

Vadym Pidhorodynskiy, PhD in Law
National University "Odesa Law Academy", Ukraine

HONOR, AUTHORITY AND MORALITY AS A UNIFORM OBJECT OF LEGAL PROTECTION IN UKRAINE'S CRIMINAL CODE

The article examines the honor of an individual, the business reputation of a legal entity, the prestige of the government bodies, and morality as objects of criminal law protection. It was substantiated that these objects are of the same type, but are inherent in different participants in public relations (to a natural person, the legal entity, the state, the society). Effectiveness of the protection of these values is interrelated and interdependent, and depends on the positive characteristics of the participants of these relations themselves.

Protection of these values in the Criminal Code of Ukraine is investigated. It was substantiated that the honor and dignity of an individual defended insufficiently in comparison with the business reputation of a legal entity, the authority of the state power and the morality of society. The author concludes that the lack of the necessary criminal protection of the honor and dignity of a natural person negatively affects the criminal protection of the authority of the state and the morality of society.

Keywords: honor, dignity, morality, authority, slander, insult, crime, object of legal protection.

Formulation of the problem. In the theory of criminal law, the object of criminal legal protection is understood as social relations protected by criminal law. Participants in this relationship are physical and legal persons, the state acting by its authorities, small (nationality, nation) and large (society, humanity) collective foundations.

In the theory of criminal law, more attention was paired to the protection of the physical basis of the existence of these participants criminal legally relations (life, national security, public order) and the material basis (property, system of economic relations and taxation, national security) of the existence of these participants.

On 21 November, Ukrainian people celebrate the Day of Dignity and Freedom. However, the question appears of whose dignity or which participants` dignity in criminal law relations? The people of Ukraine of a certain territorial community or legal entities? And as a sign and conviviality of the dignity of a physical person and his honor is protected by criminal law, along with similar non-property rights of other participants in criminal law relations. The question is also interesting, if is it possible to talk about the honor and dignity of other participants, except for legal persons?

We believe that the carriers of honor and dignity are not only physical persons, but also the state in the person of its bodies, society, any legal entities. Dignity and honor in these participants has another form of manifestation. For example, the state has the authority of its bodies, legal entities have business reputation, and society has morals. These values are one-order, but characteristic for various participants of social relations, at different levels of generalization of criminal legal relations. The Ukrainian legislator, in our opinion, unevenly determined the degree (or intensity) of the criminal legal protection of the said non-property goods in the Criminal Code of Ukraine. Unevenness of criminal legal protection of the above benefits leads to insecurity of the honor and dignity of physical persons.

State of the research. Law scholars devoted a lot of attention to their works to the issue of legal and criminal-legal protection of the values mentioned above. For example, the questions of the comparative analysis of criminal-legal protection of honor and dignity are investigated by A. S. Subbotenko. The scientist came to the conclusion that honor and dignity are protected by the provisions of Section III of the Special Part of the Criminal Code of Ukraine, in which these values act as optional objects (articles 149, 151, 116, 123, 161 of the Criminal Code of Ukraine)¹. V.A. Bortnik investigated the system

¹ Субботенко, О.С. (2016). *Охорона честі та гідності особи кримінально-правовими засобами (досвід країни СНД та ЄС)*. Харків: Харків. нац. ун-т внутр. справ, 83.

of crimes against honor and dignity much deeper and is related to these acts, such as: 1) encroachment on personal dignity of citizens (articles 365, 373, 296 of the Criminal Code of Ukraine); 2) encroachment on the professional dignity of citizens (articles 345, 346, 350, 377, 398 of the Criminal Code of Ukraine); 3) encroachment on the national and religious dignity of Ukrainian citizens (Article 161 of the Criminal Code of Ukraine); 4) encroachment on women's honor (Articles 152, 153, 154, 303 of the Criminal Code of Ukraine); 5) encroachment on family honor (Article 167 of the Criminal Code of Ukraine); 6) encroachment on the personal honor (public reputation) of a citizen (articles 383, 384 of the Criminal Code of Ukraine)¹.

However, these scientists did not investigate the criminal-legal protection of honor and dignity in the context of acts that encroach on such values inherent in a legal person, state, society. The purpose of this article is to investigate the correlation and interrelationship of the criminal legal protection of the honor and dignity of a physical person, authority and morality as objects of criminal-legal protection, as well as the correlation of these concepts with each other. It is not the subject of this article to analyze such concepts as "morality", "authority", "business reputation" separately, as well as questions of the grounds for criminal liability for encroachment on these values.

Statement of the main material. The honor of a person can be defined as a positive evaluation, which is given by society to the qualities of this person, and dignity as a positive evaluation of a person's self, self-esteem².

The right of respect for the honor and dignity of a person, according to Art. 201 of the Civil Code of Ukraine is an inalienable right of every physical person. This provision was thoroughly detailed in the entire civil legislation of Ukraine.

Can the society be recognized as a bearer of honor and dignity? Most scholars will point out that this issue is controversial, as it belongs to the sphere of sociology and constitutional law, but the answer to it will help determine the methodological approach for improving the criminal legal means of protection the honor and dignity of physical persons. In our opinion, society is a carrier of non-property rights, like honor and dignity of a physical person, that evidenced by the following arguments. In Art. 296 of the Criminal Code of Ukraine stated that hooliganism is a gross violation of public order based on apparent disrespect to society. The disrespect to the society can be manifested in a flagrant violation of the rules of conduct in public places by one of the members of the society. In this regard, it can be argued that society can be treated with respect or not respect it and the foundations or rules of its existence. We believe that the society has inherent unwritten features that can be defined as the rules of a co-existence, the basis of the functioning of society, the content and forms of existence of which determine the level of development of such a society within a particular civilization or historical formation. These non-property properties of society, in general, are like the "dignity" of a physical person, and other participants in criminal legal relations (physical, legal entities, the state) are obliged to show respect for them, it means, to adhere to them in their behavior. These properties are a kind of "honor" and "dignity" of society, which is called morality.

In the constitutional law the human rights are divided into four groups. The third generation of human rights includes collective rights based on solidarity: the right for development, for peace, independence, self-determination, freedom from colonial oppression, the right for a decent life, for a healthy environment, for the heritage of humanity, and the right for communicate³.

Of course, these "collective rights" can be only actualized through "collective subject" – society and its territorial communities, nations, nationalities.

A similar situation is the recognition of the state as the bearer of non-property rights of "analogous" "honor" and "dignity" of an individual. The following arguments testify to the fact that the state is a carrier of a kind of "honor and dignity". The existence of Section XV, entitled "Crimes against the authority of public authorities, local self-government bodies, citizens' associations and crimes against journalists" in the structure Special part of the Criminal Code of Ukraine, confirms that the state ensures the protection of respect for its bodies and officials.

In part 1 of Art. 167 of the Civil Code of Ukraine states that the state has equal rights with other participants in public relations. According to the provisions Art. 1191 CC of Ukraine, the state, in case

¹ Бортник, В.А. (2004)ю *Кримінально-правова охорона честі та гідності особи*. Київ: Нац. акад. внутр. справ України, 112.

² Підгородинський, В.М. (2009). Поняття честі та гідності особи. *Вісник прокуратури*, 10, 94.

³ Лазур, Я.В. (2011). Щодо класифікації прав і свобод людини. *Форум права*, 1, 565-569.

of compensation for moral or any other damage caused by its officials or bodies to physical persons, has a recourse right to such officials. However, the state itself, in accordance with judicial practice for the protection of honor and dignity, in the case of filing a suit in court to protect its honor and dignity, has no right to demand compensation for the moral damage caused (this right is enjoyed only by officials of state authorities), but has the right to demand only refutation of unreliable information¹.

In confirmation that the state in the person of its bodies has authority, which is a kind of "honor and dignity", it is possible to cite some provisions from the criminal legislation of other states. For example, in chapter II "Crimes against the Crown", section XX "Crimes against the Constitution" of the Criminal Code of Spain, Part 3 of Art. 490, entitled "Slander or insult to the King", provides for a qualified defamation and insult to the King, any of his relatives or other senior officials in the performance of their duties or their functions².

Section 95 § 3 "Criminal acts against foreign countries" of the Criminal Code of Germany provides for responsibility for insulting bodies and representatives of a foreign state. In § 103 of the Criminal Code of Germany provides for responsibility for insulting the head of state or a member of the government who are on an official visit to Germany³.

Perhaps someone will have doubts about the connectedness of such concepts as the honor and dignity of a physical person and the authority of public authorities. However, the causal relationship between these concepts is obvious. It should be noted that the infringement on the authority of state authorities in the modern information society is usually carried out through encroachment on the business reputation, honor and dignity of high-ranking officials with the aim of harming the authority of public authorities, and as a result, to undermine the national security of this state.

For example, the theory of the coup d'état («bloodless revolutions») developed by A. Gramsci is based not on the idea of a riot "bloody and ruthless", but on the idea of fighting for "minds and ideas" by destroying the "cultural core" of society on which any state authority relies. A bloodless revolution, according to A. Gramsci, is not an instantaneous clash of classes, but a permanent, long-term mechanism of changing by small proportions the thoughts and moods of each person by identifying and using the permanent difficulties and problems that exist in each country; a change in the culture of the population (with the help of the media and art), in which the government itself "falls" in your hands.

In turn, this theory was based on the statements and ideas of similar ideas of the Chinese commander Xian Dzi, who wrote 2,500 years ago: «Decompose all the good that exists in the country of your opponent. Involve prominent representatives of your opponent in criminal enterprises. Undermine their prestige and expose it at the right time to the shame of society. Use also the most vile and sad people. Kindle quarrels and clashes among citizens of an enemy country. Interfere with all means to government activity ...»⁴.

So, the ultimate goal of encroachment on the authority of public authorities through encroachment on business reputation, honor and dignity of representatives of public authorities is to create favorable conditions for harming the national security of this state.

In its turn, it is exactly the organs of state power provide with the protection of morality in society. Not in vain to the highest state authorities of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry of Internal Affairs of Ukraine and the central executive bodies were included, they were defined and controlled the policy in the field of protection of public morals, according to Art. 15, 16 of the Law of Ukraine "On the protection of Public Morality".

So, these bodies are obliged to determine the policy in the sphere of protection of public morals, adhere to this policy and control its implementation, that is, they must determine the general rules of public relations for the protection of morality (due to the requirements of the civil, family, administrative, criminal and other branches of law). At the same time, these general rules of governing the regulation of public relations in terms of honor and dignity, business reputation, authority, morality were formed between

¹ *Постанова про судову практику у справах про захист гідності та честі фізичної особи, а також ділової репутації фізичної та юридичної особи 2009* (Пленум Верховного суду України). *Вісник Верховного Суду України*, 3, 7.

² *Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*. <<https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>>.

³ *Уголовный кодекс ФРГ (2001)* (Бундестаг ФРН). Москва: ИКД Зерцало-М, 208.

⁴ Глазьев, О.Н. (2006). *Государственный переворот. Стратегия и технологии*. Москва: ОЛМА-ПРЕСС Образование, 151, 153-154.

different subjects-carriers by: 1) physical persons; 2) legal entities; 3) the state in the person of its bodies; 4) by the society. At the same time, these participants in criminal legal relations are in unequal conditions, since the state determines the means of protection as its non-property rights (authority), and the rights of individuals and legal entities (honor and dignity, business reputation), society (morality).

Previous studies of the notion of honor and dignity show that those who really possess inner qualities and moral qualities, they have just dignity. This pointed problem at the level of large social groups is manifested in the fact that the state has the right to protect the authority of its bodies and to defend and protect respect for society (that is, to protection of the "honor" of the state and society), but this protection will be effective only if such a state and its officials will have "dignity".

It is scarcely that the officials will have the right to defend his honor, if it offends the citizen-visitor, encourages citizens to provide her with undue benefits. The situation with respect to the state and society is the same. It is unlikely that this or that territorial community will respect the official and the decisions taken by her, if the pointed officials completely ignore the rights of this territorial community. If the state violates the rules of conduct that it establishes for itself, will not fulfill its obligations, such behavior will deprive the state of itself of the common qualities that others owe to respect. And from here and demand respect from other subjects of social relations, the state will not have the right, because in this case the so-called "humiliation of authority" of public authorities, business reputation, honor and dignity of top officials will be nothing more than criticism (in its various forms).

Consequently, individuals have the right to respect for their honor and dignity, legal persons have the right to respect their business reputation, the state and its bodies have the right to respect their authority, and society has a moral character that all participants in public relations must adhere.

The effectiveness of the mechanisms of protection (civil law, administrative law, and criminal law), honor and dignity, authority, morality of subject-carrier depends on the extent to which the subject-carrier has a positive characteristic (conditional "dignity"). The effectiveness of mechanisms for the protection of all subject-carrier is interdependent and mutually correlated between the various participants in criminal legal relations (physical, legal person, state, society).

Based on the foregoing, let us compare the intensity of criminal law protection in the Criminal Code of Ukraine of such objects: 1) the honor and dignity of a physical person; 2) business reputation of a legal entity; 3) the dignity of the nation; 4) the authority of state authorities and local self-government bodies; 5) the morality of society.

Considering that the provisions of the Criminal Code of Ukraine protect these objects, however in different meaning, therefore, we structure them depending on whether they act as: 1) the main constituent of the crime; 2) only as qualifying signs of other crimes; 3) only as privileged signs of other crimes.

Morality is protected from criminal encroachments, the responsibility for which is provided for in the following articles of the Criminal Code of Ukraine: Art. 296 "Hooliganism", art. 297 "Abusive grave, other burial place or over the body of the deceased", art. 298 "Illegal conducting of prospecting works on the archaeological heritage site ...", art. 298-1 "Destruction, damage or concealment of documents or unique documents of the National Archival Fund", art. 299 "Cruelty to animals", art. 300 "Import, manufacture or distribution of works promoting the cult of violence and cruelty, racial, national or religious intolerance and discrimination", art. 301 "Import, manufacture, distribution and distribution of pornographic items".

The authority and dignity of public authorities are protected from encroachments, the responsibility for which is provided for by articles of the Criminal Code of Ukraine, such as: Art. 338 "Abuse of the State Symbols", art. 339 "Illegal lifting of the State Flag of Ukraine on the river or the sea vessel", art. 340 "Illegal obstruction of the organization or holding of the meeting ...", art. 343 "Interference in the activities of a law enforcement officer ...", art. 344 "Intervention in the activities of a statesman", art. 345 "Threat or violence against the law enforcement officer", art. 349 "The seizure of a representative of the government or an employee of the law enforcement agency as a hostage", art. 351 "Obstruction of the activities of a people's deputy ...", art. 352 "Deliberate destruction or damage to the property of an official ...", art. 353 "Unauthorized appropriation of power ...", art. 354 "The bribe of an employee of an enterprise". In these crimes, the authority of public authorities plays the role of the main direct object of the crime, and this object does not act as qualifying or privileged signs in other crimes.

The dignity of the nation was protected as the main components of crimes, this art. 161 "Violation of the equality of citizens, depending on their race, nationality, religious beliefs, disability and other grounds", art. 442 "Genocide" of the Criminal Code of Ukraine, and in most other articles, the specified object is provided as qualifying signs of other crimes, such as: cl. 14, part 2, Art. 115 "Intentional

homicide", Part 2 of Art. 121 "Intentional grave bodily harm" , part 2 of Art. 122 "Intentional moderate bodily injury", Part 2 of Art. 126 "Fights and torture", Part 2 of Art. 127 "Torture", part 2 of Art. 129 "The threat of murder" of the Criminal Code of Ukraine.

In the Criminal Code of Ukraine the business reputation of a legal entity is protected from encroachment, responsibility for which is provided in the provisions of Art. 355 "Compulsion to perform or non-fulfillment of civil obligations", Part 1 of Art. 353 "Unauthorized appropriation of power or the title of official" , art. 354 "Bribery of an employee of an enterprise, institution or organization", art. 355 "Compulsion to perform or non-fulfillment of civil obligations", art. 356 "Self-rule" as the main direct object of the crime in the Criminal Code of Ukraine.

Concerning the protection of honor and dignity of a physical person, the situation is completely different. For example, E.L. Streltsov, investigating the composition of crimes, the responsibility for which is provided for in Section III "Crimes against freedom, honor and dignity of the person" of the Special Part of the Criminal Code of Ukraine (Articles 146-151), noted that honor and dignity are not objects of these crimes¹.

Investigations of other provisions of the Criminal Code of Ukraine show that these values are protected exclusively as: 1) privileged signs of other crimes (Article 116 "Intentional murder committed in the state of violent emotional excitement", article 123 "Intentional heavy bodily harm caused in the state strong emotional excitement "of the Criminal Code of Ukraine); 2) qualifying signs (part 2, article 365 "Excess of power or official authority by the employee of the law enforcement agency", part 2, article 387 "Disclosure of the data of operational search activity, preliminary investigation", part 2, article 406 "Violation of the statutory rules relations between servicemen in the absence of subordination relations", Part 2, Article 426-1" Excess of the military official of power or official authority "), and also plays the role of an additional optional object of crime in Part 1 of Art. 120 "Bringing to suicide" of the Criminal Code of Ukraine. At the same time, there is no separate basis for criminal liability for encroachment on the honor and dignity of a physical person in the Criminal Code of Ukraine.

The conclusion. Honor and dignity of a physical person, business reputation of a legal entity, authority of the authorities and morality are similar (one-order) in content to non-property rights of various participants in criminal legal relations.

The effectiveness of civil law, administrative law, criminal law mechanisms to protect the honor and dignity, authority, morality of the subject-carrier depends on the extent to which the subject-carrier has a positive characteristic (conditional "dignity"). The effectiveness of the mechanisms of protection of all subject-carrier is interdependent and mutually correlated between the various participants in criminal legal relations (physical, legal person, state, society).

The criminal legislation of Ukraine provides several grounds for criminal liability for infringement on the business reputation of legal entities, the authority of government bodies, the morality of society, but there is no liability for infringing on the honor and dignity of a physical person. Causing damage to the honor and dignity of physical person's s is a qualifying sign of other crimes, as well as the basis for the allocation of privileged offenses, when the injury of honor and dignity to the perpetrator of the crime preceded the commission of the crime.

Legal and criminally legal protection of honor and dignity of physical persons, business reputation of physical persons and legal entities, authority of authorities, morality are interrelated. In the Criminal Code of Ukraine, there are no grounds for criminal liability for infringing on the honor and dignity of physical persons. Protection of morality and authority of government bodies, business reputation of legal entities cannot be effective without proper protection of the honor and dignity of physical persons.

References:

1. Subbotenko, O.S. (2016). *Ochorona uesti ta hidnosti osoby kryminaeno-pravovymy zasobamy (dosvid krajin SND ta JeS)* [Protection of the honor and dignity of a person by criminal law (experience of CIS countries and the EU)]. Kharkiv: Charkiv. nac. un-t vnutr. sprav, 83. [In Ukrainian].
2. Bortnyk, V.A. (2004). *Kryminaeno-pravova ochorona uesti ta hidnosti osoby* [Criminal and legal protection of person's honor and dignity]. Kyiv: Nac. akad. vnutr. sprav Ukrainy, 112. [In Ukrainian].
3. Pidhorodynskiy, V.M. (2009). *Poniattia chesti ta hidnosti osoby* [The concept of honor and dignity of a person]. *Visnyk prokuratury* [The bulletin of the procecutor's office], no. 10, 94. [In Ukrainian].

¹ Стрельцов, Е.Л. (2012). *Кримінальний кодекс України: науково-практичний коментар*. Харків: Одіссей, 275-287.

4. Lazur, Ja.V. (2011). Chodo klasyfikaciji prav i svobod liudyny [Concerning the classification of human rights and freedoms]. *Forum prava* [The forum of law], no. 1, 565-569. [In Ukrainian].
5. Pro sudovu praktyku u spravach pro zachyst hidnosti ta uesti fizyinoji osoby, a takoñ dilovoji reputaciji fizyinoji ta jurydyinoji osoby [On judicial practice in cases concerning the protection of the dignity and honor of an individual, as well as the business reputation of a natural person and a legal entity]. *Postanova Plenumu Verchovnoho sudu Ukrainy, vid 27.02.2009 № 1, Visnyk Verchovnoho Sudu Ukrainy* [Resolution of the Plenum of the Supreme Court of Ukraine dated February 27, 2009 No. 1. Herald of the Supreme Court of Ukraine]. 2009, 3, [In Ukrainian].
6. *Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal* [Organic Law 10/1995, of November 23, of the Penal Code] <<https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>> (2017, November 25) [In Spanish].
7. Ugolovnyj kodeks FRG (2001) (Bundestag FRN). per. s nem. Sererennikova A.V. [The Criminal Code of the Federal Republic of Germany (2001) (Bundestag)]. *Moskva: IKD Zercalo-M* [Moscow: ICD Szerzalo-M], 208. [In Russian].
8. Glaz'ev, O. N. (2006). *Gosudarstvennyj perevorot. Strategija i tehnologii* [The state revolution. Strategy and technology]. Moscow: OLMA-PRESS Obrazovanie. [In Russian].
9. Dudorov, O.O., Pysmennyj, Je.O. (2013). *Kryminalne pravo (Osoblyva uastyyna): pidruchnyk* [Criminal Law (Special Part): Textbook]. Kyiv: VD Dakor, 597. [In Ukrainian].
10. Strelcov, Je.L. (2012). *Kryminalnyj kodeks Ukrainy: naukovo-praktyunyj komentar* [Criminal Code of Ukraine: scientific and practical commentary]. Kharkiv: Odyssey, 275-287. [In Ukrainian].