

THE RIGHT TO DIGNITY - BETWEEN ASPIRATION AND LEGISLATION ¹

Prof, PhD. Verginia VEDINAȘ; Dr. Ioan Laurențiu VEDINAȘ

Motto: We can have everything, but without dignity,
we have nothing.

Summary. The study aims to analyse one of the essential rights of the human being, the right to dignity, with particular implications for the evolution of communities, societies and humanity as a whole. Dignity is also an ethical and legal value, which runs like a guiding thread through the evolution of individuals, whether viewed in isolation or in a larger or smaller group. Dignity is the cornerstone of the architecture of fundamental rights and freedoms, a conclusion drawn from its inclusion in the Charter of Fundamental Rights of the European Union, in the sequence of its component parts, as its first title. Article 1(3) of the revised and republished Romanian Constitution regulates the values declared supreme in the Romanian State and guaranteed in the spirit of the democratic traditions of the Romanian people and the ideals of the December 1989 Revolution. The first of these values is human dignity. Then follow, in succession, the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism. Hence the conclusion that, in the view of the Romanian constitutional legislator, human dignity is also the pedestal of the values which are the essential elements of the Romanian state's identity. We say this because we are referring to the first article of the Fundamental Law, whose name is “the Romanian state.”

Keywords: dignity, right, supreme and guaranteed value, national law, European Union law.

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I. Prolegomena

We chose this problem for research, taking into account the theme of the Conference for which I prepared it, which refers to the acquisition, through science, of the health of a society. In our opinion, the health of a society does not mean only physical, biological health, life expectancy or other similar coefficients. The health of a society means, **in equal measure, its moral health.**

Mahatma Gandhi² said, in an imaginary dialogue with those alongside whom he fought his battles for the liberation of mother India, *that they cannot take away our dignity, if we do not give it to them.*

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Dignity is an attribute of attitude, of how you relate to yourself. And the attitude, as Winston Churchill said³, is that little element that makes a great difference.

Directly referring to this important human quality, we have in mind an example from a modern Romanian film, of a peasant from Alba, when a senator, in the middle of an election campaign, spends the night in his house together with the driver. Their car had broken down.

Drinking together a few good glasses of palinka, the dignitary promises him that if he wins the elections again, he will buy him a tractor. The peasant, who normally should have been, as they say in the plain language, *knocked off his feet* (or at least so the representative of the Senate probably expected) remained unmoved in facial expression, even indignant:

- But why buy me a tractor?

- Well, didn't you say, sir, that this is your greatest desire?

- Okay, if you so want, then you can buy me one. I shall accept it.

In a few words, dignity, in the context evoked above, is the ability not to bend for material benefits in front of people you do not appreciate or you might even despise.

The highly flexible spine is useful perhaps in yoga and other sports, but never in competition with greed.

Greedy, miserly people, with great difficulty, can manage to keep their dignity, a quality that you can only lose in front of your own person and unfortunately which you can only lose once.

Dignity is about your own spiritual privacy. You don't have to flaunt it in front of people, there's no need. No one can evaluate this quality of yours, because no one knows your inner history completely and, automatically, the starts that determine and impel you to access certain actions or, on the contrary, to the lack of action in some situations.

The important thing is that the supreme judge, conscience, allows you to rest your head quietly the pillow the last time you so do.

This is an intimately personal and eminently moral understanding of dignity.

But dignity, as a moral value, was **legalized**, acquiring a complex, **ethical-legal nature** and transformed into the **right to dignity**. But dignity is not just a right. It is equally an individual and collective landmark. It is assumed by man, collectives, states and supranational structures.

² Mahatma Ganhi, (1869-1848), real name Mohandas Karamchand Gandhi, was the creator of independent India and the method of peaceful/nonviolent revolt called Satyagraha. The name Gandhi was given to him by the poet Rabindranath Tagore and means, in Sanskrit, *the great soul*.

³ Winston Churchill, November 30, 1874-January 24, 1965 was a great English politician, former Prime Minister of the United Kingdom of Great Britain and Northern Ireland, during the period 1940-1945; I 1951-1955.

All these poses and hypotheses are our object of introspection, which we want to lead us to the conclusion assumed by us and, we hope, by those who will lean on these lines: **we can have everything, but without dignity, it is as if we had nothing.**

II. Understandings of the concept

1. Dignity as a personal value

The etymology of the word can be found in the Latin *dignitas, dignitatis*, which means *worthy*. According to Wikipedia,⁴ this notion is described as an abstract term, indicating aspects related to the quality of a person's reactions and behavior, moral authority, prestige. In our opinion, dignity is a complex word, difficult to define. It falls under the adapted meaning of the Latin adage *omnis definitio in iure civili periculosa est*⁵. The expression *adapted meaning* was used, because the expression evokes the difficulty of giving a definition, for it is unlikely that arguments will be found to contradict or combat it, but as far as dignity is concerned, it is not about *combating*, but about *completion*, about the multitude of meanings it can receive.

Dignity is part of the category of those concepts *that can be described rather than defined*, such as democracy, rule of law, administration, with which, moreover, we will find that they are in a link of interdependence.

In our opinion, dignity, as an ethical-legal value, has several meanings:

a) Dignity means a person's ability to have values of good, beauty, balance and personal progress, reflected in the relationships with himself and those around him.

b) Dignity is respect for oneself and others.

c) Dignity imposes the need for perfection of the inner and outer being.

d) Dignity implies the power to value yourself and those around you.

e) Dignity means the drive to assume duties and the strength to fulfill them.

Trying to summarise all these components into a definition, **dignity signifies that human quality that allows the individual to have the consciousness of his values and identity, the representation that they are in harmony with the need for progress of the individual being and of the collective and the ability to act to express them, in life and society, contributing to the state of balance, personal and general good and beauty.**

⁴ <https://ro.m.wikipedia.org/wiki>

⁵ The Latin expression belonging to the juriconsult Lucius Iavolenus Priscus, which, in translation, means that *definitions in civil law are dangerous, because there are rare cases when they cannot be fought.*

2. Dignity as a public value

The human being is detached from the other forms of life on earth through certain functions and values identified and analyzed by anthropologists, philosophers, sociologists or other categories of researchers.

*“The supremacy of humans lies in their meditative nature, in the fact that they think—they are a thinking reed⁶ (...) they have the capacity to know, to anticipate and to be happy, **they are aware of their own value**”.*⁷

Among these, two stand out, in our opinion: **labour as a form of fulfillment and dignity, as a goal and experience.**

The human being is thus highlighted by **the ability to live sentimentally with dignity and to fight for its protection and promotion.**

The world, social, political and legal, at the same time, was built starting from certain statements assumed under the title of **declarations. Thus, we have declarations of human rights⁸ or declarations of independence.**

Among these, one of the most touching for the topic we are addressing remains **the Declaration of Independence of the United States of America.**⁹

The fifty-six signatories of the Declaration, after showing the reasons why they saw fit to draw it up, concluded it with the following words, emblematic of the goals that guided them: *„And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and **our sacred Honor**”.*

Honor is an element of dignity, without overlapping with it.

In the Declaration of Philadelphia¹⁰ recognized to represent the current **charter of the International Labor Organization (ILO), four fundamental principles for human dignity** are enshrined.

1.The first of them is that **labor is not a commodity, cannot be bought and sold.**

2.According to the second principle, **“freedom of expression and of association are essential to sustained progress”.**

3.The third principle is that **poverty anywhere constitutes a danger to prosperity everywhere.**

4.A final principle is that **the war against deprivation must be waged with implacable vigor.**

⁶ The characterization belongs to Blaise Pascal, 1623-1662, French mathematician, philosopher and writer.

⁷ Vasile Stănescu, *Elogiul iubirii*, Univresul Juridic Publishing House, Bucharest, 2016, p. 28.

⁸ Example, Declaration of the Rights of Man and Citizen, adopted on August 26, 1789 by which the foundations of modern democracy were laid in France.

⁹ The Declaration was ratified by the Continental Congress on July 4, 1776, and is the document by which the thirteen former colonies of Great Britain in North America proclaimed their independence from the United Kingdom. See ro.m.wikipedia.ro, accessed September 7, 2023.

¹⁰ Enacted May 10, 1944.

This means that **induced poverty should not be tolerated**, the only form of poverty that can be accepted is that assumed by individuals who have chosen to live by their own laws, outside of society, serving different ideals and beliefs.

III. Dignity in the European legal construction

According to Article 2 of the Treaty of the European Union,¹¹ *“The Union is founded on **the values of respect for human dignity**, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”*.

We find that the first of the values stated by Article 2 of this fundamental document, on which the European construction is based, is **human dignity**.

Another important document for the topic we are addressing is the Charter of Fundamental Rights of the European Union¹², which, in the second paragraph of its **preamble**, bases its adoption on the thesis that *“Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, **universal values of human dignity**, freedom, equality and solidarity (...)”*.

The preamble, in the legal system of some states, as well as in international or regional documents, constitutes the introductory part of a normative act, the counterpart of the **explanatory note** or the **statement of reasons** in the national legal systems. Its content contains the factual and legal elements that led a body with normative powers at the national or supranational level to adopt a certain act. It represents, in essence, the *motivation of the act*, through which both the elements of legality and those of opportunity are founded. For supranational bodies, the elements of **opportunity** are predominant; which reveals the concrete conditions and needs to which it responds, while; **for the national legal systems, the elements of legality**, the legal bases according to which it is adopted, **in the case of collegial or multi-person bodies**, or issued, in the case of **single-person ones, have a priority character**.

In accordance with what was proclaimed in its preamble, the first title of the Charter is devoted, as it follows from its name, to **dignity**.

¹¹ The Treaty on the European Union (consolidated version), published in the Official Journal of the European Union C 326/15 of 26 10 2012.

¹² The Charter of Fundamental Rights of the European Union, approved by the Nice Treaty of December 7, 2000; amended and proclaimed for the second time in Strasbourg on 11 December 2007 and published in OJEU series C 303 of 14 December 2007. In 2009, with the entry into force of the Treaty of Lisbon, it was given the same binding legal force as the treaties. The Charter was published, together with the consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union in the Official Journal, series C, no. 202 of June 7, 2016

Two aspects highlight, in our opinion, the importance given to dignity in the conception of the existence of the European Union:

- the fact that the name of the title itself is the **dignity**;
- the fact that in the **sequence of the Charter's component parts, its first title is dedicated to human dignity.**

These elements do and say more than any declaration or proclamation of the importance of dignity.

Analyzing the content of this first title, we find that it includes five fundamental rights.

The first of them is the **right to dignity**, whereby **human dignity is declared inviolable**, which requires that it be **respected and protected**.

There are **four elements** – rights and prohibitions – that circumscribe human dignity. The first of them is **the right to life**,¹³ which, on the one hand, is recognized by any person, and on the other hand, attracts the prohibition that a person/human being can be sentenced to death or executed.

Chapter II on fundamental rights and freedoms from title II of the Romanian Constitution also begins¹⁴ with this right, through Article 22 which regulates **the right to life and to physical and mental integrity**. We find that the mentioned text, on the one hand, **guarantees the right to life**,¹⁵ and on the other hand it establishes the **prohibition of the death penalty**.¹⁶

The second component element of dignity is **the person's right to integrity**,¹⁷ which includes physical and mental integrity and which, as we have previously noted, in the Romanian Constitution is regulated together with the right to life. We find that by the European Charter it is enshrined as a distinct right, which attracts the respect, in the field of medicine and biology, of the free consent of the person and the prohibition to practice eugenics,¹⁸ cloning¹⁹ or the use of the human body, in whole or in part, as a source of profit.

¹³ Regulated by Article 1 of the Charter and title.

¹⁴ The Constitution of Romania was published in the Official Gazette of Romania no. 233 of November 21, 1991. It was revised by Law no. 429 of 2003, published in the Official Gazette of Romania no. 758 of October 29, 2003 and republished in the Official Gazette of Romania no. 767 of October 31, 2003.

¹⁵ Article 22 (1) The right to life, as well as the right to physical and mental integrity of the person are guaranteed.

¹⁶ Article 22 (3) The death penalty is prohibited.

¹⁷ Regulated by Article 2 of the Charter.

¹⁸ Eugenics is a theory and practice that promotes the improvement of human genetics through various means of intervention.

¹⁹ Cloning means the process of creating an identical copy. The first successful cloning of a mammal is Dolly, by Ian Wilmut, Keith Campbell and their colleagues at the Rosin Institute near Edinburgh, Scotland. In the United Kingdom of Great Britain and Northern Ireland, in January 2001 the House of Lords authorized human embryo cloning for therapeutic purposes.

The third component of human dignity is represented by the **prohibition of torture and inhuman or degrading treatment or punishment**,²⁰ which, in the Romanian Constitution, has its counterpart in Article 22 (2), as a component of the right to life and to physical and mental integrity, the European and Romanian texts being almost identical.

A final component of human dignity, reflected in Article 5 of the Charter, the last of Title I, represents the **prohibition of slavery and forced labor**, to which is associated, as a component, the prohibition of trafficking in human beings.

The Romanian Constitution regulates this prohibition in Article 42, and the Labor Code²¹ defines forced labor as *any labor or service imposed on a person under threat or for which the person has not freely consented*.

Both the Constitution,²² as well as the Labor Code²³ delimit the situations that do not constitute forced labor. The understanding of the provisions regarding the prohibition of forced labor must be related to the regime of the right to work, which includes, on the one hand, **the freedom of work**, which entails the fact that *the right to work cannot be restricted, but also the prohibition of forcing the person to work, without their consent, i.e. the prohibition of forced labor*.²⁴

IV. Dignity, the ultimate and guaranteed value

Such a vision of dignity, contained in the European Charter which, with the entry into force of the Treaty of Lisbon on December 1, 2009²⁵ it was given binding force by introducing it into European primary law²⁶, it also reverberated in the Romanian Constitution, revised and republished. It is reflected in the very

²⁰ Regulated by Article 4 of the Charter.

²¹ The Labor Code was approved by Law no. 53/2003, republished in the Official Gazette of Romania no. 345/18 May 2011.

²² According to Article 42(2), „*the following are not considered forced labor: a) the activities for the fulfillment of military duties, as well as those carried out, according to the law, instead of them, for reasons of religion or conscience; b) the work of a convicted person, performed under normal conditions, during the period of detention or conditional freedom; c) labor imposed in the situation created by calamities or other danger, as well as those that are part of the normal civil obligations established by law.*”

²³ According to Article 4 (3) of the Labor Code, it does not constitute forced labor, work or activity imposed by public authorities: a) under the compulsory service law; for the fulfillment of civic obligations established by law; on the basis of a court decision of conviction, which has remained final, under the terms of the law; d) in case of force majeure (...).

²⁴ A. Popescu, L. Dima în I. Muraru, E.-S. Tănăsescu, *Constituția României. Comentariu pe articole*, ed. 3, C.H. Beck Publishing House, Bucharest, 2022, p. 350.

²⁵ Romania ratified the Lisbon Treaty through Law no. 13/2008, published in the Official Gazette of Romania no. 107/12 02 2002008.

²⁶ Dan Vătăman, *Dreptul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 210, p. 59.

first article entitled *the Romanian state*, in paragraph (3) thereof, the content of which has undergone some changes through the Revision Law no. 429/2003.²⁷ However, the following aspects are important:

a) that the changes made did not affect the position of **human dignity**, placed as the **first value in the constellation of values that the text enumerates** and which are declared **supreme and guaranteed**;

b) that the recognition of the supreme character of all values, starting with **human dignity**, is carried out in the *spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989*.

The role of **supreme values** must be understood from a double perspective: on the one hand, that they *determine the content and goals of the state*, and on the other hand, they constitute a *point of reference both for the regulations regarding fundamental rights and freedoms, as well as for those regarding public authorities*.²⁸

V. Human dignity in the jurisprudence of the Constitutional Court

The constitutional court referred, in some of its decisions, to human dignity. By Decision no. 841/2007²⁹, the Court ruled that **human dignity** is an inalienable attribute of the human being and an intrinsic value of the human being.

Through another decision, the Constitutional Court expanded the understanding of the notion of dignity. We consider Decision no. 74/2002³⁰, by which it ruled on the provisions of Article 2 of Law no. 61/1991 for the sanctioning of acts of violation of some rules of social coexistence, public order and peace,³¹ considered by the author of the exception that “*honor and dignity are traits specific to the natural person and not to public institutions, and the inclusion of acts related to harming the dignity and honor of public institutions in the scope of contraventions is in contradiction with the provisions of the Constitution*”.³²

²⁷ The current content of the text of Article 1 (3) is as follows: “*Romania is a state of law, democratic and social, in which human dignity, the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and are guaranteed.*”

²⁸ I. Muraru, E.-S. Tănăsescu în I. Muraru, E.-S. Tănăsescu, *Constituţia României. Comentariu pe articole, op. cit.*, ed. 3, p. 16.

²⁹ Published in the Official Gazette of Romania no. 723 of 25 October 2007.

³⁰ Published in the Official Gazette of Romania no. 283/26 April 2002.

³¹ Republished in the Official Gazette of Romania no. 387/19 August 2000.

³² Article 1 point 1 of Law no. 61/1991 qualifies as a contravention “*committing obscene acts, acts or gestures in public, uttering insults, offensive or vulgar expressions, threats of acts of violence against persons or their property of a nature to disturb public order and tranquility or to provoke the indignation of citizens or to harm their dignity and honor or that of public institutions*”.

The Constitutional Court rejected the exception, stating that *„Just as the feeling of honor or dignity is characteristic of a natural person, in the same way one can talk about the fame and good reputation of a public institution or authority, attributes that the law defends by penalizing the acts referred to in Article 2 point 1 of Law no. 61/1991, republished”*.

We further refer to Decision no. 1/2012³³ through which the Constitutional Court referred to **human dignity** and which concerned the amendments made to GEO no. 55/2001 regarding the stray dog management program,³⁴ in which we find an interesting correlation between human dignity and the responsibility of caring for animals. Thus, the Court ruled that *“by using an inadequate legislative technique, the legislator ultimately harmed human dignity, the supreme value provided by Article 1 (3) of the Constitution. Human dignity, from a constitutional point of view, involves two inherent dimensions, namely the relationships between people, which refers to the right and obligation of people to be respected, and correlatively, to respect the fundamental rights and freedoms of their peers (see, in this regard, and Decision No. 62/2007³⁵...) as well as **one's relationship with the environment, including the animal world**, which implies, with regard to animals, one's moral responsibility to care for these beings in a way that illustrates the level of civilization achieved”*.

Decision No. 1576/2011 is also of interest to our research,³⁶ whereby the Constitutional Court ruled that *“human dignity, as enshrined in the Constitution, is not and should not be interpreted as establishing a preferential treatment for certain categories of people, regardless of their contributions, qualities or contribution to society. Therefore, dignity is an intrinsic value of the human being, having the same valences for any of the individuals”*.

VI. Conclusion

We wanted our approach to represent a legally reasoned praise of **dignity**, an immanent value of the human being, as it was proclaimed by the Constitutional Court. The meaning of which was extended by the constitutional court to **legal entities**, finding a counterpart in the **fame and good reputation of a public institution or authority**. And, very importantly, **the content of dignity has been completed** in the sense that **it concerns not only the relationship of the individual with his fellows, but also with the animal world, an aspect that reveals the level of civilization of both the individual and the societies.**

Dignity is the cornerstone of human values and humanity.

³³ Published in the Official Gazette of Romania no.53/23 January 2012.

³⁴ Published in the Official Gazette of Romania no. 311 of 10 May 2002.

³⁵ Published in the Official Gazette of Romania no. 104 of 12 February 2007.

³⁶ Published in the Official Gazette of Romania no. 32 of 16 January 2012.