



THE 7<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
**EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES**

## **Human Dignity in International Law: Issues and Challenges**

**Izabela Bratiloveanu<sup>1</sup>**

**Abstract:** We intend to present in this synthesis study the concept of human dignity, reviewing the main legal instruments on the protection of human rights that defines it, concisely analysing the jurisprudence of the European Court of Justice and of the European Court of Human Rights, focusing on the key moments of its jurisprudential definition. Human dignity, through its continuously expending presence in international law and through the controversies related to it, is an exciting and challenging topic of debate for Romanian and foreign literature, being one of the issues and challenges of the new millennium.

**Keywords:** jurisprudence of the European Court of Justice; Charter of Fundamental Rights of the European Union; jurisprudence of the European Court of Human Rights; international law

### **1. The Contribution of the Philosophical Currents to the Evolution of the Concept of Human Dignity**

The term, before appearing in international law, after the year 1945, as a reaction to the dramatic events of the Second World War, was the object of philosophical and theological reflections. Thus, the Greeks and the Romans didn't know other dignities than those which resulted from the social class or from the positions occupied. (Pettiti, 1999, p. 53)

The notion of dignity, of laic origin in Antiquity, would acquire a religious connotation through the Christian theologians. According to Ph. I. André-Vincent "The human dignity is, from an historical point of view, a Christian concept. It is the result of reflections which were originated in the doctrine of Calcedonia." The first major reference to dignity is assigned either to Lactance, or to Gregory of Nyssa (Ranson, 1995, p. 24). In Christianity, the human dignity is founded on the creation of man in the image of God and His redeeming work on man; therefore, according to the religious concept, the individual that is protected is not man himself but the divine power which is expressed in man through the dignity of the individual. Dignity becomes an attribute by excellence of the person, an expression of his/her intrinsic humanity.

Throughout the centuries, Plato, Aristotle, Cicero, St. Augustine, St. Thomas Aquinas, Giovanni Pico della Mirandola, Leibniz, Locke, Schopenhauer, Schiller, Hegel, Stuart Mill, Feuerbach, Comte, Kant, B. F. Skinner, Jürgen Habermas have reflected on this concept, this being only an attempt to review them, without the claim of completeness of the numerous philosophers and theologians who have tried to decipher the mystery of human dignity.

### **2. The Main International Documents which Define the Concept of Human Dignity**

As France Quéré rightfully states: "Before Auschwitz, man presented himself through the sculptural beauty of the body, through his power to work, by his conflicts of honour and interests, by his natural

---

<sup>1</sup> PhD in progress, Faculty of Law and Administrative Sciences, University of Craiova, Craiova, street Horia no 8, block E 2, entrance.2, apartment 2, România, 0729948398, bratiloveanuisabela@yahoo.com.

but conscious limits, by the nobility of the “I think”, by the struggle of the soul, torn between misery and grandeur. Dignity always made him appear above nature and stated his automatic supremacy. After Auschwitz, we know that man is also something that we can trample on until he is entirely disbanded, that we can reduce man to a matter, to a consumable good by volatilizing him or we can reduce him to nothing: that we can deny until refusing him the honour of an individual death, treating him like magma, as a whole, mostly with one shot in order to burn him like pieces of wood” (Quéré, 1991, p.178).

The concept of human dignity appeared in the international law of human rights and in the constitutional right very late; it was not mentioned in the text of the first founding declarations on human rights; the declarations on rights were mostly founded on the notions of liberty and equality, therefore not on the notion of human dignity. The notion appears neither in the Declaration of Independence of the USA nor in the French Declaration of 1789. However, in the foreign literature, there are authors which state that Article 1 of the Declaration of 1789 contains an implicit reference to dignity; therefore the concept would be absent just as a legal norm which would not exclude it for this reason from the category of moral rules on which the text is based (Gimeno-Cabrera, 2004, p.27).

The first explicit mention of the notion in the international legal order was related to the social rights. Therefore, the Declaration of Philadelphia of 17 May 1944, the founding declaration of the International Labour Organization, states that: “All human beings (...) have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”

The first Convention on Slavery, that took place on the 26<sup>th</sup> of September 1926 in Geneva, made no reference to dignity; after the Second World War, the New York Convention of the 2<sup>nd</sup> of December 1949, the Supplementary Convention of the 7<sup>th</sup> of September 1956 and the Convention of the 25<sup>th</sup> of July 1951, all three of them on the issue of slavery, state this notion only in the Preamble.

The U.N. Charter of the 26<sup>th</sup> of June 1945 states in the Preamble the decision of the members of the United Nations to restate their faith in the fundamental human rights, in the dignity and value of the human being.

In 1948, the notion appears in the American Declaration of Human Rights according to which “All humans are born free and equal, in dignity and in rights” and “while rights exalt individual liberty, duties express the dignity of that liberty”.

The Universal Declaration of Human Rights passed on the 10<sup>th</sup> of December 1948 states in the Preamble that: “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and “the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human being and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.” (Năstase et al., 2007, p. 124) In the same text, Article 1 states that all human beings are born free and equal in dignity and rights.

Starting with the Universal Declaration of Human Rights, the number of international instruments which refer to this concept greatly multiplies, dignity becoming the “solid idea of the human rights system”, the expression of an universal, fundamental consensus and the justification of the human rights, “the common basis acceptable to all, the basis so general that can serve as a common denominator for the general aspirations of all the peoples and of all the human beings, a solid base for an universal code of conduct of a modern humanism. “ (Toth, 1976, p. 76 and 79).

For example, at Article 11 of the American Convention on Human Rights (1969) it is stated that: “Everyone has the right to have his honour respected and his dignity recognized. No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks.” The African Charter on Human and

Peoples' Rights states that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples" (Dănișor, 2004, p.6).

We also have to mention the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on the 9<sup>th</sup> of December 1975 (Resolution 3452, where it is stated that: "Considering that... the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world") (Muraru & Vlădoiu, p. 3).

Human dignity was also stated by the international instruments which belong to the humanitarian law; for example, Article 3, common to the four Geneva Conventions, stated for the first time in 1949, at paragraph 1 forbids "outrages upon personal dignity, in particular, humiliating and degrading treatment".

Three of the grounds of the Preambles of the International Convention on the Elimination of All Forms of Racial Discrimination adopted on the 21<sup>st</sup> of December 1965 and of the Convention on the Elimination of All Forms of Discrimination against Women adopted on the 18<sup>th</sup> of December 1979 refer to human dignity. In parallel, the Preamble of the International Convention on the Suppression and Punishment of the Crime of Apartheid of the 30<sup>th</sup> of November 1973 and of the International Convention against Apartheid in Sports of the 10<sup>th</sup> of December 1985 come back to the issue of human dignity.

In terms of bioethics, we mention the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine of the 21<sup>st</sup> of November 1996, which states from the first Article: "the parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine."

The Convention on the Non-Applicability of Statutory Limitations to Crimes Against Humanity of the 26<sup>th</sup> of November 1969 adopted by the General Assembly of the United Nations and which came into force on the 11<sup>th</sup> of November 1970 or the European Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity signed at Strasbourg on the 25<sup>th</sup> of January 1974 remind that the requirement to respect and protect the dignity of the individual would be infringed by the acknowledgment of the applicability of statutory limitations of crimes against humanity (Gimeno-Cabrera, 2004, p. 67).

The International Covenant on the Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights recognize in the Preamble that "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and that "these rights derive from the inherent dignity of the human being". Article 10 of the ICCPR invokes the respect of dignity in a restrictive manner, namely not for all human beings, just for "all persons deprived of their liberty".

The Convention on the Rights of the Child of the 20<sup>th</sup> of November 1989 refers in the Preamble to the inherent dignity of all members of the human family and Article 39 specifically aims the dignity of the child. The concept of human dignity is also present in other international legal instruments like the Standard Minimum Rules for the Treatment of Prisoners adopted within the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Geneva in 1955. The Basic Principles for the Treatment of Prisoners adopted by Resolution no. 45/111 on the 14<sup>th</sup> of December 1990 state that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings", phrases that tend to indicate that prisoners are indeed one of the categories which are exposed to infringements of their dignity (Benchikh, 1999, p. 43).

### 3. Perception on the Concept of Human Dignity in the Jurisprudence of the European Court of Human Rights and of the European Court of Justice

The reference to the concept of human dignity was not resumed when drafting the text of the European Convention on Human Rights but “the examination of the preparatory works proves the fact that the expression in the Preamble «a common heritage of ideals» mainly contains the expression of «respect of human dignity»” (Maurer, 1999, p. 66).

However, we cannot talk an absolute absence of the notion of dignity from the text of the Convention because it was later introduced in the Protocol on the abolition of the death penalty of 13<sup>th</sup> of May 2002, which states in the Preamble: “every person`s right to life is a basic value in a democratic society and the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings.”

In the jurisprudence of the Strasbourg Court, the concept of human dignity was especially used regarding the inhuman and degrading treatment, torture, corporal punishment, police violence, detention conditions, death penalty, the right to have control of your own body, freedom of expression, discriminations.

The first mention of human dignity by the Commission was made in *the case of the East African Asians* where the requests of the United Kingdom citizens of foreign origin, residents in East Africa, were trailed, citizens which, even though they were in the possession of British passports, they were denied entrance in the United Kingdom due to the application of the immigration law. In its report, the Commission estimated, when analysing this case, that the racial discrimination which was the object of the case due to the application of the legislation on immigration, represents a prejudice of their human dignity which, in the special circumstances stated constitutes an inhuman treatment in the sense of Article 3 of ECHR. The Commission considered the infringement of Article 3 of the Convention because the discrimination to which the plaintiffs were subjected reached “a certain level of severity”. Moreover, the Commission underlined the fact that the treatment applied to the plaintiffs by the legislator reduced them to “second hand citizens”.

The first mention of dignity in the jurisprudence of ECHR was made in the *case of Tyrer v. U.K.* of the 25<sup>th</sup> of April 1978. In this case, the plaintiff, a British citizen, resident in the Isle of Man, was convicted at the age of 15 by a local juvenile court at three strokes of the birch in accordance with the legislation in force on the isle for the unlawful assault which led to actual bodily harm (Berger, 1998, p.41 and 43). In the complaint formulated in front of the Commission on the 21<sup>st</sup> September 1972, Antony Tyrer argued that the corporal punishment to which he was sentenced was contrary to Article 3 of the Convention. The judicial corporal punishment was inflicted for certain offences provided by law in the Isle of Man for males between 10 and 21 years old. Examining all the circumstances of the case, the Court assessed that the beat which the applicant was subjected to represents a degrading punishment. In this sense, the Court states the following elements: “The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being; furthermore, it is about institutionalized violence, the nature of which is composed by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender. Although the applicant did not suffer any severe or long-lasting physical effects, his punishment, whereby he was treated as an object in the power of the authorities, constituted an assault on precisely that which it is one of the main purposes of Article 3: a person`s dignity and physical integrity.”

The first exam of the Strasbourg Court regarding dignity was in the *case of Abdulaziz, Cabales and Balkandali v. The United Kingdom* of the 28<sup>th</sup> of May 1985. In this case, the Court concluded that the provisions of Articles 14 and 8 of the Convention were infringed due to sexual discrimination and, for one of the plaintiffs, due to discrimination on the ground of birth. Examining the infringement of Article 3, because the plaintiffs invoked “an affront to human dignity”, the Court considered that “the difference of treatment complained of did not denote any contempt or lack of respect for the

personality of the plaintiffs; it was not designed to, and did not, humiliate or debase; therefore it cannot be regarded as "degrading".

A major challenge is determining the legal nature of human dignity within the European Convention on Human Rights. In a well-documented study, the author B. Maurer concludes that the principle of respecting human dignity is used by the control bodies of the Strasbourg Court as a main interpretation material and that the latter has its formal source in the theory of the general principles of law. Regarding the recognition of the principle of respecting human dignity as a general law principle, the author considers that, since the European judges didn't explicitly insert it in this category, things are in progress, the hypothesis must be confirmed.

Absent from the text of the Convention, used with caution by the Strasbourg judge, the concept of human dignity plays with excellence the role of interpretative concept in the jurisprudence of the Court, helping the widening of the protection domain of rights in a progressive manner, especially on the basis of Article 3 of the Convention and determining the creation of a new law, absent from the text of the Convention, namely the right to detention conditions compatible with the respect for human dignity and also determining the restriction of the protection domain of the rights. For F. Tulkens, the jurisprudence of the Court passes "from the state of ignorance of the general detention conditions to that of recognition of the right of any prisoner to respectful conditions for human dignity." The Pretoria law emergence to the detention conditions in compliance to human dignity is the result of a permanent and long action of the Luxembourg Court, which has passed through successive phases starting with 1962 when the Commission stated in the *case of Isle Kock v. the Federal Republic of Germany* that: "Even if a plaintiff is serving a sentence for the crimes committed against the most basic rights of a person, this circumstance does not prevent him from guaranteeing the rights and liberties defined by the European Court of Human Rights". In a subsequent phase, the Committee of Ministers within the European Council, being inspired by a similar text from 1957 of the Economic and Social Council of the United Nations, adopted in 1973, "Set of Minimum Rules for the Treatment of Prisoners", revised and modernized in 1987 through the "European Prison Rules", updated on the 11<sup>th</sup> of January 2006. Finally, in 2000, in the *case of Kudla v. Poland*, the Court concluded that Article 3 entailed the state to ensure that any prisoner enjoys detention conditions which are compatible to the respect of human dignity, that the manners in which the measure is enforced do not entail that the person in question be subjected to a suffering or to a task of an intensity which exceeds the level of suffering inherent to the detention and that, taking into account the practical requirements of the imprisonment, the health and comfort of the prisoner are properly ensured.

In the community law, the concept of human dignity is used in relation to the free movement of workers, the abolition of discrimination, the promotion of women's rights, the right to sufficient resources in order to lead a life and to social assistance, etc. The reference to this concept was rather marginal, the Luxembourg judge being moderated concerning its use.

The Charter of Fundamental Rights of the European Union, which was proclaimed within the Intergovernmental Conference on the Nyssa Treaty and adopted on the 12<sup>th</sup> of December 2007, became legally binding after the entry into force of the Lisbon Treaty on the 1<sup>st</sup> of December 2009 which states in Article 6(1) that "The Union recognises the rights, liberties and principles provided in the Charter of Fundamental Rights of the European Union of the 7<sup>th</sup> of December 2000" and that it has the same legal value as the Treaty has.

In the Preamble, this document provides that human dignity is, along freedom, equality and solidarity, one of the "indivisible and universal values" on which the E.U. is founded and contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the member states as well as the national identity and the organization of their public authorities at national, regional and local levels and it places the individual at the heart of its activity.

The concept is restated in Title I "Dignity", firstly in an autonomous manner in Article 1 according to which human dignity is inviolable, it must be respected and protected, then in Articles 2-5 where it is

connected to the right to life, to the right to the integrity of the person, to the prohibition of torture and inhuman or degrading treatment and to the prohibition of slavery and forced labour. In the Explanations regarding the Charter of Fundamental Rights of the European Union it is shown that dignity is a fundamental right but also the basis of the fundamental rights; therefore, none of the rights stated in the Charter can be used in order to prejudice human dignity, which is part of the core of the rights stated in this document.

Relating to the respect of the provisions of Title I of the Charter, at the E.U. level, the Commission, which took a particular interest in the impact of the security scanners in the airports on human dignity and on other fundamental rights, proposed new standards on the interception of sailors at sea regarding the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and it also proposed new standards on human trafficking for labour or sexual exploitation in order to ensure a more efficient prosecution by the national authorities of human traffickers at a trans frontier level and it adopted a report on the application in the member states of the UE standards on the issuance of residence permits to the citizens of third countries which are the victims of trafficking (The 2010 Report on the applicability of the Charter of Fundamental Rights of the European Union).

The emergence of the Charter on Fundamental Rights of the European Union in 2000 and subsequently the acquirement of the legally binding value marked a revival from a jurisprudence point of view regarding the use and concept of human dignity in the jurisprudence of the Luxembourg Court, which culminated with its fundamental right status, part of the set of general principles which it projects in the community legal framework in the case of the Kingdom of the Netherlands v. the European Parliament and the Council of the European Union of 2001, where the annulment of Directive 98/44/EC on the Legal Protection of Biotechnological Inventions of the 6<sup>th</sup> of July 1998 was requested and also in the case of Omega Spielhallen-und Automatenaufstellungs-GmbH of 2004 (The case of the Kingdom of the Netherlands v. the European Parliament and the Council of the European Union, C. 377/98, &70, judgement of 9 october 2001, The Collection of Case Law of the European Court of Justice, page I-07079 and The case of Omega Spielhallen- und AutomatenaufstellungsGmbH, C 36/02, The Collection of Case Law of the European Court of Justice, page I-09609).

The European Court of Justice makes, for the first time, in the resolution issued in the *case of Netherlands v. the European Parliament and Council* a reference to dignity, not as a principle or as a value but explicitly as a fundamental right, part of the assembly of general principles which it protects within the community legal framework, stating that: "It is for the Court of Justice in its reviews of the compatibility of acts of the institutions with the general principles of Community law, to ensure that the fundamental right to human dignity and integrity is respected" (Case of Netherlands v. the European Parliament and Council, Case C-3 77/78, &70, C.J.C.E., resolution of the 9<sup>th</sup> of October 2001).

#### 4. Prospectus Outlook

Taking into account those mentioned above, we can only agree with the expressed and well-grounded opinion of Judge L. E. Pettiti who states that, taking into account the term in international law, it is predominantly a jurisprudential creation, human dignity developing in a few years from a philosophical reference to a compliance criteria of the protection of human right texts (Pettiti, 1999, p.53). It is worthy to note that its presence in the legal texts is today in a permanent expansion. Its polysemantic fundamental nature, the difficulty in defining it and limiting its protection domain, the controversies regarding its legal status, its presence in the jurisprudence of the European Court of Human Rights and of the European Court of Justice, the prominent status given by the Charter of Fundamental Rights of the European Union, its role in the conventional space as an interpretative concept, make human dignity a captivating and difficult topic of debate for Romanian and foreign literature, being one of the issues and challenges of the new millennium.

Taking into account the previously outlined practice solutions of the European Court of Justice and of the European Court of Human Rights regarding the concept of human dignity, in the perspective of EU accession to the ECHR which is an obligation under Article 6 of the Treaty on the European Union, it remains to be seen what the evolution of the jurisprudence of the European and national courts will be in this matter.

## 5. Acknowledgements

This work was financed from the contract POSDRU/CPP107/DMI1.5/S/78421, strategic project ID78421 (2010), funded by the European Social Fund - "Invest in people", the sectoral Operational Programme human resources development 2007-2013 (Această lucrare a fost finanțată din contractul POSDRU/CPP107/DMI1.5/S/78421, proiect strategic ID78421 (2010), cofinanțat din Fondul Social European – Investește în oameni, prin programul Operațional Sectorial Dezvoltarea Resurselor Umane 2007-2013)

## 6. References

- Benchikh, M. (1999). La dignité de la personne humaine en droit international/The dignity of the human person in international law, In Th. Revet, M.L. Pavia, *La dignité de la personne humaine/The dignity of the human person*, Economica, 1999.
- Berger, V. (1998). *Jurisprudența Curții Europene a Drepturilor Omului/ Jurisprudence of the European Court of human rights. I.R.D.O.*, pp. 41-43.
- Dănișor, D.C. (2004). Demnitatea omului: valoarea supremă a statului român/Human dignity: the supreme value of the romanian state. *R.S.J.*, 29/2004.
- Gimeno-Cabrera, V. (2004). "Le traitement jurisprudentiel du principe de dignité de la personne humaine dans la jurisprudence du Conseil constitutionnel français et du Tribunal constitutionnel espagnol"/Treatment jurisprudential from the principle of dignity of the human person in the jurisprudence of the Constitutional Council French and the Spanish Constitutional Court. *L.G.D.J.*
- Quéré, F. (1991). "Frères humains"/Fellow human beings, "*Le défi bioéthique*"/*The bioethics challenge*, Autrement, Mars, p. 178.
- Maurer, B. (1999). *Le principe du respect de la dignité humaine et la Convention européenne des droits de l'homme/The principle of respect for the human dignity and the European Convention on human rights*, La documentation française, 1999.
- Muraru, I., Vlădoiu M.N. (2007). "Protecția demnității omului ca valoare constituțională"/ Protection of human dignity as a constitutional value, *R.R.D.P.*, 3/2007.
- Năstase, A., Aurescu B. & Gâlea B. (2007). *Drept internațional contemporan. Texte esențiale/Contemporary international law. Essential texts*.
- Pettiti, L.E. (1999). *La dignité de la personne humaine dans le droit européen/The dignity of the human person in European law*, in Th. Revet, M.L. Pavia, "*La dignité de la personne humaine*"/*The dignity of the human person*, Economica.
- Ranson, P. *Humanisme ou théandrisme*, in P. Magnard (1995), *La dignité de l'homme/The dignity of the human*, Honore Champion, Paris
- Toth J. (1976). *Les droits de l'homme et la theorie du droit/Human rights and the theory of law*, René Cossin amicorum discipulorumque liber, IV, pedone.
- \*\*\*The case of the Kingdom of the Netherlands v. the European Parliament and the Council of the European Union, C 377/98, &70, judgement of 9 October, 2001, The Collection of Case Law of the European Court of Justice, page I-07079.
- \*\*\*The case of Omega Spielhallen-und Automatenaufstellungs-GmbH, C 36/02, The Collection of Case Law of the European Court of Justice, page I-09609.
- \*\*\*The 2010 Report on the applicability of the Charter of Fundamental Rights of the European Union.