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## **HONOR AND DIGNITY OF A PERSON: THE ISSUE OF CRIMINAL LAW PROTECTION**

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The article indicates that the honor and dignity of a person is an important factor and an integral component of his constitutional rights and freedoms. Starting from antiquity, in many normative legal acts such as Roman law, Digests of Justinian, the legislation of Kievan Rus, and other European states, the desire to protect the rights, honor and dignity of privileged social classes, and later also of free people, through the legislative policy of the state, can be traced. Encroachment on human right, honor and dignity was considered a crime, a misdemeanor and was punishable by a fine or even death.

With the further development and improvement of socio-economic, legal, cultural-religious and other relations, the person's awareness of his social significance and value as an individual is gaining more and more importance. The article emphasizes that the right to protect the honor and dignity of a person and a citizen is enshrined in a number of legal acts of Europe and other countries. Moreover, the emphasis is not only on the protection of individual rights, but also on the strict prohibition of torture and inhuman punishments, which act as humiliation his honor and dignity, as well as a significant expansion of his/her legal protection in all spheres of social life.

In the current legislation of Ukraine, and first of all in the Fundamental Law, the Criminal Code of Ukraine and other normative legal acts, attention is focused on protecting the honor and dignity of a person.

It is elucidated that in the modern criminal law of Ukraine and the existing legislation, priority is given to the protection of honor and dignity not to a natural person, but to a legal entity, and the existing legal norms are imperfect in terms of compensation for moral damage to a victim who has suffered humiliation and abuse of his honor and dignity.

It is established that the dialectic of the relationship between a natural person and a legal entity confirms the truth that the more a natural person is protected by law, the more he will contribute to the progressive development and functioning of state structures and government bodies, strengthening the authority and power of the state.

The article focuses on the fact that in the modern civilized world, the humanistic philosophy of protection of inalienable natural and constitutional human rights is actively making its way, the emphasis of which is aimed at the humanization of modern criminal and criminal procedural law.

**It is stated that an important principle of criminal law of Ukraine is the rule of law, equality of citizens before the law, legality, justice, humanism.**

**Based on the principle of humanism, the Criminal Code of Ukraine ensures the protection of a person, his life, health, integrity and safety as the highest social value. In its aspiration for full membership in the EU, Ukraine strictly adheres to European legal standards, moral and ethical norms in its criminal policy, which requires further improvement of its criminal and criminal procedural legislation aimed at maintenance of human rights and freedoms, protection of human honor and dignity.**

**Key words: right; law; Criminal Code; person; citizen; honor; dignity; offense; humanism; value.**

**Problem statement.** The issue of ensuring the rights and freedoms of a person, his life, health, and well-being is an extremely relevant task in today's globalized world. In this aspect, the protection of her honor and dignity plays a significant role, it is not only an indicator of the inalienable right of a person but also the level of culture, morality, and existing values of modern society. In the Constitution of Ukraine, Art. 3 states that “a person, his life and health, honor and dignity, inviolability and security are the highest social value” [1].

These provisions are also confirmed in normative legal acts and, first of all, in codes (the Criminal Code of Ukraine, administrative, labor, and civil laws).

Performing important functions regarding the protection of life, health, and inviolability of the person, unfortunately, the Criminal Code of Ukraine does not pay enough attention to the protection of honor and dignity of the person. “There are practically no criminal law norms that would have the honor and dignity of a person as the immediate main object and as a result directly protect these highest social values” [2, p. 23].

Modern European criminal legislation is constantly searching for the improvement of legal norms aimed at ensuring the rights and freedoms of a person, his honor, and dignity. Thus, there are sufficient grounds for the inclusion of such socially dangerous acts as slander, libel, and defamation into the national legislation.

Dissemination, especially in the mass media, of false information aimed at degrading the honor, dignity, and business reputation of a person is observed as a form of mental violence.

It is proven that humiliation of a person's honor and dignity is an illegal activity directed at the victim by his offender, which causes significant moral and psychological trauma to the victim.

We can notice that the EU sets some requirements of “ensuring respect for human rights and fundamental freedoms, following international and European standards” [3, p. 240] for Ukraine.

Ukraine aspires to join the circle of the most advanced democratic states of the EU, in which the fundamental values are the rule of law, democracy, freedom, equality of human rights, and respect for human honor and dignity. It requires new creative intelligence from domestic legislators and criminal theory and practice, which will work to improve domestic criminal law and legislation aimed at ensuring the protection of human honor and dignity.

**State of the research.** The issue of human rights and freedoms, his life, health, and safety has always been urgent. The protection of a citizen's honor and dignity remains the most significant one among other inalienable rights of a person. Starting from antiquity, it was considered by Socrates, Heraclitus, Democritus, Plato, Aristotle, Seneca, Cicero, and other philosophers. In the Middle Ages, its content was supplemented, in addition to legal norms, by moral norms and Christian virtues. The thinkers of the Modern Age – C. Beccaria, V. Voltaire, F. Bacon, T. Hobbes, B. Spinoza, and others, as well as well-known representatives of German classical philosophy G. Hegel, I. Kant, L. Feuerbach, and others made a significant contribution to a more in-depth analysis of the problem of honor and dignity.

In modern law literature, various aspects of the protection of honor and dignity of a person are analyzed: V. Bortnyk, A. Savchenko, R. Stefanchuk, O. Subbotenko, S. Repetskyi, H. Freiman, M. Khavroniuk, O. Khramtsov, T. Cherniavska, and others.

Paying tribute to the above-mentioned authors, we note that this problem is extremely relevant and requires further investigation in all fields of not only legal sciences but also philosophy, sociology, psychology, cultural studies, and religious studies.

The purpose of the article is to analyze the issue of protecting the honor and dignity of a person in Criminal Law of Ukraine.

**Presentation of the main research material.** The issue of human rights and freedoms, protection of his honor and dignity in today's globalized world is extremely urgent. This is primarily due to the further progressive development of all spheres of social life.

Starting from antiquity, legal norms, existing moral requirements, traditions, and religious rites were aimed at fighting not only against criminal offenses but also against the shameful behavior of a person. So, for example, in ancient Rome, legal norms provided for "cases of shameful behavior – infamy, – dishonor that humiliated the honor and dignity of a Roman citizen" [4, p. 111].

Not only law but also public opinion strictly condemned immoral acts that led to "humiliation of the honor of a person (existimatio minuitur)" [5, p. 82].

Ye. Kharytonov notes that such categories as "civic honor", "valor", and "decency" ... entered the flesh and blood of Roman society" [6, p. 20].

"Severe punishment awaited a Roman citizen who committed an unworthy act of shame (infamy) that humiliated honor – he was deprived of citizenship" [6, p. 181].

Thus, according to the Law of the XII Tables, persons were liable to punishment "in case that any of them composes or will sing a song that slanders someone or disgraces someone" [7, p. 93].

Those persons who were exposed to lies aimed at humiliating the honor of another person were severely punished [8, p. 163].

In the Digests of Justinian, a person was criminally liable for shameful acts, including slander, deception, and others aimed at humiliating honor [9, p. 69–70].

It is worth noting that in "Ruska Pravda" a significant part of the norms was aimed at protecting the honor and dignity of a free person. The offender paid a fine. A person "lost all his property and was deprived of his freedom" for criminal offenses [10, p. 55].

O. Subbotenko notes that in "Ruska Pravda", "the word insult is quite often defined as a more dangerous encroachment than physical injury" [11, p. 7].

An important event in Medieval Europe that paved the way for the expansion of individual rights and freedoms was the adoption of the "Great Charter of Freedoms" in 1215 in England. "No one could be deprived of their freedom", was emphasized in Art. 39, (to be imprisoned or arrested), except in cases of the lawful court decision or under the laws of the country" [12, p. 229].

This important legal document was a model for many European countries in terms of expanding and ensuring human rights and freedoms.

In the history of the national law, a significant place was occupied by the "Laws by which the people of Malorussia are tried" of 1743. Persons who not only humiliated the honor and dignity of representatives of the ruling classes but also free citizens were brought to civil and criminal liability. It should be emphasized that criminal charges were brought against persons who called another person obscene words (crude abuse)... such actions humiliated the honor and dignity of a person.

With the further development and improvement of socio-legal and political relations, the issue of protecting human rights and freedoms became more and more urgent.

Let us pay attention to the fact that in each historical era, cardinal changes were made in the meaning and essence of the concept of honor and dignity of a person. Significant changes took place in the 20th century. Uprisings and revolutions especially contributed to this.

The right to protect the honor and dignity of a person and a citizen is enshrined in some international legal acts, in particular in the Universal Declaration of Human Rights of December 10, 1948, the International Covenant on Civil and Political Rights of December 16, 1966, the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, Convention against torture and other cruel, inhuman or degrading treatment ... of December 10, 1984, etc. N. Onishchenko notes, “the absolute prohibition of torture, the humiliation of human dignity, and inhumane punishments serve as a guarantee of the right to human dignity” [13, p. 9].

Honor and dignity are closely related concepts and are often defined as identical, but there is a difference between these concepts. Thus, in V. Dahl’s dictionary, the concept of “honor” is characterized as “the internal moral dignity of a person, valor, nobility of soul and clear conscience” [14, p. 599].

Thus, the concept of “honor” includes the evaluation of the qualities of an individual’s behavior and activity carried out by society. Public and professional activities are under consideration. In the concept of “dignity”, a person himself evaluates his “Ego”. Art. 1 of the “Universal Declaration of Human Rights” formulated the most important criminal law provision that “All people are born free and equal in their dignity and rights”.

“Dignity”, writes P. Rabinovych, “is the most fundamental social property of every person; it serves as a point of reference, the source of all his essential human affairs” [15, p. 80].

In the current Criminal Code of Ukraine, the concept of “honor” is formulated in Part 1 of Art. 161, and Part 2 of Art. 387, and the concept of “dignity” is formulated in Part 2 of Art. 50, Part 1 of Art. 120, Part 1 of Art. 161, Part 2 of Art. 365, and Part 2 of Art. 387 of the Criminal Code of Ukraine.

The legislator of Ukraine distinguishes such types of dignity as “human dignity” (Part 1 of Art. 120 of the Criminal Code of Ukraine), “personal dignity” (Part 2 of Art. 365), and “National honor and dignity” (Part 1 of Art. 161 of the Criminal Code of Ukraine of Ukraine [16].

In the modern criminal law of Ukraine and the existing legislation, insufficient attention is paid to the level of control over the observance of “the protection of such inalienable human rights as honor and dignity” [17, p. 1].

As V. Bortnyk rightly notes, the existing legislation of Ukraine does not create the full conditions for the protection of such inalienable human rights as honor and dignity [17, p. 1].

In this aspect, M. Korzhanskyi spoke very aptly, criticizing domestic legislators for the lack of legal protection for a person whose honor and dignity are humiliated. “Our legislators recognized honor and dignity as such criminal values that are not worthy of criminal law protection, and in general, they are not values at all, but rather “social rudiments”. However, honor and dignity are essential social values; they are more important than property, things, money – honor and dignity cannot be sold but neither can they be bought” [18, p. 199].

Unfortunately, the Criminal Code of Ukraine lacks grounds for criminal liability for encroachment on the honor and dignity of individuals. “Compared to the large number of grounds for criminal liability for encroachment on the “morality”, “authority”, and “business reputation” of legal entities” [19, p. 310].

It indicates the priority of the protection of the state and its state-management structures over the protection of the honor and dignity of an individual.

Such an approach definitely indicates an underestimation of the individual and the predominance of the collective over the individual in the criminal legislation of Ukraine.

It is important to note such a regularity that confirms the truth that the protection of the business reputation of a legal entity depends on the level of protection of an individual.

Analyzing the dialectic of the relationship between the protection of the honor and dignity of a natural person and a legal entity, attention is drawn to the fact that in the criminal legislation of the former Ukrainian SSR of 1960, norms aimed at protecting the honor and dignity of a Soviet person (Articles 126, 127 of the Criminal Code of the Ukrainian SSR) and special criminal law norms (Articles 176-3, 189, 189-1 of the Criminal Code of the Ukrainian SSR of 1960). In these normative legal acts, preference was given

not only to the physical person – a man, but also to the legal entity – the state – the protection of its socio-political, legal, economic system.

The dialectic of the relationship and mutual protection of a legal entity and a natural person is as follows: the more a natural person is protected, the more he will contribute to the progressive development and functioning of state structures, government bodies, strengthening the authority and power of the state, and vice versa, only a socially developed, democratic and legal state provides rights and freedoms of a person, protection of his honor and dignity. This truth is verified by all historical practice, which is confirmed by the most advanced states of the world today.

Statements regarding the dominance of humanistic philosophy and criminal legislation are gaining more and more weight among some modern scientists, both foreign and domestic. Thus, M. Bratasiuk declares, “the protection of human rights is not a monopoly of the state. The individual himself must first of all take care of the protection of his inalienable natural rights” [20, p. 17–18].

It seems that such statements are premature. In the future, they can be implemented in a society where there are democratic traditions, strict principles of legality, high legal awareness, and a culture of citizens.

The life and safety of a person must first be protected by the state. This important provision of human rights is recorded in Art. 1 of the Criminal Code of Ukraine, where it is clearly defined that its important principle is “ensuring the protection of human rights and freedoms, as well as security” [16]. The principle of humanism is objectively embedded in these norms.

In modern criminal law, there are several approaches to the principles of humanism. So, V. Hatseliuk, N. Lopashenko, V. Maltsev, T. Sabitov, M. Khavroniuk, and others hold the opinion that humanism is a principle of criminal law related to the provision of “humanistic foundations of society and the state, the protection of the rights and freedoms of man and citizen, including mitigating the responsibility of the person who committed the crime, as well as compensating the victims” [21, p. 264–265].

Let us pay attention to the fact that the honor and dignity and business reputation of a person must be protected not only by criminal but also by civil, labor, administrative, and other regulatory and procedural acts.

M. Khavroniuk points out that in some European states there are “specific but imbued with justice and mercy, rules for imposing punishment and circumstances that mitigate or aggravate punishment” [22, p. 27].

In law literature, this problem is relevant and it causes discussions. The modern criminal policy of many states of the world is aimed at protecting human dignity, the right to life, the right to the integrity of the individual, and the prohibition of torture, and other inhuman or degrading treatment and punishment. It indicates the desire not only to protect the honor and dignity of the person but also convincingly demonstrates the humanism of the existing criminal legislation, which is indicated by the criminal policy of many countries of the world.

In the Criminal Code of Ukraine, insults, beatings, and assaults as the humiliation of the honor and dignity of a person are protected (Articles 116, 123, 126, 154, 168, 189, 386, part 2 of Article 387 of the Criminal Code of Ukraine). This is clear evidence that Ukraine in its criminal policy adheres to the norms of international law, striving for partnership and cooperation with the EU. On December 31, 1995, our country joined the Charter of the Council of Europe and on November 10, the Partnership and Cooperation Agreement between the European Communities and Ukraine were ratified, and the Law of March 18, 2004, adopted the National Program for the Adaptation of Ukrainian Legislation to EU Legislation [22, p. 1].

Thus, M. Khavroniuk points out that the legal systems of European EU member states “have converged significantly, which is reflected in their national criminal legislation: based on acts of the Council of Europe and acts of the European Union (EU), pan-European criminal legislation has been created, which has a supranational character” [22, p. 10].

It is interesting to note that if in Ukraine some acts are recognized by the law as not being a criminal offense, in the Criminal Code of many European countries the following are not criminal offenses: incident; error; pathological intoxication; irresistible force; actions committed in a state of affect, except

for cases provided for by law; the consent or request of the victim and some other actions that exclude illegality [22, p. 12].

In the criminal law of some European states, liability is established for violation of personal rights by pornography and prostitution; against the honor and dignity of a person.

Therefore, for example, the Criminal Code of many European countries “in fact does not recognize an act that caused certain harm to specific persons, if the latter does not consider it possible or does not want to file a complaint” [22, p. 21].

In the modern criminal law policy of many European states, there is a tendency to protect the right to respect for private and family life, as well as compensation for moral damage to injured persons. In some countries, for example, Great Britain, Germany, the USA, and others, the concept of “moral damage” as a legal institution is formulated as “mental damage”.

In Germany (§ 847 of the German Civil Code of 1990) – compensation is called “schmerzensgeld”, i.e. “money for pain and suffering” [23, p. 38].

There is the issue of compensation for moral damage compared to the Civil Code of Ukraine because the Criminal Code of Ukraine does not have this legal institution.

In this regard, L. Kushnir notes that the Criminal Procedure Code of Ukraine does not take into account all the provisions of the Constitution of Ukraine and international legal acts. “It does not recognize compensation for moral damage, it is not coordinated in this part with the norms of civil and civil procedural law” [24, p. 114].

One should agree with the above-cited author that the humiliation of a person’s honor and dignity, and sometimes, open mockery of him inflicts deep moral wounds and suffering on the latter, which sometimes lead to tragic consequences.

Thus, the European Court of Human Rights is increasingly inclined to the opinion of compensating the injured person with not only money but also “by way of apology” [25, p. 211].

Ukraine’s aspiration to build a society that would meet European legal standards and moral and ethical, Christian values objectively requires directing its political and legal course toward European integration.

**Conclusions.** The issue of protecting the honor and dignity of a person from antiquity to the present day is relevant. In the modern civilized world, criminal policy is gaining more and more importance, the principles of which are the rule of law, protection of life, health, and inviolability of the person. The modern criminal law of Ukraine strictly adheres to the constitutional principles based on ensuring the protection of a person, his rights and freedoms, life, inviolability, as well as honor and dignity as the highest social value.

The criminal legislation of some European countries pursues a policy of decriminalization of some legal institutions, directing them to philosophical and legal humanism.

The dialectic of the protection of the honor and dignity of a natural person by criminal law in Ukraine gives priority to the legal entity, leaving to the latter such important factors as life, inviolability, and the safety of the person and society.

In Ukraine, the problems of compensating the injured person for his moral suffering because of the humiliation of his honor and dignity remain urgent.

Ukraine's desire to become a full member of the EU requires it to improve its criminal legislation. It should be aimed at ensuring human rights and protecting its honor and dignity, which will correspond to the fundamental principles, norms, standards, and values of the most democratically, developed countries of the world today.

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## **ЧЕСТЬ ТА ГІДНІСТЬ ОСОБИ: ПРОБЛЕМА КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРОНИ**

Зазначено, що честь та гідність особи – важливий чинник і невід’ємна складова її конституційних прав і свобод. Починаючи з античності, у багатьох нормативно-правових актах: римському праві, Дигестах Юстиніана, у законодавстві Київської Русі та інших європейських держав простежується прагнення за допомогою законодавчої політики держави захистити права, честь та гідність насамперед привілейованих соціальних класів, а згодом і вільних людей. Посягання на право, честь і гідність особи розцінювали як правопорушення, проступок і карали штрафом або навіть смертю.

З подальшим розвитком і удосконаленням соціально-економічних, правових, культурно-релігійних та інших відносин все більшого значення набуває усвідомлення особою своєї соціальної значущості та цінності як індивіда. В статті підкреслено, що право на захист честі та гідності людини і громадянина закріплено в низці нормативно-правових актів Європи та інших держав, де акцент зроблено не тільки на захисті прав особи, але й на суворій забороні тортур і нелюдських покарань, що є приниженням її честі й гідності, а також значного розширення її правового захисту у всіх сферах соціального життя. У чинному законодавстві України, насамперед в Основному Законі, Кримінальному кодексі України та інших нормативно-правових актах, акцентовано на захисті честі та гідності особи.

З’ясовано, що у сучасному кримінальному праві України та чинному законодавстві перевага щодо захисту честі та гідності надається не фізичній, а юридичній особі, а чинні норми права є недосконалими щодо відшкодування моральної шкоди потерпілій особі, яка зазнала приниження та знущання над її честю та гідністю. Установлено, що діалектика взаємозв’язку фізичної та юридичної особи підтверджує ту істину, що чим більшим правом захищена фізична особа, тим більше вона сприятиме прогресивному розвитку і функціонуванню державних структур, органів управління, зміцненню авторитету і могутності держави.

Зосереджено увагу на тому, що в сучасному цивілізаційному світі активно прокладає собі шлях гуманістична філософія захисту невід’ємних природних і конституційних прав людини, яка робить акцент на гуманізації сучасного кримінального та кримінально-процесуального права.

Установлено, що важливим принципом кримінального права України є верховенство права, рівність громадян перед законом, законність, справедливість, гуманізм. Грунтуючись на принципі гуманізму, КК України забезпечує охорону людини, її життя, здоров’я, недоторканість і безпеку як найвищу соціальну цінність. У своєму прагненні до повноправного членства в ЄС Україна суворо дотримується у своїй кримінальній політиці європейських правових стандартів та морально-етичних норм, що вимагає подальшого удосконалення її кримінального та кримінально-процесуального законодавства, спрямованого на забезпечення прав і свобод людини, захисту її честі та гідності.

Ключові слова: право; закон; Кримінальний кодекс; особа; громадянин; честь; гідність; правопорушення; гуманізм; цінність.