

HUMAN DIGNITY BETWEEN THE ACCEPTANCES OF ROMAN LAW AND THE PERCEPTION OF THE ROMANIAN LEGISLATOR NOWADAYS

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Abstract: The aspects of human dignity have aroused my interest for a long time and I have been following this notion since my university studies. Subsequently, from the point of view of my teaching activity and also that of my lawyer, I had the opportunity to observe and analyze directly the factors that can influence human dignity, as well as the perception of people in relation to it. This allowed me to better understand how I should pursue both my professions. Through this work I intend to make a presentation of the expression "human dignity" as it was perceived in ancient Rome. I started from the fact that Roman law inspired most of the legal systems, including Romanian law, no doubt. Then, I intend to talk about the way in which human dignity is protected by Romanian law nowadays. In order to reach my goal, I also considered a few works by some well-known authors (more or less), who were directly and directly involved in the analysis of the human dignity idea. I used the comparative analysis of the ideas expressed in those works. As a result of this analysis I have come to a conclusion that I wish to be a starting point in further researching the idea of "human dignity". I am aware of the fact that in this paper I could not carry out a complete or complex analysis of the notion analyzed, but I only opened a door through which I would like to enter other people interested in this fascinating subject.

Keywords: Law, Roman law, dignity, freedom, responsibility / capacity

Introduction

I thought of this article from the point of view I read in a work that I consider being particularly important. This work is entitled "Legal education for high school students", and its author said that "... we can be free as long as we do what is right, that is, what guides our morals and binds us to the LAW. After the right to life, FREEDOM is the most valuable human right for which people have fought for centuries. In order to be free, we must keep our DEMNITY and behave RESPONSIBLY: it is necessary to acquire healthy principles of life, to know and respect the rules, to pay attention to those around us, to appeal with TRUST to the bodies of the law and submit to the final decisions made by them."¹

The notion of *norm*, whether we think of the social norm or the legal norm (which we usually call simple and direct *law*), orders the society in which we live. Before we have a legal norm, history has shown us that even the primitive man is guided by certain rules of conduct. With the evolution of society, man felt the need to establish and impose certain principles that he considered "right" or "fair" and then adapted the social norms to what was considered right.

Religion has played an important role in establishing the idea of truth, righteousness and justice throughout the ages. This has influenced the legal norms, in different ways, depending on the historical epoch, the geographical location, but also in relation to the relations between the different social categories. Also, the idea of freedom has been debated since the beginning of history and analyzed at least from a philosophical, legal, historical and religious perspective. From all these points of view, I will choose the legal perspective on human dignity and I will limit myself to two pillars: Roman law and current Romanian law.

Terminology

It should be mentioned from the outset that "dignity" or "human dignity" did not benefit from a definition given by the legislature. The only definitions we have come from are doctrines. From the point of view of the origin of the word, DIGNITY we have several points of view, which we will pay attention to in the following. According to some opinions,

¹ Cristi Danileț, *Educație juridică pentru liceeni*, p. 86. <https://www.educatiejuridica.ro/wp-content/uploads/carte2018.pdf>

the word *dignity* comes from the Sanskrit, where we find the words: "dec" (meaning to *show, indicate*) or "dacas" (meaning *reputation, glory*); but also from the Latin, where the words "dignus", "dignitas" (meaning *dignity*), "decere", "decus" (meaning *distinction, stand out, glory*); it meet as well as in Greek, where we find the words "deiknumi", "doxa", "dakein" (meaning *the highest quality that man claims*)².

In the Romanian, as in other modern languages, the word *dignity* has a polysemantic value and refers to the quality of the reactions or the attitude of a person towards certain factors / internal / external stimuli. The same word denotes the greatness today, the prestige enjoyed by a person in society, a moral authority, and a certain function that a person can occupy in the state hierarchy.

The Romanian legislator included in the current civil code the connection between *human dignity* and other rights that protect the person. Thus, the civil code provides, inter alia, for guaranteeing and respecting *human dignity* by protecting all rights inherent in the optimal development of human personality, as well as sanctioning the violation of any of the rights related to personality in order to protect the right to dignity (the relationship between dignity and personality is well known). Also, the perspective that Christianity has given to *human dignity* should not be neglected, developing respect and/or compassion for people who have experienced certain physical or mental suffering.

Human dignity in Roman law

Roman law has known the notion of *dignity* since the beginning of the founding of Rome, when it spoke about the status that an individual can have in society or in the state, as well as in the moral acceptance of the notion, when we talk about the qualities or virtues of an individual. . As we can see, we are talking about an indissoluble connection between *dignity* and the *human personality*.

The Roman world understood by the concept of (*individual*) *person* any human being, whether he was a free man or a man held by another man. *Stricto sensu*, we can say that the Romans understood from the *person* (from the post-classical period) only free people, without

² Mirea Antoaneta Laura, *Dreptul la demnitate*, teză de doctorat, rezumat, Craiova, 2016 https://www.juridice.ro/wp-content/uploads/2016/10/Rezumat_Dreptul-la-demnitate-ROMANA.pdf

including slaves in this category. We mention that this Roman concept of *person* is identified with the modern legal acceptance of the *person*, as we find it nowadays, including in current Romanian law, as an *individual* considered as an each person, holder of rights and obligations.

The whole of the rights and obligations of a human being as a subject of law forms its *legal personality*. However, in ancient Rome, the legal personality was not automatically and expressly linked to the free man. He had legal personality only that human being who enjoys a certain *status*. When the Romans took about the existence or non-existence of the rights and obligations they referred at *status*.

The *status* is not identified with the legal personality. Unlike the legal personality, which denotes the existence of rights and obligations, the *status* could mean the lack of those rights and obligations, therefore the lack of *legal personality*. When a human being has a certain *status*, he or she may have legal personality. A free man had a certain *status*, because, in his (its) turn, a slave had his *status*. Consequently, not every person had legal personality, but every person had a *status*. The *status* generically designated the legal condition of a human being within the framework of Roman law.³

The status of a human being has been established in Roman law according to three elements: freedom (*status libertatis*), citizenship (*status civitatis*) and family (*status familiae*). The lack or the absence of these elements for a human being generates a certain status. Depending on *freedom*, people could be free or enslaved. Depending on the *citizenship*, people could be *citizens*, *latinos* or *pilgrims*.

According to Justinian, the population of ancient Rome was divided into two main categories, namely: *free people* and *slaves*. While the state of slaves was unitary, free people had a non-homogeneous legal regime, being divided into other categories, depending on several factors.

In ancient Rome, the personality could be obtained legally at the birth of the child, if the child was born alive, viable and without malformations (an aspect that nowadays we no longer find at Romanian legislator acceptance). Also, the child had to acquire the status of a free man. The legal personality of a person from ancient Rome was extinguished by his physical death and, in some cases, by his civil death (*capitis deminutio*). Regarding the two types of capabilities:

³ Cristinel Murzea, *Drept roman*, ediția a 2-a, Editura ALL Beck, București, 2003, p.56.

- *Full legal capacity* could be held only by men who fulfilled the status of head of family (*pater familias*), being Roman citizens and free men;
- *Exercise capacity* had only men who fulfilled the status of *pater familias*, were elderly and mentally healthy.⁴

Because *personality* supposed *life*, it starts legally from birth, provided that the child is born alive and has a human appearance, is not a monster (*monstrum vel prodigium*). Sometimes, in the interest of the child, the *personality* may begin just before birth, respectively, at the time of its conception. By virtue of this principle, the child born after the death of his father could still come to his succession (thus a legal fiction was created and accepted).

According to Roman law, people were divided into two broad categories: *free people* and *slaves*. As regards the first category, the principle according to which the child born of legal marriage (*justa nuptiae*) he/she acquired the legal status of his/her father (depending on the time of conception), while that child born outside a legal marriage, he/she acquired the legal condition of his/her mother. Subsequently, the foreigners who arrived in the "eternal fortress" acquired their own legal *status*, in the sense that they were granted freedom only if they were protected by a Roman citizen, as guests or clients. A similar situation was acquired by the inhabitants of the cities with which the Romans concluded alliance treaties (including as a result of armed conflicts) they could come to Rome without becoming slaves.

Towards the end of the old era and at the classical period, the legal situation of free persons acquires new varieties, these being divided into two categories, respectively, *citizens* and *non-citizens*. The latter category, in turn, was divided into *latinos* and *pilgrims*. Each of these categories of people knew particularities about their rights and freedoms, but we do not intend to develop this topic in the present work.

In addition to the legal personality recognized by the human individual, the Romans conceived the existence of rights and obligations on behalf of human communities. Historical sources tell us about these collectivities or human groups and they attribute their existence and necessity as an effect to economic, religious, political and even recreational needs. From these human groups, there was a unique will that expressed

⁴ Vladimír Hanga, *Adagii juridice latinești*, Editura „Lumina lex”, București, 2007, p.76.

certain interests. These interests had to be satisfied and, for this purpose, means, space and finances were needed. Human groups have found their legal expression in the notion of *legal personality*. In this context, we must mention that, in addition to human groups, Romans have granted the status of subject of law and of goods affected for a specific purpose.

Human dignity in current Romanian law

When we talk about the notion of *human dignity* in current Romanian law, it is necessary to make some clarifications regarding the perception of this notion in the legal world, and it is not necessary to resume the point already expressed and to discuss the etymological origin of this notion.

The legal dictionaries, as well as the Romanian doctrine define *human dignity* through the *principle of respecting human dignity*. This principle is a basic rule of the criminal trial, which we find regulated in the Romanian Constitution, according to which no one can be subjected to torture or to any inhuman or degrading punishment or treatment. Consequently, any person who is in the process of being prosecuted or prosecuted must be treated with respect for human dignity. Its submission to torture or to cruel, inhuman or degrading treatment is punishable by law. The principle is to reflect Romania's accession to the Convention against Torture and other Cruel, Inhuman or Degrading Punishments or Punishments, adopted in New York on December 10, 1980 and is provided for in the laws of other states.

An interesting approach to *human dignity* can lead us to define *the right to dignity*, an aspect that has been the subject of some of the theorists' concerns, but has also attracted practitioners of the law. Since neither national legal documents nor regional or international documents contain a definition of *human dignity*, European and international jurisprudence have been used as tools to determine the acts or facts that undermine *human dignity*. Regarding *the right to dignity*, the analysis of the provisions of the current Romanian Civil Code concluded that this notion has a synthetic, integrating character, which is in relation to the other rights of the personality. In one of the opinions studied, it is shown that guaranteeing and respecting *human dignity* implies the protection of all rights inherent in the development of *human personality*. It is also claimed that the violation of any of the *personality rights* is equivalent to the violation of the *right to dignity*.⁵

⁵ Mirea Antoaneta Laura, op. cit.

The lack of a legal definition makes it difficult to define the content of the notion of *dignity*, because, in addition to respecting the honor and reputation referred to in art. 72 paragraph 2 Civil Code, this also includes the right to intimate, family or private life (art. 71), the right to one's own image (art. 73), the right to life, health, physical and mental integrity of the natural person (art. 61 and 64), the prohibition of eugenic practices (art. 62), the right to free expression (art. 70), etc. Also, the content of *the right to dignity* evolves and diversifies in doctrine and jurisprudence, the lack of legal determination giving it an uncertain character. Trying to synthesize all these ideas, I identified a definition of the right to dignity:

The right to dignity consists in the recognized possibility of the natural person to develop freely and fully his identity and personality, on all levels - social, political, economic, and cultural - regardless of race, gender, age, social origin, material status, nationality, ethnicity, religion or any such criterion that may lead to discrimination and if this involves expressing thoughts, ideas, options or adopting attitudes, behaviors, appearance that are considered unacceptable by the authorities, other persons or the rest subject to the limits imposed by law.⁶

Conclusion

The conclusion I reached, following this study, resumes an older idea expressed long before. It is not by accident that the basic ideas of the law, started from the dawn of history, have continued to this day. The personalities of the ancient world dedicated themselves to studying the ideas of law and justice. As in ancient Rome, the *juris-consuls* made annotations (interpreted) the texts of law, and the magistrates applied the law exactly as the edict indicates, nowadays the legislative power makes available to the judiciary the rules that the society and the legal instruments for the law the execution is organized, according to each situation and the training and perception of the professional applying the respective normative act.

We must not neglect neither the context in which a law appears nor the scope of application of this law. Let us not forget that our forerunners have taught us that the law must be fair/right and the justice also involves

⁶ Idem

finding the truth. At the same time, we must bear in mind that the law, justice and finding the truth does not affect any *human dignity*.

This is the point of view that I set out to present to you and which I do not expect to accept *a priori* by all readers, but I hope that my opinion will be a starting point for theoreticians and practitioners interested in this topic.

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