

The Constitutional Models of Securing of Protection of the Right to Human Dignity in European Countries

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Abstract: The study presents the constitutional approaches of European countries to formalize protection of the right to human dignity. The researchers identified the distribution of constitutional models in levels, depending on the guarantee of the protection of the dignity of citizens that contributes to the evaluation of the significance of social policy and the real protection of civil rights in different countries.

Key words: Human dignity, human rights, security, guarantee, the constitution, the state, responsibility

INTRODUCTION

The dignity of the person constitutes the most important socio-legal value, adoption and comprehensive protection of which is the foundation of modern society (Schachter, 1983; Donnelly, 1982). Due to the formation and development of democratic institutions, the level of warranty the right to dignity is constantly increasing (Brennan, 1977). However, the improvement of various kinds of technology often has the opposite effect, laying the groundwork for violations of specified benefits (Andorno, 2009).

In the constituent acts of the European States, the right to the dignity of the individual undergoes a transformation and improvement, along side with the complexity of relations in society and development of its basic institutions. In the existing constitutions, in addition to the natural rights of man, the predominant position is occupied by human rights as an individual with certain interests and needs. Therefore, for proper functioning of the specific personality, it is necessary to implement his rights in the aggregate.

Popular in the 19th century English politician John Ray, exploring trends, emerging in the field of human rights, noted that “the self-esteem of society as a whole with the course of history is changing, tomorrow it might not accept the fact that today seemed tolerable but the idea of rational intervention of the state remains constant: it must create a set of conditions, providing a person the opportunity to live a decent life and fulfill his purpose” (Ray, 1980).

Based on the key role of the right to dignity in a modern society and the state we think that the analysis of

the experience of European countries on formalizing the axiological installation and guarantees is of the urgency. In this connection, as the focal group for the research were elected the Constitutions of Belgium, Germany, Greece, Spain, Italy, Poland, Slovakia, France and Sweden.

MATERIALS AND METHODS

Technique: We used various general scientific techniques and methods of logical cognition: systemic analysis and synthesis, modeling, formal logic. Special methods include content analysis, correlation and specially scientific linguistic-legal, formal-legal, comparative legal and method of interpretation of the law.

RESULTS AND DISCUSSION

The most important task of the state is the provision in the constitutional-legal field, such real legal protection of the dignity of citizens which can be obtained in the courts of general jurisdiction. Sometimes the constitution is presented to the population as an abstract phenomenon and is not considered as the applied instrumentation. Largely this is the case.

After the adoption of the constitution and the legislative consolidation in it of a legal basis for the state, it can peacefully coexist with the police entity of the same state for quite a long historical period, as it was in Imperial Germany.

Moreover, it is noteworthy that the legislative recognition of the inviolability of human dignity as a leading constitutional principle is first found in the basic law for the Federal Republic of Germany of 1949.

The basic law of Germany is actually permeated with the idea of protecting the dignity of the individual. The country prohibits any action that express disdain or purpose limitation, exclusion or deprivation of the inviolability of human dignity.

Taking into account the mistakes, made by the founders of the Weimar Republic, failed to defend the rule of law in the country and allowed the Nazis came to power, the inviolability of human dignity in modern German constitutional-law theory is based on the priority of human values.

Besides, the Basic law of Germany contains a number of interdependent norms, aimed at protection of dignity. To them, in our opinion, should be included the prohibition to subject the deprived person to bad moral and physical treatment (part 1 Article 104), the abolition of the death penalty (Article 120), etc. Social rights in Germany are considered as a way of protecting people's rights to a decent life.

Thus, dignity of a personality is not an abstract principle but has quite specific content of moral and material character. German legal scholars believe that a constitutional state is based on two pillars: popular sovereignty and dignity of the person.

To the same conclusion in his own time came Nevinskij (1994) who studied in detail the German experience of the constitutional fastening of the dignity of the individual and considered a number of issues, related to the content of this constitutional principle and defining its place in the system of fundamental rights and freedoms of the citizens in Germany.

The Constitution of Austria is substantially different from the German constitutional legal model. Specific articles, regulating the guarantee of the right to dignity, are not discovered but partial mentions are revealed. Thus, the Federal constitutional law of Austria from 1988, which establishes the rights of the detainee and the deprived, commits to respect such people, respect their human dignity.

A certain guarantee of the dignity and other human rights in Austria is enshrined responsibility of authorities for inadequate execution of norms of the Federal constitutional laws. For example, a number of entities can be prosecuted for violations of constitutional laws, including the Federal President, the Federal government and bodies equated to them, as well as governors of the lands and other officials.

In our view, this situation is particularly important due to the fact that the constitutional norms-principles, not backed up by legal sanctions, are often ignored by officials in practice. Therefore, for the science of constitutional law in different countries is of special

importance as social policy in the state and real protection of civil rights but not the "parade" of loud declarative formulas, although spelled out in the Constitution but not related to the actual reality.

In the Constitution of the Italian Republic, considered to be one of the most democratic constitutions, the notion of public dignity is a priority in the section of "Basic principles".

Article 3 of this section establishes the equality of all citizens before the law, regardless of sex, race, language, political opinion, personal and social status and establishes their equal social dignity, non-discrimination. The peculiarity of the Italian constitutional doctrine is the increased legal relevance and the cogency of the constitutional principles and norms.

We believe this implies the willingness of society to recognize all the rights, enshrined in the Constitution, by all members of society who identify themselves with civil society in a legal state. The worth of the human person is reinforced by the recognition of the right to pluralism of opinions (Article 21), prohibition of political persecution (Article 22), guarantee the protection of linguistic minorities (Article 6) and protection of the rights, as a guarantee of not only personal wealth but society as a whole (Article 2).

Those norms of the Constitution which provide for responsibility of officials for the violation of the dignity of citizens, their rights and freedoms, deserve special attention.

In Italy the respect of the state to the dignity of the person is evident even in such a sensitive area, as the provision of mental health care. Instead of psychiatric hospitals, a public service of mental health care is organized in Italy.

According to experts, this practice contributes to the restoration of the rights of persons with mental illness, who have a real opportunity to occupy a certain place in society, feel a full citizen.

Article 13 of the Italian Constitution declares "unbreakable" freedom of the individual, establishing the punishment for acts, related to physical and moral coercion of individuals, who have been subjected to restriction of freedom. More than a third of the text of the Italian Constitution which clearly expresses the desire for socialization of the constitutional law of European States, is devoted to the rights and freedoms of an individual, including detailed, sometimes overly rigorous regulation of his legal status.

In the preamble of the Declaration of 1789 which is a part of the Constitution of the French Republic (1958) ignorance, disregard of human rights or ignoring them declared the "cause of public calamities and of the corruption of governments".

Despite the fact that the authors of the Declaration include freedom, property, security and resistance to oppression to the natural and inalienable human rights, attention should be paid to the absence in the document under consideration, as in the preamble of the French Constitution (1946) rules or even mentions of the right to dignity.

In the Constitution of the Hellenic Republic (1975) it is easy to see significant borrowings from the practices of discussed above the basic laws of Germany, France and Italy. In particular, the duty of the state to respect and protect the dignity of the person is identified as a priority.

Human dignity is presented in a separate article in Chapter 1 "Fundamental rights" of the Federal Constitution of the Swiss Confederation. Article 7 specifically stipulates that "human dignity shall be respected and protected".

This is facilitated by presented in the Constitution other fundamental subjective rights. In the unconditional connection with guaranteeing the right to dignity, are the social objectives of the Swiss Federation and the cantons, defined in Chapter 3. In particular, the Federation and the cantons advocate that every person, involved in the system of social security, received the necessary care of his health, employees could cover their living expenses through work in proportionate terms (Article 41).

Specifically stipulated principle that the state should be carried out directly with respect for the dignity and liberty of people and the individual citizen, in particular, is in non-codified Constitution of Sweden.

For the first time the post of special representative of the Parliament is established, intended to exercise control over the observance of the rights and interests of citizens by public authorities (the Ombudsman). Characteristically that the Swedish constitutional legislation recognizes the interests of human dignity as the precedence over the rights to freedom of expression and information. This provision is in the Act on freedom of the press (1974), which is an integral part of the Swedish Constitution.

Swedish legislation consistently defends the interests of women, paying great attention to the protection of their dignity. This is reflected in the texts of the adopted laws: "Prohibiting the purchase of sexual services in 1998" and "Women's freedom in 1999".

The basic law Spain of 1978, article 10 of the introductory section refers to the dignity of the human person and the inviolability of his rights, free development of personality, respect for the law and for the rights of others. Noteworthy and highly instructive, in our view, is the provision of this Constitution of guarantee a decent economic existence in old age.

It should be emphasized that the existing mechanism of protection of honor and dignity includes not only

legislation but also practice of its use. Typically, this relates to the positive obligations of the state. Negative duty, lying on the government, is refraining from actions that infringe the honor and dignity. Accordingly, to violate the constitutional rights to defend the honor and protection of dignity can only state represented by its bodies and officials.

Thus, individuals cannot commit these actions because they are not subjects to the regulated relations. To the duties of the state to protect dignity and protection of the dignity corresponds the power to resort to the mechanism of protection of honor and dignity protection: a person is entitled to require the state to take actions on creation of the effective legal regulation of protection of honor and dignity protection.

Thus, in the preamble of the Constitution of Poland the need for States to maintain dignity, given from the birth of human, in the application of the basic law is noted.

All other principles and norms of the Constitution are interpreted through the prism of dignity which seems to be extremely important. This enables the characterization of the constitutional provision on human dignity not only as a declarative statement but as directly valid norm, endowed with political and legal content.

Article 23 of the Belgian Constitution provides that everyone has the right to lead a life appropriate to human dignity.

The Constitution of Belgium is characterized by a special respect for the dignity of the child. Thus, in accordance with article 22 every child has the right to speak on any matter that concerns him; his opinion is taken into account, according to his age and his sound judgment. Every child has the right to everything that concerns his development.

Securing the fundamental rights and freedoms, the Constitution of the Slovak Republic in article 12 declares all men free and equal in dignity and rights, recognizes the fundamental rights and freedoms of man inherent and inalienable.

Unlike a number of EU countries, Slovakia is currently one of the few States that legally seeks to consolidate the concept of marriage as "a unique Union between a man and a woman". The amendments to the Constitution were supported by the majority of votes in Parliament.

John K. von Cranach, counsel of European centre for law and justice (the European Centre for law and justice), describing the situation, notes that "since the beginning of human civilization up to the period that started about ten years ago, it was clear that marriage should be between a man and a woman and that same-sex "marriages" therefore cannot exist...one should not be

surprised that in the constitutional laws of most countries there is no definition of marriage, it was not necessary". With the increasing of the number of countries that allow so-called same-sex marriage, "the once universal moral and legal contract of marriage was destroyed".

Article 19 of the Slovak Constitution contains a provision, according to which everyone has the right to respect for human dignity, personal honor, good reputation and protection of name, protection against unjustified interference in private and family life.

CONCLUSION

Comparative study of constitutional models of enshrining the right to dignity in foreign countries, gave us the opportunity to conclude that the legislator, in varying degrees, evaluates the significance of this phenomenon in the legal society. On this basis, we identified three levels of constitutional models, the ranking of which is due to the approach of the legislator to guarantee the protection of the dignity of citizens.

The first level includes a number of European countries: Germany, Greece, Italy, Spain, Poland, Switzerland, Sweden and others, where the state's obligation to respect and to protect the dignity of the person are established by Statute as a priority.

The second level includes such countries as Belgium, Slovakia and others, in constitutions of which the right to human dignity is considered in the context of other rights and freedoms the protection of personal honor and good reputation, protection from unjustified interference in private and family life.

To the third level we classified countries Austria, France and others in which constitutions specific articles, regulating the issues of guaranteeing the protection of state dignity, are not available, or is no list of fundamental rights and freedoms of man and citizen, familiar to similar laws of most States.

The distribution of constitutional models in levels depending on the guarantee of the protection of the dignity of citizens allowed us to evaluate the importance of social policies and real protection of civil rights in different countries.

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