DIGNITARIAN REVOLUTION OF THE TWENTIETH CENTURY
РЕВОЛЮЦІЯ ГІДНОСТІ XX СТОЛІТТЯ

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In this paper we explore the process of emerging and further affirmation of human dignity as a transcendental value of an individual and constitutive principle of human rights. We make this using anthroposociocultural approach and its corresponding cognitive methods. We argue that dignitarian revolution became one of the most important and most influential global events of the twentieth century and might be counted among the greatest achievements of the Western civilization and humankind in general. Its quintessence is the developing of understanding of human dignity as the main universal transcendental value of human personality and the constitutive principle of human rights. We defend the claim that abovementioned understanding of human dignity is grounded in the jus-naturalistic perception of human nature firstly, as identical for everyone, and, secondly, as being the dual in each person, organically combining bio-psycho-physiological (individual) and anthroposociocultural (social) basic elements. Such perception of human nature is a consequence of the understanding of human needs as transcendental ones. The new paradigm of human dignity has found its most complete and adequate embodiment within the legal matrix of the doctrine of dignitarian constitutionalism.

***Key words*:** human rights, human dignity, constitutional principles of law, political regime, value of law, anthroposociocultural approach.

Octavio Paz, the famous Mexican poet, culture expert and public figure of the twentieth century made the following observation, striking in its substantial depth and perfection of form, that "Every time a society finds itself in crisis it instinctively turns its eyes toward its origins and looks there for a sign" [29, p. 415]. As human history testifies, the whole humanity does in the same way. Every time the search for sign is determined by the meaning of the particular historical challenges. In this vein the English historian and sociologist, founder of the theory of civilizations Arnold J. Toynbee even brought a special formula of "challenge-and-response", which later became classical [4]. Responses of societies to the challenges posed before them very often acquired the character of revolutions. The whole history of humankind is generously interspersed with such revolutions.

A special place among those revolutions belongs to the *dignitarian revolution of the twentieth century*. The immediate preconditions and causes that drove this revolution were huge social aberrations under totalitarian and fascist regimes, which happened during the inter-war period as a consequence of Bolshevik and Nazi takeovers in Russia, Italy, Germany and other countries in Europe and the world. Those regimes, which came to power, set in motion new large-scale "eugenic practices" designed to breed "elite" nations, started widespread introduction of genocidal programs, building concentration camps and other factories of death for millions of people, first, within their own borders and later in subjugated countries as well. One of the main goals of all reactionary political regimes in this war was to "clean-up" territories from undesirable social elements, groups, entire sections of society, and sometimes whole nations. For them, under these conditions, human being has completely ceased to be *an end in themselves*. Man was turned exclusively into *a means* of achieving maniacal goals. All previous concepts of human dignity and human rights were relegated to the ash heap of history.

As Hannah Arendt wrote in the preface to the first edition of her work "*The Origins of Totalitarianism"* in the summer of 1950, "In the final stages of totalitarianism an absolute evil appears (absolute because it can

no longer be deduced from humanly comprehensible motives)» [2]. Elsewhere the author added that "The stage of history seemed to be set for all possible horrors". She concluded her preface by the following words, "Antisemitism (not merely the hatred of Jews), imperialism (not merely conquest), totalitarianism (not merely dictatorship) – one after the other, one more brutally than the other, have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity…» [2, p. 221].

The forties of the last century witnessed the urgent need to find a paradigmatically new philosophical and legal matrix of human dignity and human rights, which could be helpful in saving human race from self-annihilation in the new historical circumstances. This challenge to humanity posed itself against the deepest, basic foundations of human civilization.

The present article aims at analyzing the preconditions for and the very process of revolutionary transformation of a preceding philosophical-legal paradigm of human dignity into new philosophical-legal paradigm of this phenomenon, considered as a fundamental transcendental value of a person and the constitutive principle of human rights which took place in thirties and forties of the last century.

The specific goals of the paper are as follows: to clarify the historical background of the emergence of the philosophical and legal paradigm of human dignity as the fundamental transcendental value of the individual and the constitutive principle of human rights; to analyze the paradigm itself; to inquire into the differentiation of the phenomena of *human dignity* and *human rights* in the basic general instruments of international law; to reveal the legal matrix of the doctrine of dignitarian constitutionalism; to substantiate the universal character of the new philosophical and legal paradigm of human dignity.

The methodological basis of the paper is chosen in view of the anthroposociocultural nature of human dignity and human rights as phenomena of legal reality. The most adequate for the cognition of the nature of human dignity and rights is the anthroposociocultural approach. In the article, on the basis of this approach we use a whole range of philosophical, general scientific and special legal methods of cognition, in particular: Husserl's fundamental phenomenology and the material phenomenology of Henry; Heidegger's fundamental ontology; the social ontology of Berger and Luckmann; Searle's ontology of social facts and social institutions; practical philosophy; genetic and historical methods; method of systemic-structural analysis.

1. Axiological background of the emergence of philosophical-legal paradigm "human dignity as the transcendental value of a person and constitutive principle of human rights"

The evolution of the philosophical and legal paradigms of human dignity, which were dominant from time to time in both European civilization in particular, and in Western civilization in general, has been thoroughly studied in the scholarly literature [5; 14; 34; 36; 37]. One of the first precisely known such paradigms was *the ancient Greek personalistic philosophical and legal paradigm of human dignity*. It was spawned by the Personalistic revolution in ancient Greece that lasted throughout almost the entire period of early antiquity. Legendary Socrates became the symbol of the revolution. Because of the ancient Greek Personalistic revolution, an ancient Greek individual-person came into being and the understanding of human dignity as an ability and possibility *to perform actions based on principle* received universal recognition. The governing among these principles was the maxim advanced by sophists: "Man is the measure of all things". The basic mode of the coexistence of ancient Greek individuals-persons was their natural law while the ancient Greek polis served as their existential dwelling. This is where the ancient Greek individuals-persons, carrying out their principle-based actions for almost a millennium made most of social inventions and discoveries that are still among the foundations of the modern European and whole Western civilization [9].

Within the historical boundaries of the Late – ancient Roman – Antiquity Europe witnessed another one, Christian revolution in the understanding of the nature of human dignity which brought about establishment of its *Catholic philosophical-legal paradigm*. The latter represents the result of the triumph of Christianity as a worldview and faith and formation on its basis of the European type of culture and European-style human-Christian.

However, the Catholic philosophical-legal paradigm of human dignity asks all Christians to be extremely exacting towards themselves. In this respect, God himself is a model that Christian should follow: "Therefore you shall be perfect, just as your Father in heaven is perfect", the New Testament says [41]. In these words, there is a call for the infinite overcoming of oneself, which Christians can achieve in practice only through boundless mercy. The core, essence of the Christian word reveals itself in the duty of every follower of Christ

to take care of another, to take care of their neighbor. And due to this great principle of Christianity it has managed to create a civilization, where everyone felt free and safe, because each one was fellow for the other.

Between the Middle Ages and modern times, there was another paradigmatic revolution in the understanding of human dignity. This revolution has become part of an incomparably broader in terms of its content, new European cultural revolution within which the former manifested itself as a rejection of the medieval values and the assertion of culture of the new European industrial civilization of the capitalist West. *Protestantism* played a key role in this revolution while at the same time it was itself one of the main products of the latter. The focal point of the evolutionary change was again a human being with their values, needs and problems. It is about the emergence of the *Protestant philosophical and legal paradigm of human dignity*.

Protestantism represented a new form of Christianity as a kind of culture and became a direct continuation, development and at the same time denial of the values of the previous era, including the most important value – human dignity. Within its paradigmatic framework, the human dignity of each individual from the pure creation of God was transformed into a co-creation of God and each person. The Protestant doctrine of personalistic faith and earthly calling, absolute confidence in personal religious and spiritual experience of human being and conviction that every believer is able for themselves to understand the word of God just as well as the luminaries of the Church are, taken together, asserted a priori existential equality of people before God, each individual before every Other, made them rightful co-creators of their own destiny. In place of the traditional Catholic obedience, Protestantism put forward the personal responsibility of believer for themselves.

Whereas Catholicism or Orthodoxy maintain that God predetermines man's fate, then in Protestantism a person is constantly in a situation of self-conscious choice of their own destiny. From this follows the *predestination* theory that dominates among the Protestants, according to which, after the creation of the human world, God does not interfere in the being of his creation. Having world created by God, henceforth people act autonomously, under the influence of their own values and needs, and acting on their own, build a hierarchy of actions aimed at satisfying them in accordance with the available possibilities. In this axiological paradigm, human dignity has been transformed primarily into a person's responsibility to their human nature, since they cannot escape from themselves without losing human dignity. The Protestant philosophical-legal matrix of human dignity, without ceasing to be a social phenomenon even for a moment, is thoroughly personalized.

This is its most vulnerable spot that remained for a long time hidden from view. However, after the victory of the American and French revolutions at the end of the 18th century and fueled by those revolutions swift growth of constitutional democracy in the Western world in the 19th century, the potential shortcomings of the Protestant philosophical and legal paradigm of human dignity gradually began to acquire their real and visible manifestations. Primarily it was the rapid spread of exaggerated individualism as a human value. In the middle of the 19th century threats to human dignity and social order of the Western societies clearly emerged from the opposite side – socialist collectivistic ideology which openly denied the worth and values of an individual. One more threat for the entrenchment of human dignity in everyday life became apparent, namely in the shape of idealized and magnified substantive states turned into terrestrial deities and set against individuals and societies in general. Such were the new historical challenges to the concept of human dignity.

2. Catholic conception of dignity of the human personality as transcendental value and constitutive principle of human rights

The first among the influential social powers, which responded to these dangers and challenges, was the Catholic Church. It has done this already at the end of the nineteenth century through a number of papal encyclicals. One of the most prominent encyclicals aimed at overcoming abovementioned threats became the Encyclical of Leo XIII *Rerum Novarum* issued on 15 May 1891. De-jure it was addressed to all Catholic bishops and actually represented by itself an appeal to the whole Catholic world. The Encyclical declared a new doctrine of Christian democracy that sought to shift the common person with their dignity and needs to the focal point of life of the Western societies. The basic idea of *Rerum Novarum* was that the conflict between capitalists and the workers, which became at that time particularly acute and continued to grow, actually was not inevitable if to consider mutual interdependency between its main parties. Encyclical discarded socialist ideology, affirmed the right of everyone to private property and emphasized aberrant character of both liberal individualism and socialism [35].

Another Pope Leo XIII's Encyclical *Graves de Communi Re,* dated 18 January 1901, followed the doctrine of *Rerum Novarum* [19], further strengthened the understanding of human dignity as a corporate phenomenon.

This was clearly articulated in the Encyclical of Pius XI *Casti Connubii* of 1930, which proclaimed the dignity of marriage and family, and in his Encyclical *Quadragesimo Anno* (issued on 15 May 1934) which referred to dignity of workers.

Thus, Catholicism was the first which saw in human dignity the *constitutive principle of human rights*: if the person is deprived "All dignity of human personality", so "there is no natural right accorded to human personality" and the later "is a mere cog-wheel" of antihuman social forces. Reclassification of dignity in the Catholic doctrine from collective value into value of individual as a social being ("dignity of man", "human dignity") became the very new philosophical and legal construct the emergence of which enabled paradigmatic change of hierarchy of social values in the Western world and subsequently developing civilized societies of the West on the ground of human dignity and human rights.

American researcher Samuel Moyn wrote about new Catholic doctrine of human dignity as follows, "*Divini Redemptoris* was epoch-making, for it gave the concept as an incident of individuals or persons by far its highest profile entry in world politics to that date. It also gave a lift to the Catholics' civil society, according to which dignity did not exclusively attach to groups" [27, p. 49]. In the forties of the twentieth century, this doctrine became the emergence of the concept of individual as a subject of international law [22, p. 56–57]. Emmett John Hughes still in 1944 summarized that "the doctrine of dignity of man has no intelligible validity when not fortified by the substance of Christian philosoph" [20, p. 267].

In the dean's speech *The Renewal of Law* (*Die Erneuerung des Rechts*) delivered by Gustav Radbruch on the occasion of reopening of Law Faculty at the Heidelberg University on January 12, 1946 he stated, that "We have seen in the past twelve years how all spiritual powers, universities and science, the courts and the administration of justice, the political ideologies and parties, collapsed in the face of tyranny and only one of them held on. It was *Christianity and Church"* [31, p. 80].

There is the question: why could just Christianity, in its Catholic form, be able to resist fascism in the struggle for Man and find the formula of human dignity, which later served as a basis for modern structure of human civilization? The answer is not simple since here we are talking about the deepest principles of existence of human civilization. At the same time, it is clear, that the answer should be sought in the most fundamental values of Christianity as a phenomenon and Catholicism, in particular. In this way, Catholicism, since the time of Papal Revolution, defended its axiological identity, its independence from emperors, kings and feudal lords. Already medieval Catholic thinkers, canonists, as Brian Tierney pointed, "Were coming to see that an adequate concept of natural justice had to include a concept of individual rights" [43, p. 6]. In its turn, they understood these "natural right" as "licit claims and powers inhering in individuals". At the same time, according to Thomas Woods, medieval jurists insisted that, "natural right of individuals derived from the universal moral law" [44, p. 199]. Along with Catholic concepts of the sanctity of human life and unique value of every human being, they constituted the invisible side of Catholicism. In thirties and forties of the last century, this tradition became precondition for appearing of the new philosophical and legal paradigm of human dignity as the transcendental inviolable human value and constitutive principle, from which all human rights can be derived.

3. Differentiation of "*human dignity"* and "*human rights"* in the basic instruments of international law

1945 witnessed the creation of the UN as a preventive tool of progressive humanity for averting and eradicating anti-human practices. "New law on earth, whose validity this time must comprehend the whole of humanity" became a reality with the adoption of the Charter of the United Nations in 1945, the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966 and a number of other instruments of international law at the global and regional levels. Later specialists qualified these documents and the UN doctrinal approaches set out in them as "the internationalization of human rights and the humanization of international law" [8, p. 28].

One of the most fundamental novelties of the above-mentioned acts was the distinction between such, seemingly identical values, as *human dignity* and *human rights*. Here, we are talking about not only the formal, but also the substantive distinction between such phenomena as "fundamental human rights" and "dignity and worth of the human perso" which has been drawn already in text of the UN Charter. It is set down in the Preamble to the UN Charter as one of the cornerstone principles of this intergovernmental organization:

"Faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The UN Charter established a new global legal order, the principles of which became a direct continuation and concretization of the fundamental goals of the Organization. One of the main purposes of this order was the effective regulation of relations between states and keeping them within certain limits with respect to each other, that is, ensuring static equilibrium in the world. However, no less important was another objective, stipulated in the Charter (para. 3, Art. 1) – effective international protection of human rights, which are the first victim to infringements and violations in the case of armed conflict or aggression. To this end, the Charter defined the scope of "domestic jurisdiction" of states regarding human rights in such a way that under certain, clearly specified conditions, the international community can interfere with this jurisdiction (para. 7, Art. 2 of the Charter). It could only be avoided through the full implementation of the UN regulations on the part of the respective national state.

The normative provisions of the UN Charter became the legal basis on which the *Universal Declaration of Human Rights* has been developed. Already in the last century human rights specialists have proved that the articles of the Declaration are in fact based on the articles of the UN Charter, although it lacked direct and explicit provisions with respect to human rights [30, p. 36]. The ideological sources of the Universal Declaration of Human Rights are incomparably more diverse than those of the UN Charter. The Catholic concept of human dignity as the transcendental value of a person and constitutive principle of human rights figures prominently among them. That is why the paradigmatic approaches of the latter have found the widest application and development in the Declaration.

Largely, this has been achieved by virtue of the establishment and functioning of the *Committee on the theoretical bases of Human Rights*, which acted under the auspices of UNESCO. Less than five months before the adoption of the Declaration, this Committee drew up and adopted the report under the title "The Grounds of an International Declaration of Human Rights". In the introductory part of this document, it was noted that "An international declaration of human rights must be the expression of a faith to be maintained no less than a programme of actions to be carried out" [40, p. 1]. In addition, the authors of the report put it that the declaration must serve as intellectual means to secure agreement concerning fundamental rights and to remove difficulties in their implementation such as might stem from intellectual differences. The Committee suggested the basic conceptual apparatus of the Declaration, above all the philosophical and legal concept of *human dignity* and *human rights*. Without significant changes, they were applied in the text of the Declaration and became its main and core structural elements.

Just like in the UN Charter, the *Universal Declaration of Human Rights* also formally differentiated the phenomena of *human dignity* and *human rights*. Already in the preamble of the Declaration there were set out as distinct legal concepts, on the one hand, "human dignity", "inherent dignity of the human person", "dignity of the human personality", and on the other hand "inalienable rights of all members of human family" [47]. Moreover, they received different ontological statuses. According to the German professor Eckart Klein, *human dignity* was given the status of a "founding principle in the system of basic [human] rights", "an absolute right" [24, p. 147]. As Yehoshua Arieli, professor at the Hebrew University of Jerusalem has argued, that *human dignity* started to define «…the ontological status of man…» [3, p. 9]. That is, *human dignity* has been granted the status of an *absolutely unchanging value*, *constant* in the system of human fundamental values, such as physical constants in the structure of the universe. While the role of a variable value, and by no means of secondary importance in this system, has been assigned to *human rights*.

Yet the drafters of the Universal Declaration of Human Rights made another paradigmatically important distinction between two phenomena, this time between *rights of man* and *human rights*. This has been done in January 1948 at the request of the UN Commission on the Status of Women and manifested itself in the substitution of the initial wording "the rights of man" firstly, with the "rights of human beings", and later with the term "human rights". Members of the Commission saw in the first of the above constructs (particularly in the word "man") an overt discrimination. This argument does not cause objections, but it explains only one aspect of the problem. In fact, the difference between these two constructs is incomparably deeper – it is of paradigmatic character [1, p. 9]. Professor Wiktor Osiatyński provided perhaps the most comprehensive and thorough description of this difference. He showed that the term "the Rights of Man" belongs to the concept of human rights, which has its roots in the American and French revolutions of the end of the eighteenth century. Its quintessence amounts to individual rights granted to a person or group of persons by the state or its equivalent.

Whereas the quintessence of the term "human rights" originates from the concept of human rights developed in the last century, and means that all human beings have certain inherent (and inalienable) rights only on the grounds that they are humans, and not because they are members of some social community [28, p. 26].

The scholarly works on human rights problems, whose authors fully share the philosophical-legal paradigm of understanding human dignity as a transcendental value and the constitutive principle of human rights, emphasize that inherent and inalienable rights, possessed by all people, stem from human nature itself (that is, are "natural rights"). Consequently, it is precisely because every human being possesses these rights from birth, that they belong to a person, and not to any social group. These rights must be made equally available by law to all individuals since only law is the principal mode of coexistence of individuals among themselves. The legitimacy of every government basically resides in its ability to guarantee these rights in respect of all members of society, because they are transcendental, not conferred by state or any other social institution [21, p. 2].

Proposed and consistently used by the drafters of the Declaration conceptual apparatus pronounces clearly on the transcendental nature of human rights proclaimed in this document. The convincing indicators of this are the words "inherent" and "inalienable" which are mentioned in the first paragraph of the preamble to the Declaration; phrase "conscience of mankind" – in the second paragraph; formula of "essential" relation between the right to rebellion and the rule of law in case when human rights are not protected – in the third paragraph; word "common", used in the last paragraph of the preamble; word "born" in the Article 1; word "arbitrary", used several times (in Articles 9, 12, 15 and 17); word "degrading" in Article 5; phrase "regardless of frontiers" in Article 19; word "reasonable" in Article 24; "prior" – in Article 26; finally, phrase "just requirements of morality", mentioned in Article 29 of the Declaration [47].

The Universal Declaration of Human Rights, being neither the contract nor the convention or any other instrument that under international law places specific legal obligation on its parties-states, is nevertheless a fundamental document and guidance for the civilized nations of the world in their activities. This is largely due to the fact that many of its provisions are recognized as legally binding for the UN member-states since they have gained the status of customary international law [10, p. 23]. Such was the opinion expressed by the Venice Commission [16].

That such new philosophical and legal paradigm of solving complex contradictions of human civilization, offered by the Universal Declaration of Human Rights, was not a result of some incidental move on the part of the UN, but a deeply meaningful and consistent approach, is clearly evident from its other universal documents of global significance. The preamble of the *International Covenant on Civil and Political Rights* of 1966 explicitly states that the recognition of all human rights mentioned in this document "derive from the inherent dignity of the human person" [45]. In the same way in the preamble to the *International Covenant on Economic, Social and Cultural Rights* of 1966, the abovementioned formula is represented as a reference to the provision of the UN Charter, which recognizes, that "All members of the human family endowed with inherent dignity and the equal and inalienable rights" [46]. Here, just as in the Covenant on Civil and Political Rights, there is the same legal formula which provides that "the equal and inalienable rights of all members of the human family … stem from the dignity – inherent property of human being" [48].

Thus, the UN completed and implemented practically the new philosophical and legal paradigm of understanding of the nature of human dignity and human rights. It is both paradigmatically new anthroposociocultural code of the understanding of the human rights nature and the corresponding matrix of their implementation, strengthening and protection in human life that made the Universal Declaration of Human Rights, as Johannes Morsink put it, "A very helpful guide for societies in times of transition" [26, p. 30].

The last formula pertains to all societies that have had to go through the most difficult and very long path from totalitarianism to democracy. In Western Europe, the first of these countries became postwar Germany. It was followed by Italy, and after some historical span – also by Spain, Portugal and Greece. The beginning of the third stage of this transition, the largest one, came at the turn of the 1980s. This time was the starting point for the process of transforming the previously authoritarian regimes in the "socialist" countries into democratic forms of government and political order. Its undoubted success is largely, if not entirely, due to the creative use of the experience in advancement of human dignity and rights acquired by the countries, which were among the first to embark on this course. This experience is invaluable not only for Europe, for which human dignity was the highest achievement, but for the whole world.

Together, the United Nations and their best intellectuals have found a key link in a variety of human rights issues. This link was human dignity as the transcendental value of every person and the constitutive principle of human rights. The UN has given human dignity and human rights the legal force and authority of major international legal instruments as well as of international customary law. Owing to persistent and coherent efforts on the part of the UN, the protection of human dignity and human rights has moved to the center of the needs and interests of all humankind, has become the main task of every national government (state). This created necessary and sufficient environment for the development of dignitarian constitutionalism in civilized countries of the world.

4. Dignitarian constitutionalism

Dignitarian constitutionalism as a phenomenon emerged de jure in Europe in the second half of the 1930s. The first constitutional document that materialized this doctrine as a constitutional value was the Irish Constitution of 1937. The preamble to the Constitution, which has been adopted after the publication of the encyclical *Divini Redemtoris* by the Holy See, among other things stated the following: «… Seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual [emphasis added] may be assured, true social order attained, the unity of our country restored, and concord established with other nations…» [12].

Unlike the aforementioned Pope's encyclicals where the phenomenon of *human dignity* was given the role of a doctrinal alternative to communism, the Constitution of Ireland treated this phenomenon as one of the foundations of the country's social order. However, it was still an exception and not the rule in pre-war Europe. Earlier, the Weimar constitution of 1919 mentioned indirectly the concept *die Würde* in Article 151, stating that, "The economy has to be organized based on the principles of justice, with the goal of achieving life in dignity (*menschenwürdigen – dignified*) for everyone" [42]. In general, the phenomenon of human dignity remained outside the constitutional framework. Those singular cases of its use for various tactical reasons only confirm this conclusion.

The history of genuine dignitarian constitutionalism traces its origins back to the post-war Europe. The strong public demand for it has been generated by global spiritual crisis and tragic events and consequences of the Second World War, as well as by completely discredited legalistic approach to understanding of law and legal culture of the same kind, through which the law was «… reduced to a mere attribute of the state…» [6]. Adherents of the orthodox legal positivism virtually legalized authoritarian regimes and gave them the green light for commission systemic crimes against humanity.

Recognition and comprehension of these indisputable facts of history by the world community has led to the rapid and decisive reorientation of societies, firstly, in Western and Central Europe, towards the values and ideals of natural law. An extremely powerful accelerator of this process was the Universal Declaration of Human Rights with its paradigm of human dignity as the transcendental value and constitutive (founding) principle of human rights. Forming and subsequent gradual strengthening of the dignitarian constitutional doctrine in the Federal Republic of Germany serves as a textbook example of the constitutionalization of the new European and international legal values, primarily human dignity and human rights. The experience of Germany became the common legacy of constitutionalism in the whole world.

This development largely was facilitated thorough justification of the concept of the right to human dignity as a prevalent (dominant) personality right (*allgemeine Persönlichkeitsrecht*) as well as basic principles of anthropocentric philosophy of law advanced by Gustav Radbruch and other eminent post-war legal philosophers of Germany in 1945-1946. These principles are the precious treasure of the philosophical and legal thought of the world, primarily known as a *Radbruch's formula of law*. In particular, in the article *Statutory Lawlessness and Supra-Statutory Law* he described the essence of law in the following way: "For law, including positive law, cannot be otherwise defined than as a system and an institution whose very meaning is to serve justice" [32, p. 7]. Proceeding from this understanding of law Radbruch, in another his article *Five Minutes of the Philosophy of Law*, also formulated the principle of the legitimacy or validity of laws. According to him, "If laws deliberately betray the will to justice – by, for example, arbitrarily granting and withholding human right – then these laws lack validity, the people owe them no obedience, and jurists, too, must find the courage to deny them legal character" [32, p. 14]. Radbruch formula helped the creators of the German constitutionalism and later constitutionalists in other countries to attribute the phenomena of *human dignity* and *human rights* to the category of main constitutional values within the entire legal order.

Nevertheless, within the national experience of Germany a role of a *fundamental and primary value* among the above-mentioned constitutional values has been reserved for *human dignity*. Thus, the idea of *human dignity* as a complete rejection of the doctrine and practice of the Nazi regime as well as positive affirmation of humanistic values, was clearly stated in the first constitutions of the various German states adopted immediately after the end of the Second World War: Constitution of the State of Hesse of December 1, 1946 (Art. 3) [49]; Constitution of the Free State of Bavaria of December 2, 1946 (Art. 100); Constitution of the Free Hanseatic City of Bremen of October 21, 1947 (Art. 5), and in other constitutional documents of the German states. Each of these acts has nearly the same provisions that the State recognizes and respects the human dignity.

In the Basic Law of the Federal Republic of Germany, adopted May 23, 1949, the legal status of *human dignity* was raised to an even higher level. According to Paragraph 1, Article 1 of the Basic Law, "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority". The next paragraph of the same article proclaims that, "The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world" [18]. Here, human dignity is given the role of "the foundation that legitimizes the state". In the German Basic Law *human dignity* represented as a "normative order directed to the state – that impart to human dignity the status of the founding principle within the system of fundamental rights". It is the *dignity of human being* that requires that an individual be endowed with rights so that he or she can defend his or her own way of life. The provisions of Article 1 of the Basic Law of the Federal Republic of Germany regarding the inviolability of human dignity and inalienability of human rights as a basis of every community, peace and justice in the world, their binding character for the government as a directly applicable law have become the fundamental principles of life of the German society and state.

However, the legal concept of *human dignity* in the German Basic Law is not limited to the abovementioned provisions. It should be viewed as a part of a larger picture and considered from systematic perspective, i.e. in conjunction with other articles of this document. The basis of this concept includes, together with the first two paragraphs of Article 1 of the Constitution of Germany, also the following provisions:

a) para. 2, Art. 19 –"In no case may the essence of a basic right be affected" – [here under the essence they mean human dignity in the context of possible restriction of rights]; b) Art. 20 of the Basic Law – «1) The Federal Republic of Germany is a democratic and social federal state. 2) All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. 3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice. 4) All Germans shall have the right to resist any person seeking to abolish this constitutional order if no other remedy is available"; c) para. 3, Art. 79 – "Amendments to this Basic Law affecting … the principles laid down in Articles 1 and 20 shall be inadmissible" [18].

Previously mentioned provisions of the German Basic Law in their totality serve as a supporting pillar for its first chapter entitled as "Basic Rights" and all other its chapters. The Federal Constitutional Court repeatedly pointed to this, emphasizing that in Germany the fundamental human rights represent an extensive and complex system of values, "Based on the dignity and freedom of the individual as a natural person" [49]. The inviolable existential rootedness of human dignity in every "individual as a natural person" constitutes the quintessence of the German concept of the right to human dignity as a paramount human right.

It is the Federal Constitutional Court of Germany that assumed the mission of breathing life into the legal construct "*human dignity shall be inviolable"* (para. 1, Art. 1 of the Basic Law). As German scholars have repeatedly claimed, the Court has never doubted that human dignity belongs to the most fundamental human rights [39]. Among the Court's findings, extremely diverse, especially noteworthy position in the context of our study is that the concept of human dignity represents not only the human dignity of a particular person but also the abstract dignity of human beings as a species. Thereby, the Federal Constitutional Court encourages the idea that dignity as a value is inherent in all humanity, that is an absolute value, and disrespect for the dignity of one person is equivalent to disrespect for the dignity of all. The court reasoned that everyone comes to this world with human dignity, does not and, in principle, cannot lose it regardless of any circumstances of life, and that it cannot be taken from a human by anybody. Out of the duty to protect human dignity, the court also deduced the state's obligation to protect human life.

The Federal Constitutional Court considered the absoluteness of the human right to dignity in several aspects, especially from the perspective of its holders. The Court acknowledged several categories among the

bearers of human right to dignity, particularly, minor children and juveniles, the mentally ill, stateless persons and persons regardless of their citizenship, bearers of unborn human life, having specified in the latter case that this refers to the kind of life which emerges as soon as the fertilized egg is located in the uterus. According to the position of the Court, even after the death of the bearer of the human right to dignity, the state remains obliged to protect a deceased person, lest their general right to respect, observance of which rests on the inviolability of human dignity, be discredited or humiliated, or lest there is negative impact on moral, personal and social value-based legacy, that the deceased person has acquired through their own life achievement. That is, here the Court treats the right to human dignity, but now in capacity of legal concept, as the ascendant and at the same time legal principle and basis for all other human rights.

By comprehensively considering the right to human dignity as an absolute value of the individual, the Federal Constitutional Court formulated a number of categorical imperatives. According to one of them, this right is the *highest social value*. This provides it with the status of a fundamental right, therefore, unlike other human rights it should never be subjected to any restrictions. In addition, this is precisely why the Court consider the right to human dignity as the center of the value system of the Basic Law of the Federal Republic of Germany.

Other categorical imperative, advanced by the Constitutional Court, maintains that the right to human dignity is the *highest legal value* within the constitutional order. This right demands that all state authorities should respect the existing legal order and constitutional arrangement in Germany and are obliged to use their powers in their daily practice proceeding from strict awareness of the necessity to observe the right to human dignity. The Federal Constitutional Court of Germany persistently considered and continues to consider human dignity as "the dominant right".

In this capacity, *human dignity*, as defined by Eckart Klein, is a "right to rights". The legal formula of the "right to the rights" is the invention of the legal genius of ancient Greece. It has become a logical continuation of the same, inherent to ancient Greek culture constructs-inventions such as: the famous constant that *Man is the measure of all things*; the phenomenon of *law in general* as a way and the phenomenon of *democracy* as a form of co-existence of individuals in society. Primordial and yet another ancient Greek invention-value – *civil liberty* – was the fountainhead of all the aforementioned inventions-values.

It is polis where these inventions of ancient Greek civilization found their actualization. For the ancient Greeks *polis* is not primarily a political entity (as such, it has always been only its secondary meaning). Ancient Greek citizen perceived *polis*, primarily, as both a place and a way of their co-being with other, their fellow citizen, that "where" and "how", which protected them from losing their own *view*, being themselves, that is, *dignity*, civil liberty. Ancient Greek civilization irrefutably proved that it is possible to really care about "right to something" only when there is existentially rooted freedom of an individual-claimant to this "something". In other words, when the possibility to be someone or not to be someone depends on the person themselves. The creators of the ancient Greek way of life were convinced that the people's duty to themselves, to their own human dignity is the very sacrosanct foundation of right (*the right to the rights*), which is the central value of the European anthroposociocultural tradition of law [17, p. 5]. To be more precise, the legal formula "the right to rights" serves as a methodological key to the anthroposociocultural code of such values as right to *human dignity* and to all other *human rights*.

A well-known ***Objectformel*** ("object formula"), became a reliable and faultless instrument, for the protection of the "right to the rights", that is *human dignity* as its quintessence. It has been invented by the German legal genius. Günter Dürig, who is the author of the formula stated it in the following way: "Human dignity as such is affected when a concrete human being is reduced to an object, to a mere means, to a dispensable quantity". That is, as Dürig continues, "the degradation of a person to a thing, which can in its entirety, be grasped, disposed of, registered, brain-washed, replaced, used and expelled". According to him, "violation of human dignity taken as such is a transformation of particular individual into object of the state conduct" [7, p. 183], that is actual denial of possibility of the individual to realize their own legal personality.

Direct ideological source and methodological key of the Dürig's *objectformel* is the so-called "object theory", which already in the eighteenth century was developed by Kant [7, p. 183]. In particular, in his formula of the second categorical imperative ("formula of personalit" he postulated that under any circumstances it is prohibited to utilize or exploit man by man thereby turning man into a mere thing. In his "*The Groundwork of the Metaphysic of Morals"* where this formula has been mentioned for the first time Kant explicates it in

the following manner: "Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as end and never merely as means" [23, p. 37]. Elsewhere Kant summarizes: "The human being, however, is not a thing, hence not something that can be used merely as a means, but must in all his actions always be considered as an end in itself" [23, p. 47]. The second formula of the categorical imperative constitutes the quintessence of all Kantian ethics and his understanding of human dignity, his concept of a mutual complementarity between morality and law.

Analysis of the German doctrine of dignitarian constitutionalism shows that ensuring the human right to dignity is the heart and soul of democracy. All other human rights, both traditional and new, have as their basis the right to human dignity. According to the doctrine of the dignitarian constitutionalism, infringement of any other human right at the same time amounts to interference with the inviolable sphere of human dignity, and therefore the entire legal system of the state must immediately, in the proper and sufficient way to prevent such interference. This approach is recognized and accepted by almost all constitutional democracies in the world. It is based on the understanding of human dignity as the transcendental value and constitutive principle of human rights.

Conclusion. Dignitarian revolution became one of the most influential events in the twentieth century. Having legitimized itself in the thirties and early forties of the last century as a new Catholic dignitarian doctrine it at once go beyond national boundaries of some countries and right after the end of the Second World War became global phenomenon. The quintessence of this revolution became the establishment of the understanding of human dignity as a fundamental universal transcendental value of human personality and constitutive principle of human rights. Legitimization of this formula in the foundational universal documents adopted by the United Nations provided it with the highest authority and normative value, transformed it into the most effective legal matrix of monitoring and protecting human dignity and human rights starting from the end of the forties of the past century and till the present. In terms of breadth, depth and essence of its immediate and remote effects for existence of human society the emergence of this philosophical and legal paradigm of human dignity belongs to one of the biggest achievements of the Western civilization and humanity in general. It was philosophical and methodological revolution, fundamental civilizational discovery, which by its magnitude and historical consequences is equal to the ancient Greek discoveries of man as the measure of all things, freedom as the quintessence of individual, law as the fundamental need-based mode and democracy as the most effective form of co-being of individuals in society.

New global philosophical and legal paradigm of human dignity is embodied in the legal matrix of the doctrine of dignitarian constitutionalism. Analysis of German doctrine of dignitarian constitutionalism demonstrates that ensuring human right to dignity makes the quintessence of constitutional democracy. All other human rights both traditional and new ones are based on the right to human dignity. According to the doctrine of dignitarian constitutionalism, infringement of any other human right is at the same time equivalent to the interference into inviolable sphere of human dignity and therefore all the legal system is obliged to prevent such interference immediately, in proper way and sufficiently. Most of the constitutional democracies of the world adopted such approach.

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