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FREEDOM AS A FUNDAMENTAL LEGAL VALUE: REFLECTION AND RELEVANCE IN THE MODERN LEGAL SPACE

***Abstract.** The inherent right to liberty is foundational to democracy, underpinning freedoms such as expression and participation. This right not only drives innovation by fostering new ideas and technological advancements but also contributes to individual growth and societal happiness. For instance, freedom of speech facilitates meaningful discussions on societal matters. The Constitution of Ukraine, through Articles 55 and 68, ensures the protection of these freedoms while outlining citizens' responsibilities. Maintaining these rights is vital for addressing complex societal challenges. A three-part test is suggested to balance the restriction of rights in democratic societies. Here, the emphasis is on the significance of freedom as a legal value, recognizing it in various global constitutions as a cornerstone ensuring democracy, rule of law, and promoting societal development.*

***Keywords:** freedom, legal values, human rights, justice, equality, legal system.*

Problem Statement. In the information world, unfortunately, there are resonant cases where human freedom is restricted. It can

be constrained both legally and illegally, and freedom can be localized by either power or other people. The basis of these conflicts lies in the contradictions between the fundamental rights and freedoms of individuals. These rights are equally guaranteed by the Constitution of Ukraine, but they are not absolute. Hence, the need to define human freedom as a legal value remains a relevant research topic.

The purpose of this paper is to characterize human freedom, its boundaries, the development process, its specificity, and its interrelation with other legal values of a person. To achieve this objective, it is necessary to solve the following tasks: 1) to investigate issues related to the definition of human freedom and consider it as a legal value; 2) to explicate the concepts of 'human dignity' and 'equality' and their place in relation to human freedom; 3) to identify the legal boundaries of human freedom in Ukrainian legislation; 4) to analyze the development process of ideas about freedom; 5) to characterize the concepts of negative and positive human rights and examine their interrelation; 6) to highlight the concept of 'the general right to human freedom'; 7) to investigate the boundaries and limitations of human freedom according to foreign legislation.

The subject of this study involves societal relations in the sphere of human rights, emphasizing the freedom of an individual as a legal value.

An analysis of recent publications demonstrated that the research employed various scholarly arguments concerning this issue, notably those made by Hayek, H. H. Kyrilenko, O. V. Hryshchuk, P. Rabinovich, V. Pohorilko, V. Fedorenko, V. M. Yakubenko, M. Maglmann, O. P. Vasylychenko, T. Radk, N. Holubyeva, V. D. Prymak, J. Locke, B. Constant, I. Berlin, J. S. Mill, A. de Tocqueville, Dworkin, I. Y. Andrievsky, and others.

Presenting the material, it is crucial to consider the understanding and specificity of freedom. How does the concept of freedom, in relation to legal values, impact the freedoms of common people? In simpler terms, freedom represents a desired state, replete with aspiration. A child seeks independence when they first let go of an adult's hand and proudly insists, «I can manage by myself.» As a result, the desire to form personal perspectives gradually develops, leading eventually to economic independence [1]. This is how

an individual personality is established. Analogously, a state is also an entity that passes through comparable stages of evolution. From my perspective, freedom implies man's ability to choose and act according to personal desires, interests, and aims; however, these desires do not always lead to positive outcomes.

I would note that freedom is the ability of a person to act, leading to the concept of human freedom of action, meaning their freedom to carry out intentions and achieve goals, to choose their path, using necessary tools and means. Such freedom of action is a fundamental human aspiration because one is entitled to do as desired. This is perhaps the most common interpretation of freedom.

Freedom of action is closely linked to creative freedom, which is the rights of individuals to realize their dreams and ideas. From a legal perspective, freedom is the natural state in which an individual performs an act – action or inaction – in accordance with their will, desire, and inner convictions. In Hayek's socio-philosophical work, «The Constitution of Liberty,» it is about the state of freedom – a state of minimal compulsion of one person to another [3]. It is also worth noting that there are several types of freedom, as pointed out by G. Kirilenko: «Freedom has many faces.» Specifically, we can distinguish physical freedom, intellectual freedom, moral freedom, political freedom, and inner freedom.

The philosophical understanding of the concept of freedom is complex and encourages a multitude of reflections on the subject, yet from an ethical and pedagogical perspective, it's best understood within the framework of value theory. In particular, we can interpret freedom as a fundamental value of human life. In my view, the prime legal value in the judicial system is freedom. On the one hand, the law restricts a person's natural freedom as it imposes a code of conduct, dictating what a person must or must not do, or leaves such discretion to the individual's judgment.

On the other hand, the law also serves as a means of social control for a better assurance of human freedom. This is due to the fact that without the protection of the law, a person may lose their freedom, for instance, through interference from others.

Values are the essential and guiding principles of what individuals consider important for decision-making across all spheres of personal

and public life. In other words, a value is something that carries significance to a person, hence freedom is a concept filled with the meaning of human existence. Freedom for individuals is a priority value, and there is a valid reason for that as freedom is essential for human life. This assertion can be fortified with the thought that existence is free, considering the world only carries value when we make free decisions that 'enhance the value' of our choices. Behind every human choice lies an implicit mechanism of 'evaluating' that choice, which, one could say, stems from values. If we opt to go to the cinema instead of the opera, even if we make a mistake in terms of advantages or acceptable efficiency, it means we have determined that going to the cinema is better for our life than going to the opera. Therefore, freedom holds the top spot in the realm of human values.

In my opinion, pedagogy and education in schools have not always given the growth of «freedom» and the priority it deserves. Many educators have considered the risk component of freedom, which is indeed very real. Freedom, undoubtedly, can provoke us to make mistakes, even errors that are destructive to life itself, a wholesome personality, and society. It would be unrealistic to assume that freedom should be restricted or excluded due to the actual risk simply because the end result is incompatible with the goal. A human life without freedom is not a full normal life. Therefore, the price of safety is literally high, and thus to deny freedom due to fear or risk is as absurd as demolishing a house for fear it may catch fire.

Freedom has a deep connection with the values it inevitably creates. This leads to a question: «Can we ensure maximum freedom and compatible values, and will freedom and values together help us achieve desired healthy maturity?» The answer lies in the possibility of defending a position that combines maturity, freedom, and value. This is our aim today, as a young generation. It is also important to realise that in the legal systems of different countries of the world, there are other legal values.

What are freedom, human dignity, equality, and justice? What is the connection between these concepts? Before discussing the interconnection between human values, it is necessary to clarify what is meant by human dignity, equality, and justice. The first definition of the concept «dignity» appeared in the Oxford English Language

Dictionary in the early 13th century, where it was noted that human dignity is the quality of being perfect or noble. Historically, dignity has often been attributed to elite groups and associated with particularly high status, position, or officially recognized status. However, over the last 200–300 years, dignity has become widely recognized as a characteristic inherent in all human beings. The attitude of Ukrainian scientists towards human dignity serves as an apt example. For instance, O. V. Hryshchuk understands human dignity in two senses:

- In an objective sense: human dignity is the recognition and respect from others.

- In a subjective sense: it is the individual's realization of their social status in society.

In my opinion, O. V. Hryshchuk's stance is not unequivocal, and possibly not indisputable. The attitude of those around us, namely public opinion, is more related to a person's honor, whereas human dignity is her attitude towards herself, i.e., dignity is our self-assessment. I tend to lean more towards P. Rabinovich's perspective, as he accentuates that human dignity is her inherent worth, which is independent of her biological and social characteristics. In other words, P. Rabinovich asserts that all people are equal based on their dignity. V. Pohorilko and V. Fedorenko emphasize that dignity is a moral characteristic that reflects the unique nature of a person, meaning they perceive dignity as inherent human self-perception as a unique human being. It is this function of dignity that unfolds in the correlation between human dignity and human value [6].

The main objective of the welfare state is the guarantee of human dignity in all its multifaceted aspects, and therefore, this principle should be considered defining. Most importantly, the right to respect for human dignity is enshrined in the Universal Declaration of Human Rights (Articles 1 and 5). Besides general international legal acts, there are specific international conventions, one of which is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is based on Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights. The outcome and goal of Article 3 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms is to strengthen respect for the individual and protect against cruel treatment and punishment, even in places of detention and under arrest. This reinforces the right to respect for human dignity. Legal recognition of human dignity in Ukrainian legislation is described in Article 28 of the Basic Law of Ukraine and proclaims that «Everyone has the right to respect for their dignity». The Civil Code provides for the right to respect for dignity and honor, as defined in Article 297 (1). The Criminal Procedural Code envisions respect for human dignity (Article 11).

According to Professor M. Maglmann, the concept of dignity intersects with many others, thus forming the basis for one of the fundamental rights principles – equality. Typically, we regard every individual as a bearer of dignity. Therefore, it is evident that all individuals should enjoy equality, as inequality in rights would lead to a denial or narrowing of dignity for a certain category of people. O. P. Vasilychenko notes that there exist several types of equality: social, targeted, legal, factual, and practical.

The principle of equality is solidified both on an international level and in the constitutions of individual states. In Ukraine, the concept of equality is implemented in constitutional provisions asserting that all humans are free and equal in their dignity and rights, and that human rights and freedoms are inviolable (Article 21). Citizens have equal rights and freedoms in accordance with the Constitution and are equal before the law (Article 24). The equality of rights between men and women is also specifically secured (Part 3, Article 24). Furthermore, the Universal Declaration of Human Rights in 1948 declared that all people are born free and equal in dignity and rights (Article 1), and everyone is entitled to equal protection against any discrimination (Article 7) [8].

The question of the interrelation between human dignity, equality, justice, and freedom is one of the most urgent and complex in contemporary philosophy and sociology. The relationship between these concepts reflects the fundamental problems that accompany the formation and functioning of society. Freedom, dignity, equality, and justice are the most crucial values that must be protected in every society. However, in my opinion, human freedom takes precedence over all other values. Freedom is every person's right to self-

determination, independence in actions and decisions, and self-realization. A free person can control their own life and choose which goals they want to achieve and what actions need to be taken to achieve them. This is a necessary condition for a person to be fully and happy. Human dignity is an intrinsic value that depends on the sense of one's significance and respect for oneself and one's life. Equality among people denotes that each person should have equal opportunities and rights. This means that no one should be discriminated against or deprived of opportunities due to their race, gender, creed, nationality, or other personal characteristics.

Justice denotes the distribution of resources and opportunities within society in such a manner, that every individual has equal opportunities for their goal attainment. Now, I wish to shed light on the interplay of freedom in conjunction with these values. Freedom may infringe upon human dignity, yet, even in such circumstances, I believe it retains a higher priority. For example, in instances where an individual's liberty is deprived due to criminal acts, this may violate their dignity. However, such a step may be necessary to safeguard the freedom and security of others. Furthermore, freedom permits the unrestrained expression of one's thoughts and beliefs, fostering the growth of tolerance and democracy within society. This illustrates that without freedom, equality could render inefficiency and unproductivity.

Justice, on par with freedom, is a significant value, though justice may not always be feasible or pragmatic, as ensuring every individual is accorded their due merit can be a complex and challenging task. Therefore, human freedom is the paramount amongst these values, as it facilitates personal autonomy and independence, the development of tolerance in society and democracy, and equal opportunities. The Universal Declaration of Human Rights, in its preamble, proclaimed in 1948 that recognizing the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

The conception of freedom has evolved over time, varying across different epochs, cultures, and individuals. The progression of the conception of freedom can be divided into several stages:

– The first stage of development is associated with ancient times. Early conceptions of freedom were intertwined with the notion

of a deity who was believed to grant humans the freedom of will. Later, the conception of freedom became associated with the idea of natural rights, where an individual was considered to be endowed with certain inalienable and unchangeable rights from birth. In this period, humans were subjugated almost entirely to natural laws and were highly dependent on their physical environment. Individuals were in a constant state of struggle for survival and therefore, the idea of freedom did not stand as a forefront issue. People lived in a world dominated by the harsh laws of nature, where only the strongest had a chance for survival. Consequently, freedom in the way we understand it today, did not exist.

– The second stage is linked with the development of Christianity and the Renaissance in Europe. During this period, the conception of freedom was related to religious and moral ideals.

– The third stage is associated with the development of philosophy and the emergence of the first forms of statehood. An important step in the evolution of conceptions of freedom was the Enlightenment movement of the 18th century. During this period, ideas began to emerge that human beings should be free from any constraints, except for the laws established by the state. From this time, concepts of civil liberties and rights begin to develop. These ideas were formulated in ancient Greece and Rome, where democracy and republican principles played a significant role. Jean-Jacques Rousseau and Immanuel Kant argued that freedom should not only be guaranteed to individuals but should also be limited by the interests of society as a whole. Subsequently, ideas of freedom began to be associated with politics and democracy. In the 19th century, freedom became a symbol of struggle against tyranny and dictatorship. It became the primary ideal for movements such as the anti-colonial movement, feminism, and the civil rights struggle. In the 20th century, freedom became a defining component of modern democracy. Conceptions of freedom expanded to include the right to freely express one's thoughts, equality before the law, and economic freedom. Now, in the 21st century, conceptions of freedom continue to develop and change.

In my view, freedom is not merely the ability to choose freely, because freedom cannot exist without responsibility, as every free choice has consequences that affect others. Therefore, every individual

must be accountable for their actions and bear their consequences. Freedom, perhaps, is best viewed as a special set of values that should be integrated into other types of values.

The issue of human freedom resides in the fact that the liberties of one individual may conflict with the freedoms of others or with the general safety and order within society. For instance, the right to freedom of speech could conflict with the right to privacy, the right to protection from defamation, or even national security interests. There are also situations where certain freedoms may be restricted to ensure other, more important values. For example, religious freedom may be curtailed to ensure equality before the law and to protect the rights of others.

Another issue lies in the varying interpretations of freedom across different cultures, societies, and times. Consequently, it becomes imperative to answer questions about which liberties are most important and what restrictions on them are suitable. International human rights conventions allow states to restrict citizens' rights, but only in circumstances that are justifiable and establish specific limits to the restriction of rights. This facilitates the state's reference to international norms and shields citizens' rights from arbitrary state actions. Such conventions also establish the objectives of possible deviations from rights protected by international agreements.

In my opinion, limitations on human freedom may be necessary to ensure the common good and societal safety, such as the harm principle and paternalism. However, these limitations should be justified, non-discriminatory, and not violate basic human rights. Furthermore, it's crucial to ensure transparency and fairness in the decision-making process concerning the limitation of freedoms. As for legal moralism, I do not support this concept as it primarily infringes upon moral norms and the right to choose. In the context of different countries and cultures, there may be distinct approaches to the limitation of human freedom, yet it is essential to remember the universal international human rights standards and ensure their adherence.

Ukrainian legislation grants citizens the right to freedom from any form of discrimination based on race, skin color, political, religious and other beliefs, sex, age, language, origin, property status, place

of residence, health status, disability, military or social position as well as freedom from violence and any other cruel or degrading treatment. The law also stipulates citizens have the right to freedom of thought, belief, conscience, free thought and speech, the right to free assembly and peaceful gatherings, the right to freedom of communication and the right to information (for instance, section 2 of the Constitution of Ukraine).

For ensuring the observance of citizens' freedom rights, in Ukraine, there exist various laws and institutions. For example, the Constitution of Ukraine, the Law of Ukraine «On Freedom of thought and speech», the Law of Ukraine «On mass Media,» Law of Ukraine «On the principles of state language policy,» Law of Ukraine «On the protection of personal data,» Law of Ukraine «On consumer rights protection,» and others. Special bodies also exist in Ukraine which ensure the observance of freedom rights of citizens. These include, for instance, the High Commissioner for Human Rights, the National Council on Television and Radio Broadcasting, the Council on freedom of speech, and others.

Conclusions. The universal right to freedom is an intrinsic aspect of human nature and serves as the foundation of democracy, as it ensures the freedom to express opinions, congregate and participate in decision-making. Freedom fosters the advancement of innovations and progress, enabling individuals to explore new ideas and cultivate novel technologies. Furthermore, freedom aids in the development of personality, as it offers every individual the opportunity to make choices concerning their own evolution. It represents the key to human happiness, as it allows individuals to live and work in a manner that brings the most satisfaction and happiness. For example, the right to freedom of speech is a critical right, as it enables individuals to express their thoughts and discuss significant societal issues. It is noteworthy that everyone has the right to defend by any means not prohibited by law their rights and freedoms from infringements and illegal encroachments (Article 55 of the Constitution of Ukraine). Similarly, everyone is obligated to strictly adhere to the Constitution and laws of Ukraine and must not infringe upon the rights and freedoms, honor and dignity of others (Article 68 of the Constitution of Ukraine).

Certainly, there are instances when the freedom of an individual is constrained by the state. For example, the Universal Declaration of Human Rights permits the restriction of a person's rights and freedoms in a democratic society only when such restrictions aim to achieve objectives such as:

- 1) Respect for the rights and freedoms of others, as each individual must understand that their rights cannot supersede those of others;
- 2) Conformity with universally recognized moral standards, given that each person lives in a society and should adhere to commonly accepted moral standards;
- 3) Maintenance of public order, i.e., compliance with rules that ensure societal security and protect the lives, health, and property of citizens;
- 4) Promotion of general welfare, i.e., creating conditions conducive to the economic and social prosperity of society.

Respecting the rights and freedoms of individuals and citizens when addressing complex state and societal tasks is of significant importance.

To ensure balance while limiting rights and freedoms in a democratic society, a three-part test is used. This test comprises three elements: the restriction must have a legitimate purpose, the non-restriction of rights could significantly harm this objective, and the harm caused by the non-restriction of rights should outweigh the damage induced by the restriction of rights. These elements should be legally established to ensure their effective implementation.

Freedom, as a legal value, is about enabling each individual to have their own values, which is the essence of human freedom. Even if we disagree with others regarding fundamental or universal values, freedom allows each person the right to freely choose their values. Moreover, freedom is one of the most critical legal values recognized in most national constitutions worldwide. It embodies the right of every individual to freely express their personality, the freedom of thought, speech, religion, assembly, and association. Freedom also ensures the right to equal opportunities, protection against discrimination, and violation of their rights.

Freedom plays a crucial role in any society as it fosters the development of democracy, the rule of law, and other social values.

Freedom also promotes individuality and creativity, which ensures progressive cultural and scientific development. Therefore, freedom is an integral component of the legal system of every nation, guaranteeing each individual's right to self-determination and freedom to express their personality.

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Томіна О. В.

Свобода як основоположна правова цінність: рефлексія та актуальність у сучасному правовому просторі

***Анотація.** Наукова стаття присвячена дослідженню принципу свободи в контексті її юридичної цінності. Розглядається універсальне право на свободу як невід’ємна частина людської онтології, її корінь в історичному розвитку та основа демократичного управління. В статті акцентується на тому, як свобода гарантує інноваційний розвиток, стимулюючи нові ідеї, та як вона сприяє індивідуальному розвитку, даючи можливість кожній особі вільно виражати своє «я», здійснювати вибір та формувати власний життєвий шлях.*

Зокрема, аналізується значущість свободи слова як основного інструменту суспільного діалогу, що надає можливість критично оцінювати,

висловлювати свої думки та обговорювати ключові суспільні питання. Особлива увага приділяється статтям 55 та 68 Конституції України, які висвітлюють права і обов'язки громадян щодо захисту їхніх основних свобод від порушень та незаконних втручань.

Досліджуються механізми забезпечення балансу при обмеженні прав та свобод у демократичному суспільстві, розглядається принцип пропорційності та його значення в контексті гарантій прав людини. Крім того, акцентується на ролі свободи як правової цінності в контексті її глобального визнання, її місце у міжнародних договорах та вплив на розвиток демократії, верховенства права та інших суспільних цінностей. В статті також підкреслюється, що свобода є базовим елементом будь-якої конституційної держави та відображає основні цінності, на яких ґрунтується сучасне громадянське суспільство.

Ключові слова: *свобода, правові цінності, права людини, справедливість, рівність, правова система.*