

## Conceptualization of Human Dignity in European Union Law

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### Abstract

*The purpose of this article is to conduct an interdisciplinary study of the formation and development of the legal regulation of human dignity in the context of European integration. Human dignity is defined as a phenomenon with numerous manifestations that encompasses various legal frameworks. Although all elements of human dignity are disclosed and enshrined in the Charter of Fundamental Rights of the European Union, this concept is also invoked to strengthen and enrich EU law as a whole. The research employs interdisciplinary and terminological approaches, as well as dialectical, hermeneutic, historical-legal, comparative-legal, systemic-functional methods, and the method of legal modeling. Particular emphasis is placed on the potential of dignity as a guideline for legal interpretation and for shaping sustainable development policies within a united Europe. The case law examined in the article demonstrates that the Court of Justice of the European Union refers to dignity in cases related to various areas of legal regulation. The article highlights the importance of the activities of the Court of Justice of the European Union in interpreting human dignity as a fundamental value underlying the organization and functioning of the EU, as a general principle of law, and as an individual subjective right. Problematic issues concerning the relationship between the values enshrined in the Treaty on European Union and the rights guaranteed by the Charter of Fundamental Rights of the European Union are addressed. The significance of the Convention for the Protection of Human Rights and Fundamental Freedoms in the formation and development of EU legal regulation in the field of human rights is emphasized. The importance of enshrining human dignity at the level of the founding treaties and the Charter of Fundamental Rights of the European Union is substantiated. The theoretical generalizations and conclusions obtained within the framework of the research are based on the analysis of a wide range of doctrinal sources, as well as acts of international human rights law, primary and secondary EU law, EU soft law acts, and the constitutional legislation of individual states. The results of the study may be useful for conducting comparative legal research aimed at identifying approaches to the normative consolidation of human dignity in international law, European Union law, and the law of the Council of Europe; comparing the positions of the Court of Justice of the European Union and the*

European Court of Human Rights on this issue; and improving domestic human rights legislation.

**Keywords:** human dignity; EU values; general principles; human rights; EU Charter of Fundamental Rights; judicial interpretation; EU law.

## Концептуалізація людської гідності в праві Європейського Союзу

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### Анотація

Метою статті є проведення міждисциплінарного дослідження становлення й розвитку правового регулювання людської гідності в умовах європейської інтеграції. Людська гідність визначається як феномен, що має численні прояви і охоплює різні правові рамки. Хоча всі елементи людської гідності розкриті і закріплені в Хартії ЄС про основні права, на неї посиляються для того, щоб зміцнити та збагатити право ЄС в цілому. У процесі дослідження застосовувались міждисциплінарний і термінологічний підходи, діалектичний, герменевтичний, історико-правовий, порівняльно-правовий, системно-функціональний методи, а також метод правового моделювання. Зроблено акцент на потенціалі гідності як орієнтира для правової інтерпретації та проведення політики сталого розвитку об'єднаної Європи. Прецеденти, що використовуються у статті, покликані довести, що Суд справедливості ЄС посиляється на гідність у справах, пов'язаних з різними сферами правового регулювання. У статті наголошено на важливості діяльності Суду справедливості ЄС у питанні тлумачення людської гідності як фундаментальної цінності, що лежить в основі організації та функціонування ЄС, як загального принципу права і як суб'єктивного права індивіда. Порушено проблемні питання взаємозв'язку між цінностями, закріпленими в Договорі про ЄС, та правами, закріпленими у Хартії ЄС про основні права. Наголошено на значенні Конвенції про захист прав людини і основоположних свобод в питанні становлення й розвитку правового регулювання ЄС в сфері прав людини. Обґрунтовано важливість закріплення людської гідності на рівні установчих договорів та Хартії ЄС про основні права. Теоретичні узагальнення і висновки, отримані в межах дослідження, ґрунтуються на аналізі широкого спектру доктринальних джерел, а також актів міжнародного права прав людини, первинно, вторинного права ЄС і актів його «м'якого» права, конституційного законодавства окремих держав. Результати дослідження можуть бути корисними для проведення порівняльно-правових

*досліджень стосовно визначення підходів до нормативного закріплення людської гідності в міжнародному праві, праві Європейського Союзу і праві Ради Європи; порівняння позицій Суду справедливості ЄС і Європейського суду з прав людини з означеного питання, а також удосконалення вітчизняного законодавства в сфері прав людини.*

**Ключові слова:** людська гідність; цінності ЄС; загальні принципи; права людини; Хартія ЄС про основні права; судове тлумачення; право ЄС.

## **Introduction**

The future of Europe in an increasingly fragmented world depends on a robust democracy, adherence to the rule of law, and the level of protection afforded to the values upon which the European Union is founded and operates. According to Art. 2 of the Treaty on European Union (hereinafter, the TEU), 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 [1]. In the EU Charter of Fundamental Rights, human rights and freedoms are grouped around six values of a united Europe, with "Dignity" occupying the first place among them [2].

The values enshrined in the primary law of the EU are common to all Member States. A. Matat, in his study, emphasizes the fact that the explanations to the EU Charter of Fundamental Rights regarding the content of Art. 1 state that the right to human dignity is not only one of the fundamental rights but also a constitutive principle underlying the entire system of individual rights in the EU [3, p. 237].

Human dignity as a value permeates not only the primary but also the secondary law and the law-enforcement practice of the EU. In particular, European Union legislation safeguards respect for human dignity in such areas of legal regulation as criminal justice, immigration, and labor rights, among others. Respect for human dignity also implies combating poverty and ensuring every individual's access to healthcare, education, and social support. The Court of Justice of the European Union contributes to the observance of human dignity when adjudicating human rights and equality cases; national courts, in turn, are likewise required to apply EU law to protect human dignity [4].

In the course of European integration, the issue of human dignity acquires particular salience for Ukraine. Respect for human dignity is enshrined at the constitutional level in Ukraine: Art. 3 of the Constitution recognizes dignity as one of the highest social values, while Articles 28 and 68 prohibit any encroachment upon it [5]. The preamble of the Association Agreement between Ukraine, on the one hand, and the European Union,

the European Atomic Energy Community, and their Member States, on the other (hereinafter, the Association Agreement), in turn, emphasizes that the Parties are, first, committed to a close and lasting relationship grounded in shared values, including respect for human dignity; second, that Ukraine, as a European country, shares common values with the Member States of the European Union and is determined to uphold them; third, that common values are key elements of the Association Agreement; and fourth, that Ukraine's political association and economic integration with the European Union will depend, inter alia, on Ukraine's progress in ensuring respect for those common values [6].

The experience of European integration of the countries of Eastern and Southern Europe, drawn from among the former post-socialist states, convincingly demonstrates that the successful realization of the values of a united Europe requires not only their formal entrenchment at the legislative level but also their effective implementation in practice. An awareness of this fact creates a need not only to transform domestic legislation but also to refine existing mechanisms capable of safeguarding human dignity across various spheres of social life.

### **Literature review**

In the contemporary world, human dignity is perceived not as a philosophical abstraction but as a legally recognized standard at the international and regional (and, above all, European) levels, incorporating criteria for assessing the fairness, lawfulness, and proportionality of public and private action, and upon which legislators and courts in democratic, rule-of-law states rely [7].

For Ukraine, given the strategic course toward European integration enshrined in its Constitution, scholarly inquiry into the place and role of human dignity in European Union law assumes particular significance. In this regard, the research of C. Pagano merits attention, in which the scholar approaches human dignity as a legal principle guiding public officials in the interpretation, application, and enforcement of the norms of international human rights law, as well as European and national law relating to sustainable development [7]. No less compelling is the approach of V. Neagoe, in whose view, within the doctrine of natural law, human dignity may be regarded as a "mother right", as a core value (Art. 2 of the Treaty on European Union (hereinafter, the TEU) [1]), as a fundamental subjective human right that is inviolable and subject to respect and protection (Art. 1 of the EU Charter of Fundamental Rights [2]), and as a general principle of EU law that "enjoys a special status as an autonomous fundamental right" (Case C-36/02 Omega [8]). The obligation imposed

on candidate countries to respect and promote the values of a united Europe (Art. 49 of the TEU) renders the treatment of human dignity an effective benchmark for assessing a country's readiness for EU accession; consequently, the concept of human dignity also informs the Union's posture on the international stage (Art. 21 of the TEU). From a positivist-normativist perspective, V. Neagoe notes, human dignity is regarded as an important interpretive principle that reflects its considerable hermeneutic potential, which judges may draw upon in the administration of justice [9].

Problematic issues concerning the relationship between the values outlined in Art. 2 of the TEU and the rights enshrined in the EU Charter of Fundamental Rights, as well as the means of attaining "mutual trust" among Member States, are examined in the works of C. Dupré [10] and J. Jones [11]. The problem of adherence to EU values as a benchmark for the development of Ukraine's legal system is taken up in the scholarship of T. Komarova [12], V. Lomaka [13], A. Matat [3], L. Chekalenko [14], and other authors.

Among the publications devoted to defining the role of human dignity in the functioning of the European Union, particular attention is given to scholarly works addressing the problem of the democratic deficit, both at the EU level (I. Yakoviuk, L. Trahniuk [15]) and within individual Member States (most notably Poland (before 2023) and Hungary, where this deficit has manifested itself in gross violations of the value under discussion (C. Dupré [16; 17])).

Despite the substantial body of scholarship devoted to defining the place and role of human dignity in European Union law, this set of issues retains its salience, particularly because certain authors characterize human dignity as an "empty" concept (M. Bagaric, J. Allan [18]) or, at the very least, a contested one (P. A. Rodriguez [19], S. Cunningham [20]), or as a subjective idea that shifts with time and the observer and masks "a significant amount of disagreement and outright confusion" (M. Rosen [21]). In turn, P. Akaliyski and C. Welzel [22], as well as J. Ciechański [23], with whose position the present author finds it difficult to agree, question the desirability of arriving at a unified, politically motivated interpretation of fundamental values within EU law, since, in their view, doing so could undermine the project of European integration.

Although human dignity is one of the four universal values upon which the European Union is founded and operates, and which underpins EU law, it remains insufficiently substantiated in a concrete legal sense. This is reflected in the debates concerning its content and role in legal regulation (even the Court of Justice of the EU regards the principle of human dignity

as one of the most difficult to comprehend [25]), as well as in a number of crises the Union has confronted over the past decade and its less-than-optimal responses to them. Accordingly, there is a need for a concrete and expanded European interpretation of the Union value under discussion.

## **Materials and Methods**

This article seeks to provide a legal account of the concept of human dignity through the prism of the European Union. At first glance, the subject of this article may appear unexpected, given that the economic component remained – and continues to remain – the defining vector of integration, not only before the establishment of the European Union but to the present day. Human dignity is a multifaceted concept whose emergence and development have been accompanied by a diversity and eclecticism of doctrinal commentary, which, objectively, complicates any attempt to determine its place and role within the legal order of a united Europe. In the course of the research, it became necessary to delineate the boundaries of the study, both formally and substantively, by focusing on the internal dimension of the concept within the EU legal order. The study is structured around an examination of the norms of the primary and secondary law of the Union, as well as an analysis of judgments of the Court of Justice of the EU that lay down the foundational propositions of this concept.

The study of human dignity drew on natural-law, positivist, and teleological approaches alike. This made it possible to disclose more fully the content of the concept under examination, as well as its connection with the general principles of law and with fundamental rights. The article traces the genesis of approaches to enshrining human dignity in EU law and analyzes the functions this phenomenon performs in the process of legal regulation of a united Europe.

Although the European Communities initially pursued a humanitarian mission and were guided by the aims of peace and social progress, for a long time, they did not operate with the concept of "human dignity". Gradually, however, under the influence of the Court of Justice of the EU and the European Parliament, this concept came to be legalized and entrenched, first in secondary and subsequently in primary EU legislation.

Legal regulation in the European Union is dynamic by nature, and the concept of human dignity, together with the sources in which it is reflected, forms the bedrock of the European paradigm and shapes the content and outer limits of the legal order of a united Europe.

The article demonstrates how the concept performs a protective function through the progressive recognition, at the normative level, of the right to respect for human dignity and the human rights flowing from it.

## **Results and Discussion**

### ***Dignity in philosophical and political-legal thought***

Throughout the history of humankind, dignity has assumed a multitude of conceptual forms tied to theological ideas, morality, humanism, individual autonomy, personhood, flourishing, and self-respect. In the twentieth century, however, it came to be conceptualized as a holistic, ontological, and absolute principle [26, p. 49]. The development of European philosophical thought contributed to the gradual emergence of the notion of the intrinsic worth of every human being. During the Renaissance, the idea of the inherent worth of the human being was elaborated, presupposing recognition of the individual's autonomy and the creation of conditions conducive to free development [27]. An important contribution to the evolution of the concept was made by I. Kant, who in *Groundwork of the Metaphysics of Morals* emphasized that a human being must never be treated merely as a means: he or she is always an end in himself or herself [28].

R. Debes, in examining the questions of when the moralizing connotation of the term "dignity" entered common usage and whether this concept had previously existed under a different terminology, concludes that in his argumentation, Kant already employed the word "Würde", which was translated by the concept "dignity", although literally it meant "value". While at that time "value" was understood specifically as an economic category, Kant rejected such an interchangeable connotation in the use of the word "Würde", which prompted English translators to introduce a new term, namely, "dignity" [29].

Until 1850, R. Debes observes, the English term "dignity", together with its Latin root "dignitas" and its French equivalent "dignité", was not used to denote "the innate or unearned worth of a human being" [29]. Until that date, the word "dignity" was understood in the context of merit and a certain form of inequality; it denoted a social status associated with nobility, power, gentlemanly conduct, or ecclesiastical preferment. References to "dignity" are not to be found in either the Declaration of Independence or the Constitution of the United States, nor were they heard among the watchwords of the French Revolution (1789–1804).

### ***National and international legal experience in the normative entrenchment of human dignity***

Researchers encounter the first official use of this term in the sense in which it is used today in Art. 3(I)(c) of the Constitution of Mexico (1917) [30], although even there it did not yet expressly denote an inherent human worth. The concept was first codified only in the Universal Declaration of

Human Rights (1948) [31] through references to it in the preamble and in Articles 1 and 5 [32].

The reference to dignity in the preamble of the Charter of the United Nations<sup>1</sup> and in the Universal Declaration of Human Rights laid an important theoretical foundation for conceptualizing the idea of human rights at both the international and national levels. The preambles to the UN International Covenant on Civil and Political Rights [33] and the International Covenant on Economic, Social and Cultural Rights [34] recognize the inherent dignity of all members of the human family as the foundation of human rights, although human dignity itself is not singled out as a distinct human right. In the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [35], although human dignity is referred to obliquely in Art. 3, the case law of the European Court of Human Rights nonetheless holds (*Case of Pretty v. the United Kingdom*, § 65) that respect for human dignity and human freedom is "the very essence of the Convention" [36].

Since the integrative process on the continent draws its inspiration from the cultural, religious, and humanist heritage of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law [1], the concept of human dignity objectively forms the foundation of the European paradigm and shapes the content and outer limits of its legal order. However, as P. de Montalivet observes, "the transposition of a moral or religious precept into law, its transformation into a legal norm, necessarily entails the risk of divergence: in this case, divergence between the principle of dignity as it appears in philosophy or morality and that same principle as it appears in law", including the law of the European Union [26].

### ***The role of the Court of Justice of the EU in the recognition of human dignity in the law of a united Europe.***

As M. Durand-Mercereau notes, under contemporary conditions, the concept of human dignity occupies a privileged position in the EU Charter of Fundamental Rights. This was not always the case, however – any mention of it was for a long time absent from the law of the European Community. Although European integration was from the outset guided by the aims of peace and social progress and pursued an important humanitarian mission, references to this concept were absent until the establishment of the European Union, owing to integration's exclusively economic orientation. Nonetheless, owing above all to the efforts of the Court of Justice of the

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<sup>1</sup> The Preamble to the Charter of the United Nations proclaims: "We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person".

European Communities, this concept was first recognized and subsequently entrenched, initially in the secondary and later in the primary law of the Union [37].

The role of the Court of Justice of the European Communities in the protection of fundamental rights took shape slowly. As is well known, the Treaty of Paris and the Treaties of Rome contained no provisions capable of serving as a legal basis for the protection of fundamental human rights and freedoms. The Court of Justice was compelled, step by step, to construct and develop this legal foundation. The first step in that direction came in the judgment in *Van Gend en Loos v. the Netherlands* (Case 26-62), in which a mere intimation of human rights was sounded: "Independently of the legislation of Member States, Community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage" [38].

The next significant step was taken by the Court in 1969 in *Erich Stauder v. City of Ulm* (Case 29-69), in which a direct reference was made to fundamental human rights: "Interpreted in this way, the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court" [39]. The Court confirmed its position in 1970 in the judgment in *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel. Reference for a preliminary ruling: Verwaltungsgericht Frankfurt am Main, Germany* (Case 11-70), in which it once again emphasized: "... respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community" [40]. In 1974, in the judgment in *J. Nold Kohlen- und Baustoffgroßhandlung v. Commission* (Case 4-73), the Court further developed its position: reaffirming the conclusion previously expressed that fundamental human rights form an integral part of the general principles of law, it noted that since it draws its inspiration from the constitutional traditions common to the Member States, it "... cannot uphold measures which are incompatible with fundamental rights recognized and protected by the constitutions of those States". The Court also referred to the Convention for the Protection of Human Rights and Fundamental Freedoms, observing that it, together with other international human rights treaties, "can supply guidelines which should be followed within the framework of Community law" [41].

The revolutionary character of the position the Court took in the judgments in these cases lay, first, in the fact that the Court had recourse to the

general principles of Community law (a category into which fundamental human rights were now included) as a basis for ensuring the protection of the latter; and, second, in the fact that the Court established that the general principles of law are derived from the constitutional traditions of the Member States of the Communities, traditions common to those Member States.

The role of interpretation in defining the substance of the phenomenon of human dignity. The position of the Court of Justice of the EU has acquired considerable significance for understanding the content of human dignity and for defining its role in the development of the concept of human rights in European Union law. This is because the literal text of the founding treaties serves only as a starting point in the process of apprehending the meaning embedded in a given norm of law through its interpretation.

As to the law, Ch. Girard observes that the theory of interpretation presupposes the existence of a hidden aspect of the legal text, the disclosure of which would reveal the deeper meaning of a particular source of law. The discourses that sustain this idea "... are based on the conviction that there exists a determinate essence of law that can be mapped onto the idea of justice; that the judge is the organ formally designated by the State to deliver it; and that this natural foundation – itself legal in character, since it is binding – determines the legal solutions embodied in the textual and applied (jurisprudential) legal order through an understanding of the concept of human rights, and sometimes of fundamental rights" [42]. Interpreting Ch. Girard's reasoning, one may conclude that situations can arise in which, in engaging with the text of a founding treaty, a judge encounters the absence of an obvious answer – one that should in principle be supplied by the legislative authority and, in the case of an EU founding treaty, by the Member States that drafted and adopted it – which serves as proof that not all law consists in what has been laid down by legislation. É. Picard, in turn, observes that the matter may not concern the interpretation of the sense of the text, but rather, to a far greater extent and in a particular way, the text of the sense, which may express itself through means other than the text itself [43].

Case law invoking this principle began to take shape relatively recently. In *P v. S and Cornwall County Council*, decided on 30 April 1996, the Court of Justice of the EU made its first reference in a judgment to respect for dignity: "To tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court is required to safeguard" [44]. In her opinion in Case C-36/02, Advocate General Stix-Hackl stated: "Human dignity, as a fundamental expression of an element of humanity grounded

simply in humanness, constitutes the foundation and starting point of all the other human rights distinct from it; at the same time, it is the point of convergence of the individual human rights, in light of which they must be understood and interpreted" (para. 76). She further emphasized that human dignity is a general principle, an evaluative principle, and an autonomous fundamental right amenable to judicial review (para. 81) [25]. The treatment of human dignity as both a right and a general principle also appears in Case C-377/98 [2001] ECR I-7079 [45]. References to human dignity are likewise found in Joined Cases C-34/95, C-35/95, and C-36/95 *De Agostini and Others* [1997] ECR I-3843 [46], in the submission of Advocate General Ruiz-Jarabo Colomer in his opinion in Case C-117/01 KB [2004] ECR I-0000, and in the submission of Advocate General Cosmas in his opinion in Case C-50/96 *Lilli Schröder and Others* [2000] ECR I-743 [25]. Thus, the Court of Justice of the EU effectively adopted the position that it regarded the principle of human dignity as a natural right pre-existing any legal construct, even one of a quasi-constitutional character.

It should be noted that the Court of Justice of the EU does not frequently invoke the right to dignity in its judgments, doing so only once or twice a year, whereas other rights enshrined in the Charter are relied upon far more often. This is explained by the fact that dignity is also reflected in many other, more specific rights [47].

### ***Approaches to the entrenchment of human dignity in EU legislation***

Gradually, the principle of human dignity has acquired clear normative entrenchment in the EU legal order, although this was preceded by debate over the manner of its formalization. Thus, no unanimity of views existed as to whether it should be referred to symbolically (for example, in the preamble) or enshrined in legal form, in numbered articles of a declaration of rights. If the answer to the latter question is affirmative, P. de Montalivet observes, a further question arises: should the provision on dignity be placed at the beginning of the text to underscore its foundational character, or further on in the text? Finally, is the scope of dignity confined to a particular field, or is it unlimited? [26, p. 50].

It is worth noting that, in constitutional theory and practice, at the level of international human rights law, and within regional legal systems, including European systems, no uniform approach to these questions has been developed:

- mention of dignity only in the preamble of an instrument: this mode of formalization is employed in the International Covenant on Economic, Social and Cultural Rights ("recognition of the inherent dignity", "rights deriving from the inherent dignity of the human person") [34]; evidently, in this Covenant, the scope of application is unlimited;

- reference to dignity both in the preamble and in the articles of an instrument with a delimited scope: this mode of formalization is employed in the Universal Declaration of Human Rights (1948), where dignity is mentioned in the preamble ("... faith in fundamental human rights, in the dignity and worth of the human person") and in Art. 5 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment") [31]. A similar mode of formalization is also employed in the UN International Covenant on Civil and Political Rights (mentioned in the preamble and subsequently in Art. 10: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person") [33];
- mention of dignity in the articles of an international instrument without emphasis on its significance for other human rights: this approach is employed in the Convention for the Protection of Human Rights and Fundamental Freedoms ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment", Art. 3) [35].

### ***Entrenchment of human dignity in the primary and secondary law of the EU***

As regards the recognition of human dignity at the level of European Union law, it occurred relatively recently and proceeded in an evolutionary manner. A substantial portion of the human rights instruments of a united Europe were political in character. Thus, in 1977, the European Parliament, the Council, and the Commission adopted a Joint Declaration "Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms", which emphasized the following: first, that the treaties establishing the European Communities are founded on the principle of respect for law; second, that, in accordance with the position of the Court of Justice of the European Communities, the law includes, in addition to the norms enshrined in the founding treaties and subordinate Community acts, general principles of law and, in particular, fundamental rights; third, that, on the basis of the foregoing, paramount importance is attached to the protection of fundamental rights, as they derive in particular from the constitutions of the Member States<sup>2</sup> and from the European Convention for the Protection of

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<sup>2</sup> It should be noted, by way of illustration, that Art. 1 of the Basic Law of the Federal Republic of Germany (1949) provides as follows: (1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace and of justice in the world. (3) The following fundamental rights shall bind the legislature, the executive and the judiciary as directly applicable law [48].

Human Rights and Fundamental Freedoms; and fourth, that, in exercising their powers and in pursuit of the objectives of the European Communities, their institutions shall respect these rights [49].

On 17 February 1986, the Single European Act was signed, the preamble of which contained a provision on human rights (the Parties "determined to work together to promote democracy based on the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms, and in the European Social Charter"); human dignity, however, was not mentioned therein [50].

On 12 April 1989, the European Parliament adopted the Declaration of Fundamental Rights and Freedoms, the preamble of which stated that "with the aim of continuing and giving fresh impetus to the work of the democratic unification of Europe, ... it is important for Europe to affirm the existence of a legal community founded on respect for human dignity and fundamental rights", and Art. 1 ("Dignity") declared that "human dignity is inviolable" [51].

The Community Charter of the Fundamental Social Rights of Workers, adopted in 1989, did not contain any direct reference to human dignity or to its connection with social rights. At the same time, the Charter links dignity with certain social rights, by affirming, first, that workers are to be afforded a fair wage (that is, a wage sufficient to ensure them a decent standard of living), and, second, that every worker of the European Community must, on reaching retirement age, be able to enjoy resources affording him or her a decent standard of living [52].

At the next stage of this evolution, a number of EU acts, predominantly of a "soft law" character, were adopted that raised the question of human dignity, namely:

- certain acts of EU secondary legislation were adopted as early as the late 1960s; in particular, Council Regulation (EEC) No 1612/68 of 15 October 1968 on the freedom of movement for workers within the

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Beyond the German Basic Law, human dignity is referenced in the first article of the Constitutions of Portugal and Romania, and in the Preambles to the Constitutions of Bulgaria and Spain. The Constitutions of Belgium (Art. 23 affirms that everyone has the right to lead a life consistent with human dignity), Estonia (Art. 10 provides that the rights and freedoms enumerated in the Constitution conform to the principle of human dignity), Poland (Art. 30 emphasizes that the inherent and inalienable dignity of the person constitutes the source of the freedoms and rights of persons and citizens), and Finland (§§1, 7, 9, 19, 31) accord dignity a distinct role within the human rights framework, recognizing it as the source of other human rights and freedoms [47].

Among the remaining EU Member States, provisions relating to dignity are absent only from the Constitutions of Denmark, Cyprus, Luxembourg, Malta and the Netherlands.

Community [53] contained, in its preamble, a reference to human dignity (the right to freedom of movement was to be exercised, by objective standards, freely and with dignity);

- the European Parliament Resolution on Discrimination against Transsexuals of 12 September 1989, paragraph 1 of which expressed the conviction that human dignity and the protection of the human person necessarily entail the right to lead one's life in accordance with one's sexual identity [54];
- Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation, or administrative action in Member States concerning the provision of audiovisual media services [55];
- Council Resolution of 29 May 1990 on the Protection of the Dignity of Women and Men at Work [56];
- Commission Recommendation 92/131/EEC of 27 November 1991 on the Protection of the Dignity of Women and Men at Work [57];
- the Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services [COM (96) 483] [58];
- Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions [59].

A genuine breakthrough in the normative recognition of the concept of human dignity would have been its entrenchment at the level of the founding treaties. The first step in that direction was taken in the Treaty on European Union. As already noted above, Art. 2 of the Treaty declared that the Union is founded on the values of respect for human dignity.

The formulation, at the level of the primary law of the EU, of the concept of human dignity vividly reflects the maximalist approach of its drafters. Support for this conclusion is found, first, in the fact that the Treaty (and, subsequently, the Charter as well) asserts "human dignity" rather than "the human person", thereby aligning itself with the position of the Court of Justice of the EU on this question. Second, beyond its status as a "foundational value", dignity is at the same time both a principle and a right, an indication of its dual objective and subjective dimensions [26].

The understanding of the concept of human dignity reflected in the EU Charter of Fundamental Rights (2000) [2] (dignity applies to all rights set out in Chapter I by virtue of the general recognition it receives in Art. 1 of the Charter) is similar to the approach normatively enshrined in paragraphs 1 and 2 of Art. 1 of the Basic Law of Germany<sup>3</sup>; it has served as a bridge

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<sup>3</sup> Paras. 1 and 2 of Art. 1 of the Basic Law of the Federal Republic of Germany provide: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority" [48].

through which the other fundamental values of a united Europe, and the connections among them, may be more fully apprehended.

In the EU legal order, human dignity is regarded not in isolation but in conjunction with the other fundamental values enshrined in the Charter, namely:

- the value of "freedom" (Chapter II), the content of which is elaborated by means of the following principles: the right to liberty and security (Art. 6), respect for private and family life (Art. 7), the protection of personal data (Art. 8), the right to marry and the right to found a family (Art. 9), freedom of thought, conscience, and religion (Art. 10), freedom of expression and information (Art. 11), freedom of assembly and of association (Art. 12), freedom of the arts and sciences (Art. 13), the right to education (Art. 14), freedom to choose an occupation and the right to engage in work (Art. 15), the freedom to conduct a business (Art. 16), the right to property (Art. 17), the right to asylum (Art. 18), and protection in the event of removal or extradition (Art. 19);
- the value of "equality" (Chapter III)<sup>4</sup>, around which the following principles are organized: equality before the law (Art. 20), the prohibition of any discrimination (Art. 21), respect for cultural, religious, and linguistic diversity (Art. 22), equality between men and women (Art. 23), the rights of the child (Art. 24) and the rights of the elderly (Art. 25), and the integration of persons with disabilities (Art. 26). The connection between dignity and equality may also be traced at the level of EU secondary legislation, in particular in the preamble of Regulation No 1612/68<sup>5</sup> [60].

The entrenchment of human dignity in the Charter is not confined to the articulation of a particular subjective right but appears as a fundamental value around which a system of norms is constructed that captures its various aspects (some authors emphasize the paramount place of dignity among fundamental human rights [61, p. 337]), namely: the right to life (Art. 2), the right to the integrity of the person (Art. 3), the prohibition of torture and inhuman or degrading treatment or punishment (Art. 4), and the prohibition of slavery and forced labor (Art. 5). The rationale for this

<sup>4</sup> Advocate General Stix-Hackl observes that the conception of the legal equality of all is inherent in the very idea of human rights in general and of human dignity in particular, which is why the expression "égale dignité" ("equal dignity"), encompassing both concepts, is frequently employed [25].

<sup>5</sup> The Preamble to Regulation No 1612/68 provides, inter alia: "Whereas the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment shall be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing".

manner of concretizing the content of the value of human dignity is as follows: when human dignity is shaped and articulated in each fundamental right, it assumes a more concrete substantive form and operates as a benchmark for assessing and interpreting that right [25].

The maximalist approach to enshrining human dignity in the Treaty Establishing a Constitution for Europe and in the EU Charter of Fundamental Rights (2007). Human dignity was to be enshrined most solemnly in the Treaty Establishing a Constitution for Europe (2004) [62]. The demonstration of the maximalist approach to the definition of dignity, both in the mode of its affirmation and in the scope of its application, was to consist in the following:

First, the inclusion of the provisions of the EU Charter of Fundamental Rights within the Treaty itself, which entailed conferring upon them supreme legal force;

Second, human dignity was named first among the values of the Union (Art. 1-2), the promotion of which was acknowledged as an aim of a united Europe and which it advances in its relations with the rest of the world (Articles 1-3 and III-292);

Third, the place assigned to the provisions of the Charter within the structure of the Constitution:

- (a) Art. I-9 ("Fundamental Rights") provided that the Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights, while setting them out in a separate Part II of the Constitution; that it accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, however, does not alter its competence as defined in the Constitution; and that fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as those flowing from the constitutional traditions common to the Member States, constitute general principles of Union law;
- (b) Part II of the Constitution sets out the Charter of Fundamental Rights of the Union directly, the structure and content of which reproduce the provisions of the Charter in its 2000 version.

Thus, in the Treaty Establishing a Constitution, the dignity of the human person was effectively formulated as a constitutional principle underlying the entire legal order of the European Union. This construction rested on substantial prior case law of the Court of Justice of the EU, which had appealed to human dignity as a value and as a general principle rather than as one of the fundamental rights.

The Treaty Establishing a Constitution was ratified by 18 Member States, when it was rejected in referenda in France (55% against) and the Netherlands (61% against) in May and June 2005, respectively, which rendered the continuation of ratification procedures by the remaining Member States impracticable.

The "period of reflection" that followed the failed ratification of the Treaty ultimately led to the conclusion of a new treaty. The Lisbon Treaty places less emphasis on strengthening a sense of identity among European citizens. This is borne out by the fact that its drafters abandoned the idea of incorporating the EU Charter of Fundamental Rights into the text of the founding treaties (so as to avoid accusations of excessive federalization of the European Union) and instead conferred upon the Charter legal force equal to that of the founding treaties while preserving its autonomy.

Because the EU Charter became part of the primary law of the EU, this entails the need to interpret EU law, including secondary law, in the light of fundamental rights. This means, in particular, that EU legislation, as well as Member State legislation implementing EU law, is invalid if it infringes the EU Charter [63].

On 15 February 2007, Council Regulation (EC) No 168/2007 of the European Union, establishing the European Union Agency for Fundamental Rights, responsible for monitoring the implementation of the Charter of Fundamental Rights in the Member States of the European Union, was published [64]. The Regulation emphasizes that deeper knowledge and broader understanding of issues relating to fundamental human rights in the Union contribute to their full observance. To achieve this end, the establishment of a dedicated agency was deemed beneficial. The Agency relies on its work on fundamental rights within the meaning of Art. 6(2) of the Treaty on European Union, including the European Convention on Human Rights and Fundamental Freedoms, and on those reflected in the Charter of Fundamental Rights, having regard to its status. Among the principal functions of the Agency were the following: the collection and analysis of data, the provision of opinions to EU institutions and Member States, and the development of a strategy of communication and dialogue. The adoption of the Regulation and the subsequent establishment of the EU Agency for Fundamental Rights attested to the Union's aspiration to promote the implementation of the Charter in the Member States.

## **Conclusions.**

The concept of human dignity occupies a central place in the philosophical and political-legal inquiries of Europeans; nonetheless, its legal codification in international law was undertaken by humanity only after the Second

World War: the preamble of the Charter of the United Nations and Art. 1 of the Universal Declaration of Human Rights both contain references to dignity. The next step was the inclusion of a provision on dignity in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Together, the Universal Declaration of Human Rights and the two Covenants constitute the International Bill of Human Rights.

Regional integration organizations, the European Union and the Council of Europe in particular, likewise incorporate dignity into their human rights instruments. Dignity enjoys an especially elevated status in European Union law: references to it are contained in the Treaty on European Union and in the EU Charter of Fundamental Rights, as well as in the Union's secondary law. The Charter provides: "Human dignity is inviolable. It must be respected and protected". With the entry into force of the Lisbon Treaty, the Charter was placed on an equal footing, in legal force, with the founding treaties; as a consequence, the observance of dignity in fields falling within the scope of EU law has acquired a binding character.

Although dignity may be regarded as a discrete, enforceable right, the more prevalent practice is to perceive it, first, as a fundamental value of the European Union of considerable significance for understanding the content of other human rights and, second, as a general principle underlying the entire system of human rights in the EU. The integration of dignity into legal norms, policy, and institutional practice is essential to achieving a model of sustainable development that is not merely resilient but truly human-centered.

The integration of dignity into the norms of European Union law, its policies, and its institutional practice is an essential condition for the further construction of a democratic united Europe that is not merely resilient but truly oriented toward the human being, his or her interests, and his or her needs.

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