
Human Dignity Principle

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1. Meaning and Position of Human Dignity in the Constitution - theoretical and dogmatic dimensions

The Constitution of the independent Republic of Azerbaijan, adopted by the referendum on November 12, 1995, embodies the desire of the people to live in a civilized and legal state, based on the norms of international law and democratic principles, which are valued by the world community. The preamble of the Constitution states that the protection of the independence and sovereignty of the state,

guaranteeing the legal and democratic structure, building a state governed by the rule of law, ensuring the protection of human rights and civil society are important obligations.

One of the important features of the Constitution of the Republic of Azerbaijan is the sufficiently comprehensive establishment of human and civil rights and the declaration that the main goal of the state is to recognize, protect and ensure these rights.

The amendments to the Constitution through the referendum have led to positive changes in the country, deepening legal reforms, the beginning of a qualitatively new phase of the democratization process, the complementarity of political and economic reforms, strengthening political culture, increasing public institutions' control over the government. For example, the amendments to Article 32 of the Constitution after the 2002 referendum aimed at a more reliable guarantee of the right to personal inviolability of every citizen in the country, defined certain legal frameworks for the activities of the media what led to the vast majority of civil lawsuits filed by governmental agencies, civil servants and even ordinary citizens against the media to be allowed for a positive resolution related to the protection of honor and dignity and the violation of the right to privacy. The amendment to Article 50 was, in essence, of special importance in terms of preventing the dissemination of purposeful and biased information in the media and eliminating abuses. According to the principal addendum in Part III attached to this article: "Everyone is guaranteed the right to refute or respond to information published in the media that violates or harms his/her rights or interests." It is known that even though untrue information is sometimes spread in the media, which insults people's honor and dignity, tarnishes business reputation, the right of the victim to refute or respond to baseless opinions and writings about them is grossly violated. In this regard, the creation of a constitutional basis for the right of every citizen to refute defamatory information about the media, which is spread in the media, should be emphasized as an extremely important innovation.

From the angle of human rights, the right to honor and dignity is one of the most ancient and natural human rights. Since an early age, our parents and society as a whole value our honor and dignity as a value through education, ethics and propaganda, although not directly. That is why the rude actions and unpleasant words of others against us immediately cause us a negative reaction since our years of childhood. We can even accept human dignity as real property. Because a truly free person realizes his dignity, and the loss of his dignity can be considered a loss of freedom. As the great Shakespeare said: "My honor is my life; both grow from the same root. If you take my honor, it means you have ended my life."

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Honor is the value that society places on a person as an individual, the social value of the moral and other qualities of the individual. Dignity is a person's self-esteem, his/her perception of personal qualities,

¹ <https://ru.citaty.net/avtory/uiliam-shekspir/>

abilities, worldview, social value. Both concepts are purely moral categories and are extremely conditional in content. These concepts may vary from country to country and from nation to nation, even among individuals raised in the same family. Many issues of honor and dignity are determined directly by practice. Article 46 of the Constitution of the Republic of Azerbaijan reflects almost more negative norms on honor and dignity. Everyone's honor and dignity are protected, regardless of mental or age level. Article 46 of the Constitution of the Republic of Azerbaijan is called the right to protection of honor and dignity and consists of three points:

- I. Everyone has the right to protect his/her honor and dignity.
- II. Dignity of a person shall be protected by the state. No circumstances can justify the humiliation of the dignity of a person.
- III. No one may be subject to torture. No one may be subject to degrading treatment or punishment. Medical, scientific and other experiments may not be carried out on any person without his/her consent.

Thus, the concept of honor and dignity is understood in a broad sense in the Constitution and includes the physical inviolability of the individual (the impossibility of experimenting on him). The Constitution prohibits the imposition of punishments that degrade the honor and dignity of the individual. Honor is also enshrined in criminal law (Article 147, paragraph 1, of the Criminal Code of the Republic of Azerbaijan, which is called Defamation: information that defames or discredits the honor and dignity of any person knowing that it is a lie, in public speeches, public displays, the media and or dissemination in Internet information resources in case of mass demonstration; Article 148 is called Insult: Insult, i.e. intentional humiliation of honor and dignity of a person in public speeches, publicly demonstrated artwork, mass media or Internet information resource in case of mass demonstration; Article 323 (defamation or humiliation of the honor and dignity of the President of the Republic of Azerbaijan) is also protected by other legislation. Ensuring the general inviolability of the individual means ensuring his honor and dignity. In many cases, crimes against personal inviolability and other acts also infringe on his honor and dignity. Many procedural rules have been developed in this aspect, i.e. taking into account the factor of potential inviolability of the honor and dignity of the individual. For example, when a person is searched, it must be carried out by a person of the same sex. Or intimidation and psychological and physical pressure are not allowed in any investigative activities. Particularly, in this regard, it is necessary to mention Article 13 of the Criminal Procedural Code of the Republic of Azerbaijan, entitled “Respect for the honor and dignity of the individual.”

The form of civil legal protection is reflected in the Civil Code and various legislative acts. Article 23 of the Civil Code is called the protection of honor, dignity and business reputation, and it is established that the protection of honor and dignity of an individual is allowed even after his death at the request of

interested persons. There is a decision of the Constitutional Court of the Republic of Azerbaijan dated 31 May 2002 on the interpretation of Articles 21 and 23 of the Civil Code of the Republic of Azerbaijan, which explains the concept of damage as follows: moral damage (physical and moral suffering) and material damage caused to a person in connection with the tarnishing of dignity and business reputation.” Thus, Article 23.4 of the Civil Code provides for the right of an individual to disseminate information that tarnishes his honor, dignity or business reputation, as well as to demand compensation for damage caused by their dissemination. These rules also apply to the protection of the business reputation of a legal entity (Article 23.6). However, it is not directly indicated whether the damage is material or moral. When a person's honor, dignity, and business reputation are insulted, he suffers shock, suffering, and thus moral humiliation. As a result, a person suffers from moral and material damage. It should be noted that the legislature in several normative legal acts, in addition to material damage, recognizes the existence of moral damage and provides for the liability of the person who caused such damage. Moral damage is usually caused by the violation of the personal non-property rights of citizens. Moral damage is non-property damage that has no economic content or value. Such damage is related to the intangible benefits of the citizen by birth or by law (honor, dignity, business reputation, personal family secrets, freedom of movement, choice of residence, title, copyright, other personal non-property rights, etc. material blessings) inflicts moral shock and suffering on an individual by violating his rights. Moral damage causes a negative psychological reaction by directly affecting the victim's consciousness after the actions of the victim. Moral damage is an independent consequence of the violation of citizens' rights. It is compensated both in conjunction with the property damage or in the absence of property damage. The nature and extent of moral and physical suffering, as well as the guilt of the defendant, the state of the property, etc., when compensating for moral damage. It is necessary to take into account important circumstances, and in each case, the details of the compensation for such damage must be determined at the discretion of the court.

As can be seen, the Constitution promotes the comprehensive development of the individual, society and the state, reflecting among the basic human and civil rights and freedoms the protection of social, political and economic rights, as well as freedoms and security by the state as a guarantee of a democratic and legal state.

2. Human Dignity - definition, content, objective principal and/or subjective right, subjects and destinataries, limits

Human dignity is one of the main factors that connect the human rights system and law in general with other social norms and determine the general role of law in society. Respect for human dignity is not only a separate written legal norm, but also has the force of customary law. For international human rights,

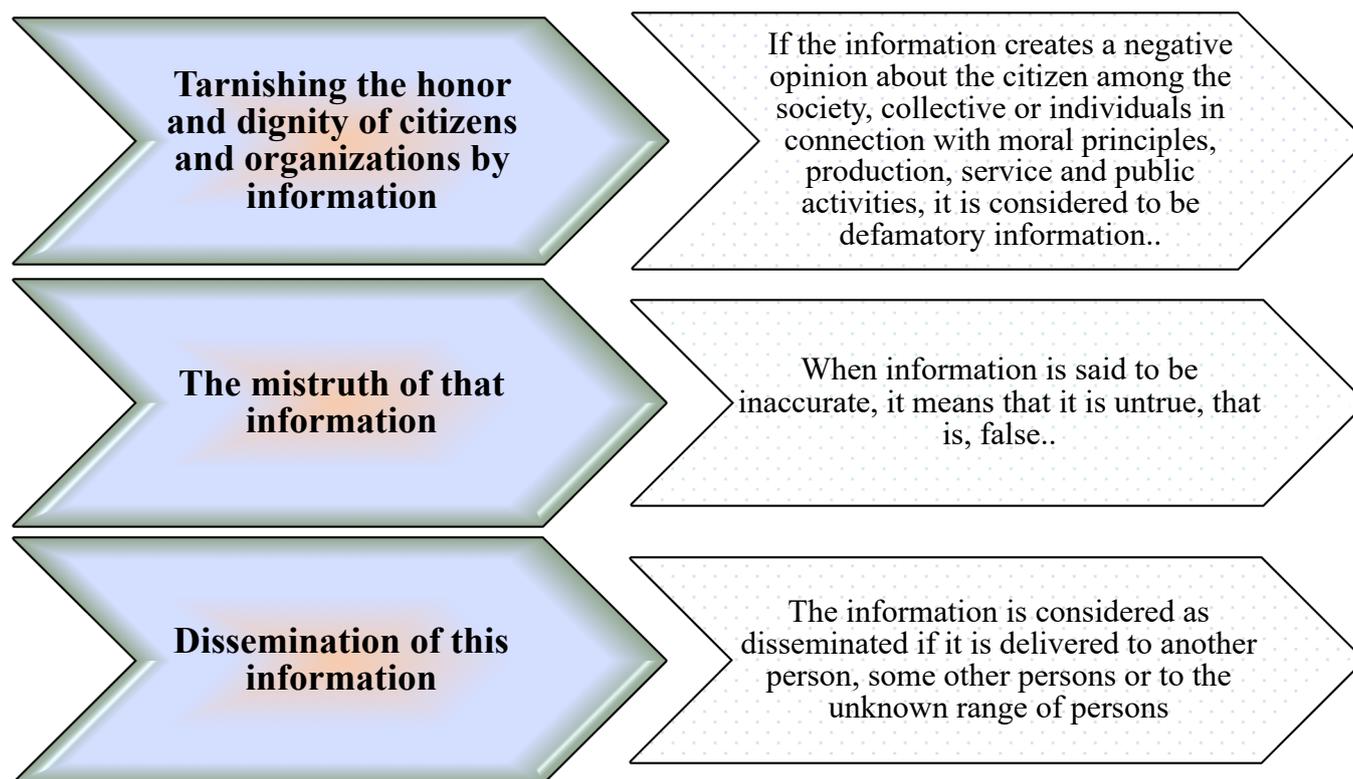
respect for human dignity is an obligation imposed on both governmental and non-governmental entities and is mandatory.

If we look at the theoretical approaches to human dignity, we may see that the assessment of dignity by Azerbaijani scientists in the Middle Ages coincides with the views of Western scholars. For example, the Azerbaijani scientist Nasreddin Tusi writes in his book 'Akhlaqi-Nasiri': "The bodies of nature are equal in terms of their bodies, and none of them is superior to the other in anything, neither in honor nor in virtue, because they all have a spiritual essence, primordial materiality."² The 16th-century Spanish playwright Calderon likened the notion of "dignity" to snow: "Dignity is like snow, and as you walk on it, its whiteness is defiled under your feet."

The protection of human dignity is itself a separate right and is "hidden" within several other elements of rights and freedoms. From the point of view of our national legislation, the protection of human dignity is an absolute right and manifests itself in the prohibition of torture and inhuman, degrading treatment, the abolition of human trafficking, the prohibition of all forms of discrimination, the inviolability of private and family life. From the human rights point of view, the protection of dignity can be considered both an individual and a collective right of a certain group of people. The national legislation of the Republic of Azerbaijan protects human dignity as a separate right, both in general form and in special forms for certain groups of the population. For example, in addition to general protection, people with disabilities, children, women, the elderly, refugees, etc. There are also special legal norms on social groups aimed at protecting the dignity of individuals.

The protection of human dignity, protected by the Constitution, is reflected in judicial practice as well. Thus, the Constitution, which declares general principles, does not define specific cases, such directions are determined by the Constitutional Court and the Plenum of the Supreme Court. The decision of the Plenum of the Supreme Court of the Republic of Azerbaijan of 14 May 1999 No.7 on the practice of application of the legislation on protection of honor and dignity by the courts should be emphasized. According to the decision, the courts must clarify three primary details when considering cases on the protection of honor and dignity and give them a legal assessment in aggregate:

² Tusi X.N.Axlaqi-Nasiri. Baku, Lider Publishing House, 2005, p. 52. [in Azerbaijani]



The absence of one of the three elements leads to the dismissal of the claim. Let's look at a practical example: Plaintiff A. claimed that after the death of her husband B., her relatives insulted A., blaming her for B.'s death, and slandered her, saying that she had poisoned and killed her husband. As a result of this slander, the plaintiff suffered a moral shock and a negative opinion about her among her relatives. For this reason, the plaintiff asked the court to refute this information and to inflict moral damage. The CD presented by the plaintiff as a type of evidence was heard by the court, but the audio recording on that disc was the plaintiff's telephone conversations. The Plenum Decision of the Supreme Court states that information can be published in the press, been broadcast on radio and television, shown in newsreels, described in artworks, spoken at meetings and gatherings, indicated in letters, applications and complaints, and recorded in documents issued by departments, enterprises and organizations, and so on. Damaging honor or dignity in public speaking is the expression of information that degrades or discredits the honor and dignity of any person in a way that at least two outsiders can hear or perceive. Public artwork is a work that can be seen or comprehended by at least two people, i.e. photographs, paintings, cinematographic works, etc. Mass media means periodicals, television and radio programs, newsreels and other forms of broadcasting. Disclosure of information to a person belonging to him alone shall not be considered as dissemination of such information. Therefore, telling any information to a person over the phone does not create liability and can only be considered as an act contrary to moral norms. The

legislation does not provide for any liability for information that contradicts moral norms. Therefore, A.'s claim cannot be considered well-founded because the request for disclosure, in this case, was not granted.

The following question arises from the above-mentioned case: In what form should a person's honor and dignity be protected in the event of non-mass insult and slander? If a person has been insulted in the presence of several relatives, can he file a claim for moral damages? – First of all, it should be noted that the Criminal Code also considers it necessary to commit insults and slander en masse in order to be considered a criminal act. In this case, the dignity of the person being insulted among relatives is naturally tarnished. Such insults are not to be taken lightly at meetings and gatherings. Because, according to the Law of the Republic of Azerbaijan “On Freedom of Assembly” dated November 13, 1998, the term “assembly” means the temporary assembly of several persons in a public place in order to participate in the assembly. Such gatherings can take the form of meetings, rallies, demonstrations, street marches, pickets. At the same time, the Law states that the following forms of gatherings are not regulated by this Law: weddings and funerals; holidays and mourning events; religious ceremonies.

Therefore, in the event of insulting a person at any funeral or family gathering, it is not possible to apply the principle of “insult at the meeting and assembly” specified in the Plenum Decision of the Supreme Court. Thus, we have to believe that the provisions applied both in civil and criminal cases, as well as the Plenum Decision of the Supreme Court, should be amended in terms of mass dissemination, in order to consider the damaged honor and dignity as the basic factor in the court analysis.

3. Human Dignity and its interpretation in the Constitutional

Jurisprudence: law and court practice

One of the most important issues in the case law on human dignity is the burden of proof. According to Article 77.1 of the Criminal Procedural Code of the Republic of Azerbaijan, each party must prove the circumstances it cites as the basis of its claims and objections. The above-mentioned Plenum Decision of the Supreme Court states that it is the responsibility of the defendant, not the plaintiff, to prove the accuracy of the information that tarnishes the honor and dignity of another. The plaintiff must prove the physical and mental concussions he suffered when claiming moral damages. In practice, courts often do not satisfy the plaintiff's claim for non-pecuniary damage by referring to this paragraph. However, this approach contradicts the general principles of existing legislation and the case law established by the European Court of Human Rights. The decision of the Constitutional Court of the Republic of Azerbaijan dated May 31, 2002 “On the interpretation of Articles 21 and 23 of the Civil Code of the Republic of Azerbaijan” provided a fair approach to this issue. According to the decision, the damage violates the subjective rights of the person or organization. At the same time, the damage in civil law has a social meaning because the violation of the subjective right is accompanied by the violation of the objective rights

defined and protected by law. Damages are property and non-property, depending on the form and content. When a person's honor, dignity, and business reputation are insulted, he suffers shock, suffering, and thus moral humiliation. As a result, the person suffers moral and material damage. It should be noted that the legislature several normative legal acts recognizes the existence of moral damage in addition to material damage and provides for the liability of the person who caused such damage.

Damage violates the subjective rights of a person or organization. At the same time, the damage in civil law has a social meaning because the violation of the subjective right is accompanied by the violation of the objective rights defined and protected by law. Damages are property and non-property, depending on the form and content.

Article 21.1 of the Civil Code stipulates that a person whose rights have been violated may demand full compensation for the damage caused to him, provided that the law or the contract does not provide for a smaller amount of compensation. Article 21.2 of the Code establishes that damage means the costs incurred or to be incurred by the infringer to restore the infringed right, deprivation of property or damage to property (actual damage), as well as the person's right in ordinary civil circulation if the infringement was not infringed income (lost profits) is understood. Thus, the loss provided for in this article consists of actual loss and lost benefit. It appears that Article 21 of the Code can be taken as a general rule for compensation for pecuniary damage caused by a violation of a person's rights. Article 23.4 of the Code provides for the right of an individual to disseminate information that has tarnished his honor, dignity or business reputation, as well as to demand compensation for damage caused by their dissemination. However, it is not directly indicated whether the damage is material or moral.

When a person's honor, dignity, and business reputation are insulted, he suffers shock, suffering, and thus moral humiliation. Moral damage is non-property damage that has no economic content or material value. Such damage is related to the intangible benefits of the citizen by birth or by law (honor, dignity, business reputation, personal family secrets, freedom of movement, choice of residence, title, copyright, other personal non-property rights, etc. material blessings) inflicts moral shock and suffering on an individual by violating his rights. Moral harm causes a negative psychological reaction by directly affecting the victim's consciousness after the actions of the victim. Moral damage is an independent consequence of the violation of citizens' rights. It is compensated both in conjunction with the property damage or in the absence of property damage. The nature and extent of moral and physical suffering, as well as the guilt of the defendant, the state of the property, etc., are essential when compensating for moral damage. It is necessary to take into account important circumstances, and in each case, the details of the compensation for such damage must be determined at the discretion of the court.

According to the Plenum Decision of the Supreme Court, the amount of non-pecuniary damage must be measured in money. In determining the amount of non-pecuniary damage, the courts should

approach each case individually, taking into account the scope of information, the nature and extent of the moral and physical shocks inflicted on the plaintiff, the defendant's guilt and property status, other notable circumstances of the case, and the defendant's real capacity they must take.

The international practice of the European Court of Human Rights shows that there are no definite and clear criteria for determining moral damage. Moral damage is of a special nature and depends on both the identity of the victim and the nature of the violation. In order to determine the amount of non-pecuniary damage, the court takes into account the emotional factors that resulted from the violation of this or that administrative right - distrust, anxiety, frustration, stress, suffering and suffering. For example, the ECtHR ordered the applicant to pay moral damages in the case of “Konig v. Germany” for “moral distress”, in the case of “Artico v. Italy” for “feelings of loneliness”, and in the case of “humiliating and insulting actions in the case of Young, James and Webster v The United Kingdom”. We may also take a look to an example from local practice: An article published on the case website www.xxxx entitled “XXXX” shows that the article contained information that degraded A.'s honor and dignity. It was determined at the court hearing that the information provided in that article should be considered untrue, tarnishing the honor, dignity and business reputation of the plaintiff, and should be refuted in connection with the information provided by that press body. Thus, because the defendant was responsible for proving the protection of honor and dignity, and the defendant's representatives could not present to the court any evidence of the veracity of the information in the newspaper at the hearing, no specific and proven facts were cited in the dissemination of such information. Therefore, since the information is merely speculative, the court considers that the information should be treated as damage to honor, dignity and business reputation.

The court does not consider the arguments of the defendant's representative to be obtained during the interview with A., the refusal of the other party to give an interview on that information and therefore the dissemination of such information, in which case they are not responsible. Thus, in accordance with the requirements of the Law of the Republic of Azerbaijan “On Mass Media”, the authenticity of information must be verified before it is published and disseminated by the media. However, the defendant disseminated this information en masse without determining its authenticity. Therefore, the court considers that the claim for the refutation of this information is well-founded.

The court notes on the part of the claim for moral damages that the claim must be partially satisfied in that part. According to the current dispute, the court must take into account the general living standards of citizens, the current economic situation, the possibility of enforcement of judicial acts when determining the amount of damage for non-pecuniary damage. The court notes that taking into account the fact that the plaintiff is a civil servant and his position, sufficient authority, but the information spread causes him

moral distress and moral anxiety, the determination of moral damage of 1,000 manats should be considered completely fair.

As can be seen, compensation for non-pecuniary damage is determined in a reasonable amount depending on the circumstances of the case.

In Decision No. 3 of the Plenum of the Supreme Court of the Republic of Azerbaijan dated 21.02.2014 on “Judicial practice on consideration of cases on complaints on special charges”, the Plenum noted that defamatory and insulting information may be disseminated via various ways - been published in the press, been broadcasted on radio and television or by electronic means as well as it can be disseminated in newsreel programs, been described in artistic works, via speaking at meetings and gatherings, appearing in letters, applications and complaints, been reflected in documents issued by departments, enterprises and organizations, and so on. The expression of information that degrades or discredits the honor and dignity of any person is considered as the public speaking if in a way that at least two outsiders can hear or perceive. Public artistic work is work (photographs, paintings, cinematographic works, advertisements, etc.) that can be seen or perceived by at least two outsiders. In the case of mass media or publicly disseminated Internet information resources means periodicals, TV and radio programs, newsreel programs, social Internet networks, websites of periodicals and TV and radio channels and other forms of broadcasting. The inclusion of defamatory and insulting information in applications and complaints addressed to various bodies and organizations or the disclosure of it to a person belonging to it shall not be considered as dissemination in the form of public speech, and in such cases the actions of the person disseminating (reporting) are not considered criminal.

As can be seen from the above-noted decision, the inclusion of the information about honor and dignity in applications and complaints addressed to various bodies and organizations is not considered as defamatory information and can only be prosecuted if such information is disseminated in the media. Therefore, in many civil cases taken from court practice, appeals to the court alleging insults in letters sent to government officials were not granted the needed legal power.

In general, the protection of human dignity is carried out by government agencies belonging to all three branches of government. Although the law enforcement agencies carry out this work in the general plan, the Ombudsman, the State Committee for Family, Women and Children Affairs, etc. perform special functions in this direction. Along with governmental agencies, civil society organizations and educational institutions bear a serious burden in the protection of human dignity. In this sense, teaching and research on the protection of human dignity at the Faculty of Law of BSU play a key role in the reforms carried out at all levels of education. In particular, the study on the place of human dignity in the human rights system is important within the UNESCO Chair on Human Rights and Information Law.

Additionally, the protection of human dignity has long been one of the principles of the BSU Legal Clinic, which provides free legal assistance to low-income people.

We would like to conclude our scientific study with the following words of the Roman Emperor Octavian Augustus (63 BC - 14 AD): “The bankruptcy of the treasury is better than the humiliation of the dignity of the Roman citizenship.”³ It should be noted that in the modern practice of the Republic of Azerbaijan, this principle is followed and human dignity is protected in all areas of public policy.

References:

1. Aliyev, A.I. Human rights. Textbook. Baku, Nurlar, 2019, 352 p.
2. The Ministry of Justice of the Republic of Azerbaijan / The Unified Internet Electronic Database of Regulatory Legal Acts - e-qanun.az
3. The official website of the President of the Republic of Azerbaijan - <https://www.president.az>
4. The official website of the Constitutional Court of the Republic of Azerbaijan. <http://www.constcourt.gov.az/>
5. The official website of the Supreme Court of the Republic of Azerbaijan. <http://www.supremecourt.gov.az/en>
6. Tusi X.N.Axlaqi-Nasiri. Baku, Lider Publishing House, 2005, 280 p. [in Azerbaijani]
7. <http://www.stuki-druki.com/Aforizmi-Calderon.php>
8. <https://ru.citaty.net/avtory/uiliam-shekspir/>

³ Aliyev, A.I. Human rights. Textbook. Baku, Nurlar, 2019, p. 75.