a bipolar dignity—the static dignity which is common to every person—and consider it the form which is filled in by certain content in an individual life. It is possible to state that in this way one recognises also the dignity of the dynamic nature of a person, the content of which is comprised of the obligations to the deity, i.e. the assessor of the created dignity, too.

3. Insight into the Human Value in the Concept of Secular Innate Right

3.1. Antiquity

The original Latin term *dignitas hominis* denotes worthiness, an external aspect of human social behaviour which embodies charisma and evokes respect.²⁷ Scientists agree that it was one or two centuries BC when a Hellenic aristocrat Panaetius from Rhode used the term of human dignity for the first time.²⁸ His texts did not survive; therefore, the first written account of this term is considered to be the works of Cicero, in which Panaetius was quoted.²⁹ In Rome human dignity was considered to be the expression of the outstanding status of an individual in the society and the reflection of the citizens' perception of imperial power. Cicero used the term 'dignity' not in this traditional mean-

25 Baublys, L., *supra* note 22, p. 221.

26 *Ibid.*, p. 213.

27 *The Oxford Encyclopedic English Dictionary*, *supra* note 9, p. 398.

28 Cancik, H. 'Dignity of Man' and 'Persona' in Stoic anthropology: some remarks on Cicero, *De Officiis* I 105-107. In *The Concept of Human Dignity in Human Rights Discourse*, *supra* note 10, p. 19.

29 *Ibid.*, p. 19.

ing, but as the description of the exceptional position of a man in the world due to his special nature which, as he stated, was the source of human dignity.³⁰ The main difference between a human being and an animal, according to Cicero, was the mind that gives every person an advantage over all living creatures and is expressed in the ability to rule the natural world. Human mind, as a qualitative characteristic of a rational creature, was recognised by other antique thinkers as well, but Cicero was the first to express this idea in the meaning of the concept of dignity. He indicates that all people are equal as they are endowed with the mind and the major differences are expressed by the very level of the consciousness of their life.³¹ The mind determines the human ability to act according to his moral decision (this forms a personality). The more conscious a man is, the more valuable he is.³² Cicero considered the human mind and sociable nature to be the source of innate law as well, and in his work *De Officiis* [*About the Duties*] he stated that the innate qualities of a person promote his spiritual and social self-expression:

Atque etiam, si considerare volemus, quae sit in natura ecellentia et dignitas, intellegemus, guam sit turpe diffluere luxuria et delicate ac molliter vivere, guamque honestum parce, continenter, severe, sobrie (‘If we remember the magnificence and dignity of our nature, we shall understand how it is wrong to live in luxury, to indulge in sensuality and how it is beneficial to live sober-minded, virgin, simple and dignified life’).³³

Cicero indicated the mind, the similar psychological composition to be the basis of dignity that is common to all human beings. However, he did not consider the dignity to be subject to legal protection or, even more, the grounds for equal rights. ‘The belief was deep-rooted in roman legal sense that every citizen moves to a higher social level and gains the right to such extent which he is worth of’³⁴. Moral improvement of a person was considered to be an important criterion of worthiness—the more a person contributed to the wealth of the country, the more valuable he was.³⁵ According to Cicero, all people have different civic duties because they have different abilities, are not equal in their education, morality, etc.³⁶ In his work *De Republica* [*About the State*] he used this concept of dignity for criticising democracy. He stated that equality in itself is not right because it does not respect different statuses (‘aequabilitas est iniqua, cum habet nullos gradus dignitas’).³⁷ Several moral requirements stem from this statement: firstly, one must fulfil the obligations of his own social layer; secondly, one must maintain dignity by controlling emotions and desires (by means of the mind). Thus, the concept of human dignity of Cicero had two meanings: worthiness/dignity of the social nature of dynamic type was related to the rank, while worthiness/dignity of the ontological nature of static type was

30 Cancik, H., *supra* note 28, p. 21.

31 Ciceron. *O zakonakh. Dialogi* [On the laws. Dialogues]. Moskva: Nauka, 1966, p. 98.

32 Asmus, V. F. *Antichnaja filosofija* [Ancient philosophy]. Moskva: Vysshaja shkola, 1999, p. 358.

33 Cancik, H., *supra* note 28, p. 20–21.

34 Arlauskas, S. Cicerono prigimtinės teisės samprata ir Romos valstybės principato politinė sistema [Cicero’s Conception of Natural Rights and the Roman State Principato Political System]. *Politologija*. 1999, 1: 95.

35 *Ibid.*

36 Sabine, G. H.; Thorson, Th. L. *Politinių teorijų istorija* [History of Political Theories]. Vilnius: Pradai, 1995, p. 196.

37 Eckert, J., *supra* note 8, p. 43.

associated with differences between the human being and other natural creatures. On the one hand, the concept defined a specific, visible quality of a man, i.e. the social layer, on the other hand—the qualitative aspect which was the mind, as a universal human value.

Cicero's terminology on dignity is common to the whole Stoic philosophy. Contrary to Cicero, the Stoics declared that the human being alongside his civic duties has also moral duties to society because he is a member of two states, i.e. the civil state and the great state of conscious beings. The reason why a person belongs to the latter is his humanity.³⁸ For example, Seneca (4 BC – 65 AD) explained a possibility to serve the society without holding a public office in the following way: 'everyone creates his spirit himself, and the office is gained by accident'³⁹. 'The man, who follows his reason, strives not only to preserve, but also to liberate in him the features that were inscribed in him by the nature—virtuous living, it means—in harmony with the nature, which guarantees a peaceful flow of life—happiness'.⁴⁰ Due to the rational mind every human being perceives his moral purpose to concur with the global mind (*logos*) which is a priori; and in the freely taken moral decisions lies a need and possibility to attain this goal.⁴¹ When a person improves himself, when he perceives the worthiness of every human being as such as well as when he understands the social inequality that is established by the global mind, the latter becomes a precondition and stimulus to reach moral perfection as an innate human possibility to be equal. The Stoics believed that the worthiness of a person is decisive and may be increased only when the person undergoes individual spiritual perfection. Thus, in this concept one may single out an indicator of static dignity, i.e. the mind that makes the human being an exception among the natural world; however, the Stoics also recognised the dynamic (growth) dignity of the social nature of the human being one of the aspects of which is the morality of a person.

3.2. Renaissance

Antique ideas inspired the thinkers of the Renaissance, too. They were the source of their creation and perception of the world. The fact that the humanism ideology originated in Italy where crafts and trade flourished and the caste of financially and politically strong citizens took its roots resulted in a new perception of the human being and his dignity as well. The main attention was paid not to God, but to a person; the cult of mind was prevailing, the belief in inexhaustible creative resources was held, the freedom of the person was declared. In the fourteenth century a range of tractates were released in Italy dealing with the nature and essence of the human being in which Cicero's anthropological definitions were used: advantage, high-mindedness and, finally, dignity.

38 Sabine, G. H.; Thorson, Th. L., *supra* note 36, p. 207.

39 Seneca. *Laiškai Lucilijui* [Letters to Lucilius]. Vilnius: Mintis, 1986, p. 114.

40 *Epiktetas. Rinktinė* [Epictet. Collection]. Vilnius: Mintis, 1986, p. 17; *Filosovskaja enciklopedija* [Philosophical Encyclopedia]. T. 4. Moskva: Nauka, 1975, p. 137.

41 Compare *Filosofijos istorijos chrestomatija. Antika* [The Reader of History of Philosophy. Antiquity]. Vilnius: Mintis, 1977.

In 1452, Gianozzo Manetti (1396 – 1459), the erudite and jurist from Florence, wrote an article *De Dignitate et Excellentia Hominis* [*About Human Dignity and Advantage*]⁴². Manetti described the human being as an exceptional creature and quoted Aristotle, the Bible and Cicero. According to him, God created the human being in his own image so that the human being would love himself, be dignified and rule the world:

Itaque innipotens Dominus ei in tanta ac tam sublimi dignitate constituto suapte natura indidit, ut se ipsum conservandi sui causa diligeret...ut rerum omnium dominaretur ('Therefore, the Mighty God granted him, the one that was created with exceptional and great dignity in his nature, to love himself, an opportunity to rule himself and the whole creations').⁴³

The concept of Manetti is called a Christian concept of Stoicism or a convergence of Stoic and biblical ideas.⁴⁴ He accepted the Christian view according to which the divine incarnation in the human being is the basis of his dignity as well as the Stoic idea that dignity is expressed in the exceptional abilities of body and mind that enable the person to dominate among other creatures. Manetti, as typical to the humanism, identified the human dignity to be located in the creative power that attest technical, artistic and intellectual achievements and stressed that the mission of humanity, i.e. the creation of the cultural world, is possible only by thinking and acting.

Still the most significant among the philosophers of the Renaissance concerned with human dignity was Giovanni Pico della Mirandola (1463 – 1494). *Oratio de hominis dignitate* [*Speech about Human Dignity*]⁴⁵ begins with a question: why is the human being such a big miracle, the creature who jaundices other creatures, including the divine ones?⁴⁶ Giovanni Pico della Mirandola declares that he is not satisfied with previous answers about the ability of the human mind, his dominance in the animal world, about his purpose to be a link between the vale and eternity. With his answer Pico contributed to Manetti's notion of dignity but his answer was more conceptual: God intended to make a creature which could understand the beauty and magnificence of the universe created by God. All the prototypes were already formed; therefore, God as an almighty lord decided to create the human being without any predetermined destiny. He released the human being into the world so that the latter chooses the form of existence himself: to form himself as a divine creature, the son of God, or as a freaky, degraded creature. Who may stop wondering our chameleon abilities (*quis hunc nostrum chamaeleonta non adiretur?*), Pico asks.⁴⁷ In his opinion, the human being enjoys a free will, due to which he discovers the place in the world; therefore, he is similar to God. The human being must strive for moral perfection and the prerequisite for that is education which must be made available to every man. Thus, by declaring the human being to be the centre of the world, a microcosm, a rational

42 Compare Trinkaus, Ch. In *Our Image and Likeness. Humanity & Divinity in Italian Humanist Thought*. Notre Dame, Indiana: Univ. of Notre Dame Press, 1995.

43 Compare Cancik, H., *supra* note 28, p. 29.

44 *Ibid.*

45 In 1487, Pico had plans to organise a public discussion in Rome about 900 his own theses on this issue, but the Pope Innocent VIII forbade the event because he considered 13 thesis to be heretical. For this reason Pico became a victim of inquisition and thesis, recorded after his death, were published by the nephew Gian Francesco in 1496 under the title 'Oratio de hominis dignitate'. More: Cancik, H., *supra* note 28, p. 30.

46 Englard, Iz., *supra* note 8, p. 1914.

47 Cancik, H., *supra* note 28, p. 30.

creature which has to find a rational solution in the course of the formation of the worldly life, Giovanni Pico della Mirandola conceptualises the dignity of social nature.

The Renaissance elevated the idea of the freedom of human self-expression which is based on the reasonable mind and moral abilities of the human being that enable him to be the creator of his own temporal existence by participation in the social life. What concerns the concept of human dignity, the humanists emphasized the similarity between the human and God as the major characteristic that distinguishes the human being from other creatures; however, binding static dignity with dynamic value is characteristic to this concept as well. And the focus is on the human being as the creator of the social worthiness that is caused by ontological features and the level of morality and education.

3.3. Post-Renaissance Era

The transformation of the term ‘dignity’ towards the modern meaning was a consistent process. Specific literature on the worthiness of the human being emerged in the Age of Enlightenment which is recognised as the continuation of the temporal humanism with all its effects. A transition was made from the definition of the human being as an exceptional creature of God having an exceptional position in the world to the interest in the social worthiness of the person. The perception of the dignity of the human being of these times is illustrated by Samuel von Pufendorf (1632 – 1694). The concept of the Saxonian humanist of the seventeenth century who was considered to be the top authority of the legal sophistication of these times in Germany was based on the Stoic philosophy and laid down in his work (1672) *De Iure* [*About the Law*].⁴⁸

Requirebat humanae naturae dignitas, et praestantia, qua caeteras animantes eminet, ut certam ad normam ipsius actiones exigerentur...Maxima inde homini dignatio, quod animam obtinet immortalem, lumine intellectus, facultate res diiudicandi et eligendi praeditam...Ob quam ille audit sanctius reliquis animal mentisque capacius altae et quod dominare in caetera posset (‘The dignity of nature of the human being and advantage that makes him exceptional among other living creatures requires assessment of human actions according to written rules of behaviour...Magnificence of human dignity originates from his immortal soul, to which the light of perception, ability to make decisions and choices is characteristic...Due to his soul the human being is treated a more holy creature than other, he has ability to think and rule’).⁴⁹

Samuel von Pufendorf is the first author who placed the concept of human dignity in the very centre of the doctrine of innate law.⁵⁰ According to him, every person is dignified because he is lightened with the ‘light of understanding’. In this view, all people are equal.⁵¹ However, Pufendorf also stressed the social aspect of the human being which, according to him, is the core of the entire human nature and allows the full realisation of individuality; however, it lays under an obligation to other members of the society as well.

The post-Renaissance view towards human dignity does not deny that the immortal soul and mind are the fundamentals of static human worthiness but even goes deeper by

48 Hof im Ulrich. *Švietimo epochos Europa* [Europe in the Age of Enlightenment]. Vilnius: Baltos lankos, 1996, p. 153.

49 Cancik, H., *supra* note 28, p. 31.

50 *Ibid.*, p. 30.

51 Eckert, J., *supra* note 8, p. 44.

stating that the human being is morally free in his nature and the core of his nature is being a social creature, while the source of law is the state. A new characteristic of the concept is that one strives to prove the links between the ontological static and the social dynamic worthiness of the human being. The traditional ontological meaning of dignity which expresses the obligations for the divinity herein is transformed to such a meaning of dignity which justifies human rights and duties in the society. Still, it is obvious that dignity itself is not yet perceived as a value which needs to be protected by legal means.

4. The Concept of Human Dignity of Immanuel Kant

Immanuel Kant (1724–1804) offered a new dimension to the concept of human dignity. He defined dignity as an internal worthiness of a person, an absolute and priceless value of an autonomous individual. According to Kant, everything has either a price, or a dignity. Something that has a price may be replaced by another thing that has an equivalent to the price, and something, that is above price and has no equivalent to price, has dignity. Morality is the condition that allows treating the human being not only according to his value (his price), but as a purpose in itself, without any additional conditions, solely due to the fact that he is as he is and he is present at present.⁵² The exceptionality of the human being in the concept of Kant is based on the following factors: 1. ability of critical and rational thinking characteristic only to the human being; 2. autonomy as an ability of every individual to determine himself. Firstly, the human being as a reasonable and self-aware creature is exceptional due to the spiritual cognition which is a contradiction to the sensual cognition that is common to animals. A human being may get to know himself by using reflections, meanwhile an animal lives on the experience of a particular moment and is not able to think about the past or the future. This transcendentalism gives dignity to the person.⁵³ Secondly, according to Kant, there exists a moral law which is a priori applicable to all humans as rational beings. It is expressed in every subjective practical mind as a categorical obligation and it is common to everybody. Thus, a person, as Kant states, is a creature that has common sense, due to which he may follow the obligation, i.e. due to the mind the human being is able to freely determine himself, to overcome the natural cause-effect phenomena, and this comprises the dignity of the person. A duty prohibits a person from being bad, so that the person does not take away from himself the advantage of moral creature and does not turn himself to the mechanism of the game of tendencies, i.e. the thing.⁵⁴

Ability to act in line with moral law creates a personality. It has exceptional characteristic of humanity in itself, namely, the ability to see the meaning and content of moral imperative and may bring it to life, in other words, the person-

52 Kantas, I. *Dorovės metafizikos pagrindai* [Grundlegung zur Metaphysik der Sitten]. Vilnius: Mintis, 1980, p. 70.

53 Kantas, I. *Grynojo proto kritika* [Kritik der reinen Vernunft]. Vilnius: Mintis, 1982, p. 73.

54 Anzenbacher, A. *Etikos įvadas* [Introduction to Ethics]. Vilnius: Katalikų pasaulis, 1995, p. 49–50.

ality has the power of decision (thinking) and refers to this decision in practical actions. In the content of the definition of dignity Kant sees the demand to recognise the human being as an autonomous person, who can and must create laws of morality himself, alongside recognising this prerogative to every other person. He states: '[a]ct so as if you always nourish the humanity, never consider yourself or any other person to be an instrument, always treat him as the purpose; consider the person as such to be the last argument in making any decision'.⁵⁵ The human being shall be considered the final purpose, when due to his goodwill we shall perceive him as the value, and its protection—as the duty. Autonomy, for the reason of which one may not use the person as an instrument, means that everyone is to be treated as the purpose and this is the reason for recognising every person, irrespective of his age or sex, as the subject to law. This position shows that society and every member of it is under an obligation to any individual as a representative of the species. Dignity is the way of thinking by which 'one expresses respect to the law of morals, when the mind orders the will to express such respect'⁵⁶. It is stated that 'every person and alongside every intelligent creature is the purpose in itself'⁵⁷ and stressed that by treating another person as an instrument one violates the moral duty; in other words, imperative violation impairs the dignity not of the victim, but of the one who acts. The human being must perceive himself as a person and as a final purpose of existence, and treat the rest of people as equal and intelligent creatures that have the same interests.

The concept of human dignity which was formulated by Kant and which prohibits using a person as an instrument means exceptionally the prohibition of the use as an instrument. In the environment of exchange in cultural services, people are always instruments of satisfying each other's needs; however, the principle of being the purpose in itself imposes an obligation to act so that the person in such relations is recognised to be 'always also' the purpose. Thus, Kant declares the unity of individuality and sociality without confronting them. In this concept the aspects of static dignity—reasonable mind and autonomy—gain a social meaning. The human being is perceived as the subject of law in self-realisation, but alongside as an instrument in the self-realisation of other persons. Therefore, these aspects give the reason not to confront the aspects of neither static, nor dynamic human dignity, indicate the direction of the perception of their convergence, and give sense to the human being as the subject to law and the duty.

Conclusions

Human rights stem from communal values; therefore, even today they may develop only on the grounds of the values of a particular community. The ideological excursus provides a possibility to fill in the gaps of the legal protection of human dignity, to serve the universal accord on common good. It should be noted that no clear evolution or his-

55 Kantas, I., *supra* note 52, p. 68.

56 Giddens, A. *Modernybė ir asmens tapatumas* [Modernity and Self-Identity]. Vilnius: Pradai, 2000, p. 134–135.

57 Kantas, I. *Praktinio proto kritika* [Grundlegung zur Metaphysik der Sitten]. Vilnius: Mintis, 1987, p. 107.

tory of the term of human dignity exists. We have only ideas of human worthiness from different ages. Various ideologies of law, as already mentioned, offer different definitions of dignity; however, all attempts to reveal its notion have a common feature—the link between humanity, personality and social characteristics which is revealed through the teleological and instrumental attitudes towards the human being. These attitudes help to define the social and legal issues of the present life, because a state under the rule of law is created also by means of the common sense of sociality and, on the equal level, the existence of privacy. A human being as a person steps into a society; however, this is the very environment in which he may act in equality with other members, he may enjoy his humanity and become socially valuable. It is believed that these two aspects of worthiness—human and personal—are obvious throughout the entire tradition of the Western law. In the course of making one of these aspects absolute, human dignity is recognised empirically, in fragments, and its legal protection is not guaranteed. However, in the very essence they do not contradict each other. Quite on the contrary, they develop the same idea of unity, only from different starting points. Thus, human dignity is meaningful only as the dialectic unity of private and public spheres, and the science of law should distinguish among the following categories: firstly, human dignity as the value of a *homo sapiens*, as the subject to the right to physical and moral integrity of a man; secondly, human dignity as the value of a socially active personality, as the subject to the right to the created individual social worthiness.

The distinction of these two aspects of dignity concretizes the subject of the right to dignity, aspects of its protection and provides a possibility to avoid the absolutism of the teleological or the instrumental attitude towards the human being.

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ISTORINIO DISKURSO REIKŠMĖ ŽMOGAUS ORUMO TEISINEI APSAUGAI

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Santrauka. Žmogaus teisės kyla iš bendruomeninių vertybių, todėl jos ir dabartiniu metu jų plėtra negali būti tik konkrečios bendruomenės vertybių pagrindas. Kintant visuomenės interesams, kyla naujos grėsmės toms pačioms vertybėms, o siekiant efektyviai jas neutralizuoti, nuolat būtinas mokslinis dialogas. Diskusijos dėl abortų, eutanazijos, klonavimo legitimacijos rodo su žmogaus orumo teisine apsauga susijusią problematiką per instrumentinio (žmogaus kaip priemonės) ir telelologinio (žmogaus kaip tikslo) požiūrių į žmogaus vertingumą priešpriešą. Straipsnyje aptariama idėjinės nuostatos – judėjų, krikščionių teologinė mintis, prigimtinių teisės, ypač stoikų mokyklos nuostatos ir I. Kanto koncepcija – lėmusios kiekvieno žmogaus paskelbimą vienodai oriu ir pripažinimą teisės subjektu, o tai padėjo jam kurti individualų socialinį vertingumą orios egzistencijos sąlygomis. Straipsnyje aptariama, kiek šis idėjinis ekskursas leidžia užpildyti žmogaus orumo teisinės apsaugos spragas, dabartiniu metu pasitarnauti visuotiniam sutarimui dėl bendrojo gėrio – žmogaus orumo. Straipsnyje tiriama, jog nėra aiškios žmogaus orumo termino evoliucijos arba jo istorijos, o tik skirtingų epochų idėjos apie žmogaus vertingumą. Visus bandymus išskleisti žmogaus orumo kategorijos sampratą sieja santykis tarp žmogiškumo, asmeniškumo ir socialumo. Šie požiūriai šiuo metu padeda apibrėžti socialinius teisinius gyvenimo klausimus, mat teisinė valstybė kuriama ir bendru socialumo jausmu, lygiai taip pat ir privatumo buvimu. Į visuomenę įžengia žmogus kaip asmuo, tačiau tai yra būtent ta terpė, kurioje jis gali veikti kaip lygiateisis su kitais jos nariais subjektais, realizuoti savo žmogiškumą ir tapti

socialiai vertingu. Tiriama, jog šie du – žmogaus bei asmens – vertingumo aspektai susiję su visa Vakarų teisės tradicija. Absoliutinant vieną iš šių aspektų žmogaus orumas pažįstamas empiriškai, fragmentiškai, taigi neužtikrinama pakankamai ir jo teisinė apsauga. Tačiau iš esmės jie neprieštarauja vienas kitam, o iš skirtingų pradinių taškų plėtoja tą patį visumos sąryšį. Taigi žmogaus orumas yra prasmingas tik kaip privačios ir viešosios srities dialektinė vienovė, o teisės moksle išskirtinos tokios orumo kategorijos:

pirma, žmogaus orumas kaip homo sapiens būtybės vertingumas, kaip teisės į fizinį ir moralinį žmogaus integralumą objektas;

antra, žmogaus orumas kaip socialiai aktyvios asmenybės vertingumas, kaip teisės į susikurtą individualų socialinį vertingumą objektas.

Apibrėžus šiuos orumo aspektus sukonkretinamas teisės į orumą objektas, taigi ir jos apsaugos aspektai ir tada galima efektyviai neutralizuoti kylančias grėsmes.

Reikšminiai žodžiai: *žmogaus kaip būtybės orumas, žmogaus kaip socialinės asmenybės orumas, teisė į orumą.*

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