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Bioethics in Correlation with the Principle of Human Dignity

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The modern science is offering to expand opportunities open to a person, for example, to improve a person's intellectual abilities, to cure the incurable or to prolong lives by such manipulations that were not available before. Legal solutions to these problems cannot be found without the discourse on bioethics. Bioethics pertains to a number of issues that are of vital importance for society, for example, euthanasia, organ transplants, reproductive medicine, the limits and methods of patient care. All principles of bioethics have been created to protect the human being. In this respect, bioethical requirements correlate with a person's fundamental rights and legally they should be examined within the scope of human dignity. The implementation of scientific findings in the society is strictly limited by fundamental human rights. The constitutional courts, abiding by the bioethical principles, should provide the balance between the person's own responsibility with that of the State regarding respecting the human dignity and retaining humanity also in the age of technologies.

Keywords: bioethics, human dignity, human rights, the principle of personal self-determination.

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Introduction

Humanists, first of all, but later enlightenment philosophers foregrounded the human being as the measure of all values and the point of reference. John Locke (1632–1704) stands among the founders of the modern concept of a person

and humanity (“human being”).¹ He wrote, “men being, by nature, all free, equal and independent.”² Constitutionalism, democracy and a state governed by the rule of law, i.e., a state that we recognise as being compatible with the contemporary world, were formed on the basis of liberal values. However, this radical change in rebuilding the state of feudal class society, where a person had a very limited right to self-determination, was brought about only because this was demanded by the new concept – a human being is reasonable and has the right to self-determination. A human being is a value and vested with inseparable dignity, which, first and foremost, needs to be legally protected from the State’s arbitrariness. With the orientation towards human dignity, the Christian ethics focused³ on the particular human being as an individual in the community of his equals to avoid the dead ends of both excessive individualism and collectivism.⁴

Simultaneously with the consolidation of the concept of humanism, to shape the new society and a state that would conform to it, two fundamental questions gained relevance: “Who is a human being?” and “How a human being may be treated?” In the course of a couple of centuries, the circle of subjects that were recognised as being “human beings”, i.e., persons endowed with human dignity and equal in the fullness of their rights, significantly changed. First of all, at the end of 18th century, the issue of women’s rights gained relevance because in the context of the French Declaration of the Rights of Man and of the Citizen of 1789, “a human being” was only male.⁵ Almost at the same time, discussions about the inadmissibility of slavery and serfdom began due to anti-humanism of these institutions.⁶ The consequences were the prohibition of slavery in the course of 19th century in the colonies of the Great Britain and France, as well as the United States of America,⁷ and the abolition of serfdom in almost all European states where it existed.⁸

By providing an answer to the question: “Who is a human being?” the circle of equals was constantly expanded throughout 19th and 20th centuries, including in it both women and persons of diverse ethnic origins, and gradually the multicultural civic society, so well-known today, formed, with the principle of equality – prohibition of discrimination – as one of its fundamental values.⁹

However, by answering the question that has been raised: “Who is a human being?” with “All human beings are human beings!” we do not gain

¹ *Holland, S.* Bioethics. A philosophical introduction. Cambridge: Polity Press, 2003, p. 15.

² *Locke, J.* Zwei Abhandlungen über die Regierung, Frankfurt am Main: Suhrkamp, 1977, S. 260.

³ The concepts referred to are the fruit of the Christian philosophy, moreover, until the mid-19th century all philosophers, basically, worked within the framework of Christianity.

⁴ *Fogels, B.* Centrā: cilvēka cieņa. Kristīgi atbildīga politiska rīcība. Kristīgā ētika kā palīdzība orientācijai [In the centre: the human dignity. Responsible Christian political action. Christian ethics as an aid to orientation]. Rīga: Konrāda Adenauera fonds, 2007, pp. 17, 18.

⁵ *Bock, G.* Bedeutung und Schicksal der Frauenrechtserklärung. In: *De Gouges, O.* Die Rechte der Frau. München: dtv, 2018, S. 11.

⁶ *Lazdiņš, J.* Baltijas zemnieku privāttiesības (XIX gs.) [Baltic peasants’ private law (19th century)]. Rīga: BAT, 2000, pp. 119, 120.

⁷ *Vorenberg, M.* Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment. Cambridge: Cambridge University Press, 2001, pp. 2–4.

⁸ *Lazdiņš, J.* Baltijas zemnieku privāttiesības (XIX gs.), pp. 120, 121.

⁹ *Levits, E.* 91. panta komentārs [Commentary on Article 91]. In: Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Zin. vad. R. Balodis. Rīga: Latvijas Vēstnesis, 2011, pp. 78, 79.

a comprehensive notion of the nature of a human being and the limits of the State's discretion in adopting decisions that affect a person. The question regarding the scope of the State's duties *vis-à-vis* a human being is equally important. The period spanning 18th to 20th centuries, first and foremost, unravelled the legal limits that restricted a person's rights by changing the penal policy, the nature of the institution of family, introducing the administrative procedure, providing the possibility to a person to turn against the State, etc. However, now, we have to collectively construct new legal limits, *inter alia*, between the discretion and responsibility of a human being and the State, within which society is to live sustainably in the future.

Legally, the very nature of a human being, in all its nuances, is protected by the concept of human dignity. Therefore, this research is dedicated to the concept of human dignity, revealing it through the requirements of bioethics, particularly relevant today. Due to the multi-dimensionality and noteworthy scope of the research issue, it will be limited to establishing the concept and content of bioethics, defining the principles of bioethics and revealing some principles of bioethics in interconnection with the concept of human dignity, as it is revealed in the jurisprudence of the Constitutional Court of the Republic of Latvia.

1. Science and Human Being – Symbiosis or Antagonism?

With the question of who a human being is and the genesis of fundamental rights, in the 19th century the relevance was gained also by the public wish to interfere with the natural order of things in the name of collective interests. Science, released from the restrictions of religion, preventively offered the possibility to free the society from the descendants of such individuals who might jeopardise the future welfare of the rest of the society. Another outcome of scientific development was the offer to improve an individual human being in the interests of the society in general, making him more handsome, healthier, smarter, etc.

The trend of freeing society from a potential threat by restricting a human being's freedom of choice and rights became vividly pronounced with the development of positive science, first of all, natural sciences.¹⁰ Science identified "a potential threat" for the future welfare of society,¹¹ whereas the State, by laws and application thereof, preventively averted these "potential threats". In the 20th century, the attempts to use the most current scientific findings to revitalise society were made in many countries, first of all, by identifying "unfavourable persons" and then restricting their rights, exterminating them or rendering them sterile to prevent their reproduction. Among others, this affected the mentally ill, cancer patients, Jews, Gypsies in Nazi Germany, in the communist USSR – "enemies of the people", exploiters and their

¹⁰ von Stephanitz, D. *Exakte Wissenschaft und Recht*. Berlin: Walter de Gruyter & Co., 1970, S. 197.

¹¹ The teaching by Cesare Lombroso, for example, was very influential: *Lombroso, C. Neue Fortschritte in den Verbrecherstudien*. Gera: Griesbach, 1899; *Lombroso, Ch., Ferrero, G. Zhenshchina prestupnica i prostitutka* [The female criminal and prostitute], 1893, *Mac Donald, A. Criminology, with an Introduction by Cesare Lombroso*. Funk & Wagnalls Company, 1893, etc.

descendants¹², in Sweden – prostitutes and vagrants, etc. The repressions against a certain part of society carried out by the Nazis and Bolsheviks were well-known before, because these states were not concealing this, and any information that was concealed came to light after the collapse of the regimes, whereas the scandal in Sweden in the last decade of the 20th century came as a surprise to the general public. The Swedish government officially admitted that persons belonging to certain social groups had been subjected to forced sterilisation, as part of a campaign organised in the country from 1936 up to even 1976¹³, whereas in Japan the last forced sterilisation occurred in 1993 by applying the Eugenics Law.¹⁴ Similarly, experiments with human beings on the basis of scientific findings of the time that it would be beneficial for the society in general, occurred also in other countries of the world, including the democratic ones.¹⁵ Only the consolidation of a rule-of-law state and fundamental rights put an end to these horrendous social experiments, which disproportionately restricted some individuals' rights to self-determination in one of the most important areas – self-determination over one's body.

Currently, when the implementation of scientific findings in the society is strictly limited by fundamental human rights, instead of narrowing a person's possibilities, science offers to expand these more extensively, for example, to improve a person's intellectual abilities, to cure the incurable or, at least, to prolong their lives by such manipulations that were not available before, *inter alia*, by using the bodies of other human beings to obtain "spare parts"; by offering to an infertile family the possibility to obtain a child of their own who is carried by a surrogate mother, or the rebirth of a particularly loved deceased through cloning, etc. To develop, medicine needs research and experiments. Therefore, in the 1970s, the practice of creating human embryos in a test tube (Latin *in vitro*) was extensively developed to use this method not only for overcoming infertility but also for scientific research and experiments.¹⁶ Society is interested in the outcomes of such experiments, since many of its members want to be clever, young, healthy, and perhaps even immortal. Therefore, a part of society pretended not seeing experiments with animals, human ova, embryos, etc., since these, after all, were not experiments with human beings. Consequently, we arrive at the need of legally defining the point of reference for the existence of a human being, entering the scope of rights protection, as well as considering what kind of treatment of a human being is admissible.

¹² In the Soviet textbooks, crime was explained to lawyers as remnants of capitalism that would disappear with growing awareness in society. "To eradicate violations of law means liquidation of a particularly harmful manifestation in human consciousness and conduct of the remnants of non-socialist ideology, psychology and morals, speeding up our advancing towards communism." In: Padoņņu likumdošanas pamati [The basics of Soviet law]. *Samoščenko, I.* (ed.). Rīga: Liesma, 1974, p. 22.

¹³ Zviedrija lems par sterilizācijas upuriem [Sweden will decide on the victims of sterilization]. Available: <http://www.diena.lv/lat/arhivs/arzemju-zinas/zviedrija-lems-par-sterilizacijas-upuriem> [last viewed 25.05.2020].

¹⁴ *Krūmiņš, M.* Japānas piespiedu sterilizācijas upuri saņems kompensācijas [Compulsory sterilization victims in Japan will receive compensation]. *Neatkarīgā Rīta Avīze*, No. 80 (7970), 2019, p. 11.

¹⁵ *Huonker, T.* Diagnose "Moralisch Defekt" Kastration, Sterilisation und "Rassenhygiene" im Dienst der Schweizer Sozialpolitik und Psychiatrie 1890–1970. Available: <http://www.thata.net/thomashuonkerdiagnosemoralischdefektzuerich2003opt.pdf> [last viewed 25.05.2020].

¹⁶ *Brāzma, G.* Bioētika. Cilvēka dzīvības radīšana un pārtraukšana [Bioethics. Creation and termination of human life]. Jelgava: LLU, 2010, p. 6.

Legal answers to these questions cannot be found without the discourse on values and ethics. Since the second half of the 20th century, to deal with the new ethical problems that were, first of all, encountered by medical practitioners, representatives of various areas of science joined the discussion, each of them providing answers, from his own vantage point, regarding those limits that should be set in the treatment of a human being.¹⁷ Religion contributes significantly to the discourse on human values, first of all, the Christian religion,¹⁸ since the rapid scientific development started in the Christian cultural space. However, at the same time, medical practitioners, nature scientists, lawyers and, among others, researchers of criminal law,¹⁹ human rights,²⁰ and medical law²¹ also joined the discussions, leading to extensive interdisciplinary debate.²²

2. Bioethics: Concept, Approaches, and Principles

In assessing the possible risks of harming, which the development of science could cause to nature, the concept “bioethics” was introduced in 1970 by the American biochemist Van Rensselaer Potter (1911–2001), to denote the “survival science” in the ecological field.²³ However, soon afterwards, André Hellegers (1926–1979) applied the term of bioethics to the science of medicine to create a branch of professional ethics to limit the threats that the science of medicine could cause for the human being himself and his selfhood (for example, genetic interference, eugenics).²⁴ Presently, we can note that bioethics had become one of the most relevant lines of applied ethics, which is closely linked not only to medicine but also, *inter alia*, genetics and evolutionary biology.²⁵ Bioethics pertains to a number of issues that are of vital importance for society, for example, euthanasia, organ transplants, reproductive medicine, the limits and methods of patient care.²⁶

¹⁷ Kuhse, H., Singer, P. What is Bioethics? A Historical Introduction. In: A Companion to Bioethics. Kuhse, H., Singer, P. (eds.). Blackwell Publishing Ltd., 2009, pp. 3, 4.

¹⁸ Burguā, E. Bioētika visiem [Bioethics for everyone]. Rīga: Nepaliec viens, 2010, pp. 29, 30.

¹⁹ Also, in Latvia, these matters have been researched by legal scholars specialising in criminal law, for example, Liholaja, V. Bioētika un krimināltiesības [Bioethics and criminal law]. *Latvijas Universitātes raksti*, Rīga: LU, 2008, Hamkova, D. Cieņas izpratne bioētikā [Understanding of dignity in bioethics]. *Jurista Vārds*, No. 21 (616), 2010, Poļaks, R. Tiesības uz nāvi. Eitanāzijas krimināltiesiskie, medicīniskie un ētiskie aspekti [Right to death. The criminal, medical and ethical aspects of euthanasia]. Rīga: TNA, 2017.

²⁰ Ielīte, K. Nedzīvi dzimuša bērna un viņa vecāku pamattiesību aizsardzība [Protection of the stillborn child and the fundamental rights of its parents]. *Jurista Vārds*, No. 6 (960), 2017, pp. 10, 11, Jansons, J. Par nedzimuša bērna tiesībām [On the rights of the unborn child]. *Jurista Vārds*, No. 30 (729), 2012, pp. 12, 13..

²¹ See, for example, Mazure, L. Pacienta griba un tās civiltiesiskā aizsardzība [Patient's will and its protection in civil rights]. Rēzekne: [b. i.], 2014, Viķis, R. Tiesības un bioētika. Cilvēka audu un orgānu nelikumīga izņemšana [Law and bioethics. Illegal removal of human tissues and organs]. *Jurista Vārds*, No. 25/26 (672/673), 2011, Hall, M. A., Bobinski, M. A., Orentlicher, D. Biotethics and public health law. New York: Aspen Publishers, 2005, Bioethics in a European perspective. *Ten Have, H., Gordijn, B.* (eds.). Kluwer Academic Publishers, p. 201.

²² Düwell, M. Bioethics methods, theories, domains. London, New York: Routledge, 2013, p. IX.

²³ Kuhse, H., Singer, P. What is Bioethics? A Historical Introduction, p. 3.

²⁴ Burguā, E. Bioētika visiem, pp. 29, 30.

²⁵ Brāzma, G. Zinātniskas argumentācijas izmantošana bioētikā: uz “sudzisma” piemēra [The use of scientific reasoning in bioethics: an example of “speciesism”]. In: Zinātnieka ētika: Latvija, Baltija, Eiropa. Tēzes. Rīga: LU, 2012, pp. 122, 123.

²⁶ Düwell, M. Bioethics methods, theories, domains, pp. 199–222.

Several groups of issues can be singled out that extend into bioethics:

1. Philosophers and scientists studying nature ask what is natural and what is unnatural. This question, for example, frames the discussions on stem cell therapy, xenotransplantation or grafting of animal and plant cells into the human body.²⁷ Lawyers could frame it, as follows: What kind of manipulations with the human body do not infringe upon human dignity?
2. Likewise, debates about life, death and killing evolve in the framework of bioethics. In this regard, it is important to clarify what a human life is worth, *inter alia*, what are the State's obligations in promoting the life expectancy of each person and in ensuring quality of life. Moreover, since medicine offers extensive possibilities to keep a person with severe injuries alive, the question of when death occurs has become relevant. One of the answers is that a human being is dead with the establishment of brain death.²⁸ However, this answer does not provide full clarity as to how long a patient in a coma should be cared for. Moreover, society has to decide, whether allowing to die by discontinuing expensive medical care should be regarded as killing,²⁹ as well as on other legally relevant issues.
3. Another range of questions is linked to the protection of a person's identity and the right to self-determination. This is closely related to a person's right to decide about himself also in the course of medical care.³⁰ However, at the same time other issues related to the development of human personality enter the scope of this topic, for example, genetic intervention into foetal development.³¹ Likewise, questions regarding transplantation of other person's organs³² and blood transfusion gain momentum in this regard. For example, the religious conviction of Jehovah's Witnesses strictly rejects the possibility of transfusing another person's blood.³³ Moreover, I would like to examine the question of euthanasia not in the context of death but rather in the context of protecting a person's identity and self-determination since, primarily, it is a question of whether a person has the right to decide when he should die.
4. The commercialisation of the human body is another significant ethical problem that characterises contemporary society.³⁴ For example, it is important to clarify whether the following comply with human dignity: the fact that a live donor is economically forced to sell his organ to gain means of subsistence or that the organs of a dead body are auctioned off, or parents' right to buy "a baby from a test tube", i.e., whether these parents are consumers and the consumer rights apply to them, if the child turns out to be "deficient", etc.

²⁷ Holland, S. *Bioethics. A philosophical introduction*. Cambridge: Polity Press, 2003, p. 91.

²⁸ Kielstein, R. *Transplantation medicine*. In: *Bioethics in a European Perspective*. Ten Have, H., Gordijn, B. (eds.). Dordrecht, Boston, London: Kluwer Academic Publishers, 2001, p. 159.

²⁹ Holland, S. *Bioethics*, p. 91.

³⁰ Polaks, R. *Eitanāzijas ētiskie un krimināltiesiskie aspekti*. Promocijas darbs [Ethical and criminal aspects of euthanasia. Doctoral thesis]. Rīga: Latvijas Universitāte, 2017, pp. 44.

³¹ Holland, S. *Bioethics*, p. 115.

³² Kielstein, R. *Transplantation medicine*, pp. 159, 160.

³³ Hall, M. A., Bobinsky, M. A., Orentlicher, D. *Bioethics and public health law*. New York: Aspen, 2005, pp. 242, 242.

³⁴ Burguā, E. *Bioētika visiem*, pp. 134, 135.

Lisa Bellantoni, the researcher of contemporary ethics, by analysing the trends in the development of bioethics and its influence in the contemporary culture (since bioethics is not solely the matter of science), finds that two different trends of bioethics have evolved:

1. One represents “the cult of life”, i.e., everything that happens naturally is good. The downside of this “back to nature” cult is rejecting scientific achievements accepted and used for generations,³⁵ it is said to jeopardise the security and welfare of a person and society, or even a person’s life and health. Currently, as a manifestation of the “cult of life” parents’ refusal to vaccinate their children could be mentioned, causing various epidemics (diphtheria, measles, rubella, etc.),³⁶ a rather widespread return to home birth, which, in certain circumstances, can jeopardise the new-born’s life and health,³⁷ choosing only homeopathic methods of treatment, etc. L. Bellantoni refers to the example of the debates among specialists of bioethics about the vaccine against the human papillomavirus.³⁸
2. “The cult of law”, in turn, basically deals with the matters of how to legally resolve matters related to bioethics; i.e., by providing incentives for, allowing or restricting further development of particular scientific research, for implementing of scientific achievements, production, etc. To achieve the desired outcomes, stakeholders or some individuals exert pressure on the legislator by using petitions, demonstrations or even “eco-terrorism”. For example, to decrease global warming, the legislator is required to restrict emissions, to prohibit certain types of engines and fuel, etc. Namely, international treaties and laws are employed to restrict economic development in order to safeguard environment by living responsibly.³⁹ Or, to decrease the risk of obesity in children and raise a healthy young generation, the principles of catering in schools, pre-school institutions and children’s homes are reviewed, etc. As a result of this, children at orphanages may be denied the birthday cake since its ingredients do not meet the standard of healthy nutrition. Some of the adherents of “the cult of law” are active in political parties and run for a parliamentary election, for example, the friends of nature in the Green Party, those representing the Christian ethics in the Party of Christian Democrats. Thus, if elected, they influence the legislator’s activity directly rather than indirectly. L. Bellantoni is of the opinion that sometimes, by dictating narrowly examined rules for society and also for the future generations, the possible consequences in the life of society and their impact on the society’s development in the future have not been properly considered.⁴⁰

³⁵ Bellantoni, L. *The Triple Helix: The Soul of Bioethics*. Publisher: Palgrave Macmillan, 2011, pp. 8–29.

³⁶ Masalu uzliesmojuma Eiropā dēļ Latvijas iedzīvotājus aicina vakcinēties [Due to the measles outbreak in Europe, people in Latvia are asked to get vaccinated]. Apollo. 11.11.2018. Available: <https://www.apollo.lv/6450796/eiropa-noverots-masalu-uzliesmojums-latvijas-iedzivotajus-aicina-vakcines> [last viewed 25.05.2020].

³⁷ Reanimācijā nonāk bērni, kam mājdzemdības ir bijušas liktenīgas [Children admitted to intensive care after a fatal home birth]. Egoiste, 01.10.2009. Available: <https://www.tvnet.lv/4926149/reanimacija-nonak-berni-kam-majdzemdibas-ir-bijusas-liktenigas> [last viewed 25.05.2020].

³⁸ Bellantoni, L. *The Triple Helix: The Soul of Bioethics*, p. 179.

³⁹ Thoresen V. W. “1+1=5”. In: *Enabling Responsible Living*. Schrader, U., Fricke, V., Doyle, D. (eds.). Springer Science & Business Media, 2013, p. 10.

⁴⁰ Bellantoni, L. *The Triple Helix: The Soul of Bioethics*, pp. 8–29.

L. Bellantoni writes that none of these trends provides exhaustive answers for the future development of civilisation because they do not offer a solution but force to choose between two extremes, for example, between natural health and functionality of a body, forgetting about the human life as the supreme value.⁴¹

The State may not remain disengaged in these processes since, traditionally, the State protects the values that are most important for the society, as well as moral norms by regulating these within the legal system, thus introducing homogeneity, mandatory nature and predictability in the processes of public importance.⁴² It is the legislator who, as the decision-making body of the nation, in the name of collective will has the obligation to adopt political decisions on all relevant matters. It is the legislator who has been authorised by the nation to perform this duty. The legislator's decisions that are not adopted today, under the influence of rapid scientific development may be overdue tomorrow. New political concepts have entered the range of national politics, alongside economic, social, international policy, among others, "thanatopolitics" or the politics of death,⁴³ which denotes the policy of the state in matters that pertain to the process of dying, abortions, euthanasia, discontinuing futile activities of a physician.⁴⁴

The second new line in the national policy in the context of bioethics is the line of protecting human life and quality of life, pertaining to the policy of healthcare, occupational medicine, policy on demographic control,⁴⁵ environment protection, etc. It is important to note that development of contemporary science and bioethics has led to definition of new principles, based on the concept of human dignity, for example, the principle of the patient's autonomy. In accordance with the principle of the patient's autonomy, each capable patient has the right to be actively involved in taking decisions regarding methods and means that are used in his treatment, and he is ensured not only the right to receive medical care but also the right to refuse it, even if the refusal could cause damage to his health or even life.⁴⁶

Science offers to introduce significant changes into the life of society; therefore, the whole legal system needs to be realigned to regulate the relationships provided by the new scientific possibilities. At the same time, both the legislator and those applying legal norms must respect the principles of bioethics, of which I would like to mention the following as, in my opinion, the most important ones:

1. in deciding on any issue, social values, first and foremost, human dignity must be taken into account,⁴⁷
2. the principle of awareness of moral responsibility, deciding truly and fairly,⁴⁸

⁴¹ *Bellantoni, L.* The Triple Helix: The Soul of Bioethics, pp. 202, 203.

⁴² *Raiser, T.* Grundlagen der Rechtssoziologie. Tübingen: Mohr Siebek, 2007, S. 165.

⁴³ The concept has been developed on the basis of Michel Foucault's and Giorgio Agamben's philosophy. The findings of postmodern philosophy, predominantly, focus on death, fatal outcome and promote apocalyptic feelings in society. *Kivle, I.* Filosofija: teorētiska un praktiska mācība [Philosophy: theoretical and practical lessons]. Rīga: autorizdevums, 2011, p. 231.

⁴⁴ *Sīlis, V.* Bioētika un tanatopolitika – izaicinājums vai sabiedrotais [Bioethics and thanatopolitics – challenge or ally]. In: Zinātnieka ētika: Latvija, Baltija, Eiropa. Tēzes. Rīga: LU, 2012, p. 236.

⁴⁵ *Burguā, E.* Bioētika visiem, p. 32.

⁴⁶ *Polaks, R.* Eitanāzijas ētiskie un krimināltiesiskie aspekti., p. 44.

⁴⁷ *Burguā, E.* Bioētika visiem, 2010, pp. 48, 49.

⁴⁸ *Ibid.*, p. 45.

3. physical life is a value, whereas health is a value that is subordinated to life and follows from it,⁴⁹
4. the principle of subsidiarity, i.e., in examining a benefit to a person, it must be balanced with the interests of society.⁵⁰

Moreover, it should be taken into account that respect for the principles of bioethics in national policy, since the last decade of the 20th century, has been promoted and determined by a number of international acts (conventions, declarations, international treaties), for example, the Council of Europe Convention on Human Rights and Biomedicine of 4 April 1997, UNESCO Universal Declaration on the Human Genome and Human Rights of 11 November 1997, and the International Declaration on Human Genetic Data of 16 October 2003.⁵¹ UNESCO Universal Declaration on Bioethics and Human Rights, adopted on 19 October 2005, contributed significantly to the unification of the principles of bioethics, it addresses “ethical issues related to medicine, life sciences and associated technologies as applied to human beings, taking into account their social, legal and environmental dimensions.”⁵²

Thus, it can be concluded that over the last 50 years three dimensions have evolved in bioethics: the dimensions of applied ethics, national law and international law, which through reciprocal control constitute the totality of requirements, and, first and foremost, restrict uncontrolled scientific experiments with human beings to promote protection of person’s human rights.

3. Principle of Human Dignity in Jurisprudence of the Constitutional Court of the Republic of Latvia

All principles of bioethics have been created to protect the human being. In this respect, bioethical requirements correlate with a person’s fundamental rights⁵³ and legally they should be examined within the scope of human dignity (in the case of Latvia, the Preamble and Article 95 of the *Saversme* – Constitution of the Republic of Latvia⁵⁴), a person’s private autonomy or the right to self-determination (a person’s private life safeguarded by Article 96 of the *Satversme*⁵⁵), the right to healthcare (Article 111⁵⁶), the right to benevolent environment⁵⁷ (Article 115⁵⁸), and other fundamental rights. However, to protect the human being by differentiating between the natural and admissible and

⁴⁹ *Burguā, E.* Bioētika visiem, 2010, pp. 55., 51.

⁵⁰ *Ibid.*, p. 54.

⁵¹ *Andorno, R.* Article 3: Human dignity and human rights. In: The UNESCO Universal Declaration on Bioethics and Human Rights. Background, principles and application. *Ten Have, H. A., Jean, M. S.* (eds.). UNESCO Publishing, 2009, p. 91.

⁵² UNESCO 2005. gada 19. oktobra Vispārējā bioētikas un cilvēktiesību deklarācija [The UNESCO Universal Declaration on Bioethics and Human Rights]. Available: http://www.unesco.lv/files/Bioethics_Human_Rights_Declaration_lv_fb737eec.pdf [last viewed 25.05.2020].

⁵³ *Brownsword, R.* Human dignity, ethical pluralism, and the regulation of modern biotechnologies. In: *New Technologies and Human Rights. Murphy, T.* (ed.). Oxford: Oxford University Press, 2010, pp. 38, 39.

⁵⁴ Latvijas Republikas Satversme [The Constitution of the Republic of Latvia]. Rīga: Latvijas Republikas Saeimas izdevums, 2017, pp. 3, 46.

⁵⁵ *Ibid.*, p. 47.

⁵⁶ *Ibid.*, p. 49.

⁵⁷ *Brownsword, R.* Human dignity, ethical pluralism, and the regulation of modern biotechnologies. pp. 31, 32.

⁵⁸ Latvijas Republikas Satversme, p. 50.

the unnatural and the inadmissible, with respect to treatment or the conditions created for the human being, first of all, the scope of the concept of human dignity needs to be clarified.⁵⁹ It is exactly in this respect, i.e., development of the concept of human dignity and its consolidation in a way binding to society, to my mind, is the most important area of a constitutional court's work. Therefore, the concept of human dignity is the first aspect that I would like to single out in the jurisprudence of the Constitutional Court.

Throughout the period of its activities, the Constitutional Court has revealed the scope of human dignity in its various aspects in a number of rulings, for example, in the judgement of 22 October 2002 in case No. 2002-04-03,⁶⁰ in the judgement of 26 January 2005 in case No. 2004-17-01,⁶¹ in the judgement of 23 April 2009 in case No. 2008-42-01,⁶² in the judgement of 20 December 2010 in case No. 2010-44-01,⁶³ in the judgement of 19 December 2017 in case No. 2017-02-03,⁶⁴ in the judgement of 29 June 2018 in case No. 2017-25-01.⁶⁵ The Constitutional Court underscores: "Human dignity and the value of each individual is the essence of human rights. Therefore, in a democratic state governed by the rule of law, both the legislator, in adopting legal norms, and the party applying the legal norms, in the application thereof, must respect human dignity."⁶⁶ Another important finding in the jurisprudence of the Constitutional Court, which I would like to highlight, is: "The legislator must take "anthropocentric" perspective on the environment, i.e., viewing it as the environment of a human being or such environment that is necessary for human survival and for providing for human needs. The right to live in a benevolent environment primarily protects the person, his or her interests, i.e., the possibility for a person to live in such an environment, where he or she can fully function and develop, and where human dignity is respected."⁶⁷ However, on this occasion, speaking about human dignity, I would like to turn to one of the most recent judgements, i.e., the judgement of 5 March 2019 in case No. 2018-08-03. In the cases I mentioned above, the human dignity was

⁵⁹ Latvijas Republikas Satversme, pp. 83, 84.

⁶⁰ Satversmes tiesas 2002. gada 22. oktobra spriedums lietā Nr. 2002-04-03 secinājumu daļas 3. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2002-04-03 October 22, 2002]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶¹ Satversmes tiesas 2005. gada 26. janvāra sprieduma lietā Nr. 2004-17-01 10. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2004-17-01 January 26, 2005]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶² Satversmes tiesas 2009. gada 23. aprīļa sprieduma lietā Nr. 2008-42-01 8. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2008-42-01 April 23, 2009]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶³ Satversmes tiesas 2010. gada 20. decembra sprieduma lietā Nr. 2010-44-01 8.1. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2010-44-01 December 20, 2010]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶⁴ Satversmes tiesas 2017. gada 19. decembra sprieduma lietā Nr. 2017-02-03 19.1. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2017-02-03 December 19, 2017]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶⁵ Satversmes tiesas 2018. gada 29. jūnija sprieduma lietā Nr. 2017-25-01 20.2. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2017-25-01 June 29, 2018]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶⁶ Satversmes tiesas 2017. gada 19. decembra sprieduma lietā Nr. 2017-02-03 19.1. punkts.

⁶⁷ Ibid.

recognized as applying during the entire lifetime of a person,⁶⁸ whereas since the case No. 2018-08-03 the Constitutional Court had to decide on the dignity of a deceased person and the attitude towards burying the body of the deceased that would be compatible with it.⁶⁹

The norms that were contested in the case were para. 18 of the Binding Regulation of the Jūrmala City Council of 4 September 2014 No. 27 “Regulation on the Operations and Maintenance of the Municipal Cemeteries of Jūrmala City” (hereinafter – the Binding Regulation No. 27): “The leaseholder acquires the right to rent a grave by concluding a rental agreement with the company that maintains the cemeteries.”, and para. 20: “The leaseholder of the grave pays to the company that maintains the cemeteries an annual rental payment, which is approved by the decision of the Jūrmala City Council.” The case was initiated on the basis of the Ombudsman’s application; in the framework of verification procedure, he had concluded that the Jūrmala City Council had established a rental payment for using a grave, thus violating the principle of a state governed by the rule of law, enshrined in Article 1 of the *Satversme*. Allegedly, cemeteries have the status of public property; therefore, their civil turnover is restricted. The Ombudsman entered the case and held that the Jūrmala City Council did not have the right to establish either a fee or rental payment for using a grave because the legislator had not authorised local governments to set such a payment. Therefore, this institution turned to the Jūrmala City Council, requesting it to revoke the contested norms. However, the Council refused to eliminate these deficiencies with the term set. Finally, the Ombudsman submitted an application to the Constitutional Court. At a first glance, the case might seem rather simple – in Latvia, a local government has the right to issue binding external regulatory enactments only strictly within the framework of the authorisation granted by the legislator.⁷⁰ Moreover, local governments’ regulations are on the lowest step of the hierarchy of legal norms⁷¹ and, *inter alia*, the legality thereof is supervised by the Ministry of Environment Protection and Regional Development.⁷² The Constitutional Court, in examining the legality of external regulatory enactments issued by local governments, found that it followed from the principle of legality and separation of powers that the local government had the right to issue binding regulations only in cases stipulated in law, within the framework of law, and they could not be incompatible with the norms of the *Satversme* nor other legal norms

⁶⁸ Satversmes tiesas 2012. gada 2. maija sprieduma lietā Nr. 2011-17-03 12.3. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2011-17-03 May 2, 2012]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁶⁹ Satversmes tiesas 2019. gada 23. aprīļa spriedums lietā Nr. 2018-12-01 [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2018-12-01 April 23, 2019]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁷⁰ Latvijas Republikas Saeimas 1994. gada 19. maija likums “Par pašvaldībām” ar grozījumiem [Law “On Local Governments” of the Saeima of the Republic of Latvia of May 19, 1994, as amended] Available: <https://likumi.lv/doc.php?id=57255> [last viewed 25.05.2020].

⁷¹ For example, this has been established in Section 15 of the Administrative Procedure law, which regulates “Application of External Regulatory Enactments, General Principles of Law and Legal Norms of International Law.” See, Latvijas Republikas Saeimas 25.10.2001. Administratīvā procesa likums ar grozījumiem [Administrative Procedure Law, as amended]. Available: <https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law> [last viewed 25.05.2020].

⁷² Latvijas Republikas Saeimas 19.05.1994. likums “Par pašvaldībām”.

of higher legal force,⁷³ whereas in the case under review, the Court found rather early on that a legislator's authorisation of this kind had been absent.

The Court reviewed the legality of the contested norms in the light of the Article 1 of the Constitution. It provides: "Latvia is an independent democratic republic." Notably, this Article is a part of the unchangeable core of the constitution of the Republic of Latvia.⁷⁴ Article 1 of the *Satversme* defines both a part of the state law identity of our state and also the identity of the state order.⁷⁵ It has been recognised in the doctrine that, due to its high level of abstraction, this Article of the *Satversme* serves as the general clause of the Latvian public law.⁷⁶ In case No. 2018-08-03, the Constitutional Court, on the one hand, had to decide on the compliance with the principle of separation of powers, examining the relationship between the central and the municipal power, i.e., whether the central power had authorised the municipal power to act. However, on the other hand, the Court also had to decide on the matter that is very important in our culture – appropriate burial of a person and maintaining his grave in the future because the contested regulation pertained to the field of burials and maintenance of graves. These issues directly concern the dignity of the particular person – the deceased person – and values that are important for the Latvian society. The Constitutional Court found that the protection of human dignity after death was based also on cultural and religious traditions, which form a part of the Latvian *savoir-vivre*, which is an autonomous legal notion included in the Preamble to the *Satversme*.⁷⁷ The Latvian folk wisdom (in Latvian – *dzīvesziņa*), which is mentioned in the Preamble to the *Satversme*, is a concept that is difficult to translate into a foreign language. Philosopher Roberts Mūks defines it, as follows: "the Latvian folk wisdom is a totality or mental and moral values, which, in the course of the cultural historical development, have been cultivated by the people, determines and shapes the Latvian selfhood (identity), its core and culture as a universal human value of the European and the global culture."⁷⁸ Values of the Latvian folk wisdom are the shared historical memory of the nation, ideals, symbols and archetypes uniting it. Respect towards the deceased person and culture of cemeteries, which, *inter alia*, has been included in the Latvian cultural canon⁷⁹ are among these values and, obviously, influence the scope of bioethical principles within the Latvian

⁷³ Satversmes tiesas 2016. gada 12. februāra sprieduma lietā Nr. 2015-13-03 14.3. punkts [Judgment of the Constitutional Court of the Republic of Latvia in case No. 2015-13-03 February 12, 2016]. Available: <https://www.satv.tiesa.gov.lv/cases> [last viewed 25.05.2020].

⁷⁴ Latvijas Republikas valsts prezidenta izveidotās konstitucionālo tiesību komisijas 2012. gada 17. septembra viedoklis "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" [Opinion of the Commission for Constitutional Rights of the President of the Republic of Latvia of September 17, 2012 on the constitutional foundations of the State of Latvia and the untouchable core of the Constitution]. Available: http://www.president.lv/images/modules/items/PDF/17092012_Viedoklis_2.pdf [last viewed 25.05.2020].

⁷⁵ Grigore-Bāra, E., Kovaļevska, A., Liepa, L., Levits, E., Mīts, M., Rezevska, D., Rozenvalds, J., Sniedzīte, G. I. Latvija ir neatkarīga demokrātiska republika [Latvia is an independent democratic republic]. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Zin. vad. R. Balodis. Rīga: *Latvijas Vēstnesis*, 2014, p. 149.

⁷⁶ *Ibid.*, pp. 151, 152.

⁷⁷ Satversmes tiesas 2019. gada 5. marta sprieduma lietā Nr. 2018-08-03 11. p.

⁷⁸ Mūks, R. Latviskā dzīvesziņa [The Latvian folk wisdom]. Available: <http://latviskadziveszina.lv/> [last viewed 25.05.2020].

⁷⁹ Mellēna, M. Kapu kopšanas tradīcija [Grave care tradition]. In: Latvijas kultūras kanons. Available: <https://kulturaskanons.lv/archive/kapu-kopsanas-tradicija/> [last viewed 25.05.2020].

cultural space. The Constitutional Court, for the first time in its jurisprudence examining the protection of human dignity after death underscored that “the State must protect human dignity, identity and integrity both during the lifetime of a person and after his death.”⁸⁰ The Constitutional Court noted that “[h]uman dignity also comprises a person’s right to decide about his body. It means respecting the wish expressed during a person’s lifetime to be buried in a certain way or donating one’s body to scientific research.”⁸¹ Through the latter finding, the Constitutional Court emphasised the connection between human dignity and a person’s right to self-determination, by adopting certain decisions about one’s body, which must be respected not only during a person’s lifetime but also after death, whereas by referring to a person’s right to donate his body to scientific research, the Constitutional Court became involved in a discussion that falls within the bioethical discourse.

The concept of human dignity and the principle of personal self-determination derived from it, at the time, were established to allow a person to lead a life worthy of a human being. It is a matter of discussion, whether the concept of human dignity, which sets a high standard for the State’s respect and care of the person in this respect, also restricts the freedom of a person to act contrary to preserving his or her own human dignity. Should the society and the State do everything possible to safeguard the dignity and self-determination of a person, who does not respect himself, does not respect society as an environment for full-fledged human life and has done everything possible to ruin his health? This is one of the most essential questions to which the constitutional courts, abiding by the bioethical principles, should provide an answer already today, balancing the person’s own responsibility with that of the State regarding respecting the human dignity and retaining humanity in the age of technologies.

Summary

1. A human being is a value and he is vested with inseparable dignity, which, first and foremost, needs to be legally protected from the State’s arbitrariness. The state should create the protection of a person’s identity and guarantee the individual the right to self-determination. This is closely related to every person’s right to decide about himself.
2. Science, freed from the restrictions established by religion, provided the opportunity to proactively liberate society from the descendants of such people who could jeopardize the future well-being of the rest of society. Another result of scientific development was the proposal to improve a person to make him more beautiful, healthy, smart, etc. That is why the collective desire to intervene in the natural order of things became relevant in the 19th to 20th centuries. Therefore, the research dedicated to the concept of human dignity, revealing it through the requirements of bioethics, is particularly relevant today.
3. The concept “bioethics” was introduced in 1970 by Van Rensselaer Potter, to denote the “survival science” in the ecological field. André Hellegers applied the term “bioethics” to the science of medicine to create a branch of professional ethics to limit the threats that the science of medicine could

⁸⁰ Satversmes tiesas 2019. gada 5. marta sprieduma lietā Nr. 2018-08-03, 11. p.

⁸¹ Ibid.

cause to the human being himself and his selfhood. The concept of bioethics is closely related to the concept of human dignity. In the end of 20th and the beginning of the 21st century, bioethics had become one of the most relevant lines of applied ethics, closely linked not only to medicine but also to genetics and evolutionary biology, and the field of work for national and international legislators.

4. By analysing the trends in the development of bioethics and its influence upon the contemporary culture, we can find that two different trends of bioethics have evolved: “the cult of life”, i.e., everything that happens naturally is good, and “the cult of law”, which basically deals with the matters of how to legally resolve matters related to bioethics.
5. All principles of bioethics have been created to protect the human being. In this respect, bioethical requirements correlate with a person’s fundamental rights and they legally should be examined within the scope of human dignity by constitutional courts. If the legislator does not solve bioethical problems in legal norms, the constitutional court becomes involved in a discussion that falls within the bioethical discourse.
6. Throughout its activity, the Constitutional Court of the Republic of Latvia has made numerous judgments about the extent of human dignity in its various aspects. The Constitutional Court has found that the protection of human dignity is protected not only during individual’s lifetime, but also after death, and this ruling is based on cultural and religious traditions, which form a part of the Latvian *savoir-vivre*.

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