The Dignity in Law - Searching for a Definition

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Abstract
Falling back upon the contact between dignity and law, this has taken place in 1948, at the Universal Declaration of Human Rights. Hence forward, the concept was to be taken in hand by almost every international convention regarding economic, social and cultural rights, along with civil and political rights, being assimilated – on legal or constitutional level- by a considerable part of the national European legislation, while making a clean career of what, during the '60's, was to be known as 'bioetica-dignity', the key-concept of the regulatory documents regarding bioethics.1

Key words: ethics, legal, limit, protection, inquiry

A thing that strikes (yet puts out) every inquirer of the legal notion of 'dignity' is the complete lack of legislation – whether national or international - of a definition of the term 'dignity'.

In return - although sufficiently rich to form a study subject itself-jurisprudence, regarding dignity does not provide us with clearly stated terms of reference regarding a definition either. A few well-known cases2 ensure, however, a shaping sense of meaning over what the courts have decided to give to the notion.

Regarding the dogmatic analysis, the majority of studies dedicated to the concept, have zoomed in on the effort of making up for the notable lack of legislation (the absence of a definition), without, however, setting a mutual agreement between the various approaches of the subject and also, without a dignity theory, capable of acting as a bech-mark for law-practicants, being presently voiced.

Despite various approaches, one aspect which all authors fully agree upon is, on the one hand, the exceptional difficulty to rigorously define this term, and on the other hand, the fact that all definitions of dignity will inevitably articulate around notions of respect.

1 The Universal Declaration on Human Genom and Human Rights (UNESCO, 1997), The Convention on Human Rights and Biomedicine (Council of Europe, 1997), The Universal Declaration on Bioethics and Human Rights (UNESCO, 2005) and many other relevant legal documents adopted by various national legislations.

2 For instance, the 'lancer de nain' case in France. The case went through the appeal chain of administrative courts to the Conseil d'État, which found that an administrative authority could legally prohibit dwarf tossing on grounds that the activity did not respect human dignity and was thus contrary to public order.
The difficulty is that respect, in itself, is a highly subjective value. Therefore, perception (determined by personal character and biography), human capacity to simulate/dissimulate, concrete relational circumstances, different from one case to another – are entirely subjective elements that can completely alter any effort to objectively assess a situation invoking the violation of dignity. In fact, respect, as a correlative obligation of the right to dignity, is not related to external manifestations but to internal attitudes that are not exteriorized\(^3\).

A detailed presentation, from the legal perspective, of all situations that reflect, from the point of view of the law makers, violations of dignity, no matter how elaborate it may be, will never cover the many subtle psychological and circumstantial nuances which reality challenges us with and which are actually the essence of dignity and respect. Briefly speaking, a technical definition is “a coat that is too tight” for such a comprehensive concept!

On the other hand, however, an entirely subjective definition (in terms of: honour, reputation, contempt, humiliation etc.) is not desirable, even if, at first sight, it seems to reconcile the requirements of appropriateness and efficiency because, while a technical definition may alter the right perception of reality, on the other hand, an appropriate definition, even if it does not entail this risk, would allow norm an excessive intrusion into relational areas where, normally, other self-regulating mechanisms are put into motion. The question of dignity is – as we all know, actually – an everyday issue. Lack of respect is something we are all subject to and we all make others subject to. We are ignored and we ignore, we are despised and we despise, we are humiliated and we humiliate many times a day. However, there is a limit beyond which law can no longer protect the individual without incurring the risk of too many restrictions regarding options and behaviour and these risks can act against the protected individual! Beyond this limit, the individual must protect oneself – and we admit here the value of Pullmann’s concept of self respect.\(^4\) We cannot claim that law makers should protect us against an ever-grouching husband, against an unpleasant remark of a high-school young man made in relation to an imperfect body line, against cyclothymic remarks of a sulky cash-desk assistant. It would be exorbitant, and society would

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\(^3\) Example: the plaintiff whose presence is - because of stubbornness or because of indifference - persistently ignored by a clerk, and whose timid attempt to draw attention remain obscure for the lady behind the desk, who is too busy or too deeply engaged into an interminable conversation - is in fact humiliated. Even if not necessarily voluntarily and even if practically it is not openly done. Under certain circumstances, mere indifference is an aggression to the dignity of the others. A psychological study performed on primary school pupils showed that, when asked: „what would mostly bother you if others would do to you?“; most answers said: „talking and being neglected“. This answer should make many think carefully...

\(^4\) Not as a major defining element of dignity, as these authors suggest – because in this case, as I shall explain later on, it would mean that we abandon the entire theory of the universality of dignity, which allowed its acceptance in the law area! But as a psychological instrument that the individual wishes to develop in order to protect oneself against aggressions for which the law cannot ensure protection without risks posed to another „social fortress“ conquered with a lot of effort: freedom.
become a battle ground, full of stressed „fighters” in a permanent state of mutual suspicion.

Although not defined, dignity is regulated from the legal point of view, and both theoreticians and practitioners take it seriously! Summarizing, we have the following:

- A technical definition would be inappropriate and therefore dangerous;
- A “psychological”, moral definition would be “too” appropriate to avoid being dangerous;
- The lack of a definition, on the other hand, (current situation), makes the notion ridiculous or excessively interpretable.

This is the current status of dignity in law: stipulated but not clear what to do with. Is it a „ticking bomb” that should be „deactivated” through a definition that should ease its potential? Or a notion deprived of contents that may need a definition in order to acquire essence?

In this context, the information assimilated through personal research, corroborated with the attempt to critically analyze a significant part of the research in this field has led me to the following conclusions:

Firstly, I consider that all attempts to give a definition of dignity should exclude all attempts that deprive it of its universal and unconditioned character.

The genealogy of the term shows that the explanation for the late meeting of dignity with the law area (the term is absent from all classical declarations of human rights, starting with the 18th century, and all great codes of the 19th century! It was introduced for the first time in the international legislation by the Universal Declaration of Human Rights in 1948) is the fact that, before Kant, dignity, derived from Latin dignitas, was interpreted as exclusively elitist, meaning a social status that was acquired or inherited. Such a meaning could not be compatible with the universalist ideal of human rights – a very new concept at that time, arisen from the effervescence of the dramatic events of the 18th – 19th centuries.

Consequently, the universalist character given to the term by the Konigsberg philosopher was the reason for which law adopted the notion of dignity. The proof is the fact that dignity appears in the 1948 Declaration on the list of basic values of the Rights, together with liberty and equality. If rights have a universal character and belong to all humans, clearly dignity belongs to all, since it is a prerequisite and foundation of these rights! All references to the old interpretations of dignitas is outdated and all conditioning of dignity on personal achievement or on self -respect – inappropriate.

I do not share therefore the opinion according to which, from the juridical point of view, dignity should be restrictively interpreted. Or otherwise. Dignity should be interpreted as what it is, as what it was meant to mean when it was adopted by law. Namely, the right to be respected due to my capacity of human being. And, correlatively, as an obligation to pay respect, in my turn, due to the same argument.
I agree however that the integration of a definition into the law, beyond this natural interpretation and somehow „reflex” interpretation, is not desirable. Because, on the one hand, as mentioned earlier, such a definition conceived in technical terms does not appropriately cover reality, and on the other hand, even if conceived in moral terms, once consecrated, it incurs the risk to be subject to abusive interpretations, in the sense of allowing law to interfere in much too personal areas to make it an object of the coercion of the state.

Dignity is currently, from my point of view, well determined from the legal point of view. Completion is needed, if the case, in „sensitive” areas, with a set of rights and obligations concretely determined, based on values related to the concept of dignity, rather than a general definition that should be include in the law. Mentioning of principles and circumstances of the values that are opposed to dignity⁵, are, however, welcomed because they are explanatory, like a sort of „legal pedagogy”⁶ – and rather than coercive prescriptions. In other words, in law, dignity must be an instrument interpreted in a wide key⁶, but used in a parsimonious way. Consecrating a wide interpretation from the legal point of view without indicating the case to apply to is dangerous.

Some cases are clear enough to be legally identified (de ex., bio-ethics); others are more volatile, and reconciling the requirements of legal protection with freedom of consciousness is more difficult to achieve in these cases, as they require circumstances that only the judge, as an expert in law, is entitled to determined. I shall suggest below some reference elements that may somehow facilitate the identification of the cases where pressure upon dignity is high enough to justify the intervention of courts.

II. Scope – some reference elements

As previously mentioned, dignity must be used carefully by law makers and courts, when coercive intervention is at stake. However, there are cases where it is more risky not to intervene because the individual or the society incurs the risk of a significant unbalance. For these cases, as previously mentioned (and jurisprudence has proved – v., e.g., the case „lancer le nain”, or „HIV positive AIDS”), can take multiple forms of manifestation and it is practically impossible to determine them.

However, I believe we can draw some conclusions so that a sort of warning system could be designed, meant to warn the judge when dignity is subject to significant pressure as to justify the opportunity of the intervention. Here are, therefore, some „sensitive” circumstances:

1. Cases where the respective violation has been done in a way susceptible to induce a negative model in the collective consciousness, even if it is not very significant for the alleged victim⁷. It is the case: „lancer le nain” where there is a free consent of the individual, the individual was supposed to receive money and

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⁵ Indifference, contempt, humiliation – for instance.
⁶ Kantian.
⁷ The issue of the collective effect is more significant nowadays when mass media is so efficient.
the individual did not seem bothered by the initiative. However, presenting this case in public as a totally natural case – even entertaining, or artistic etc. – a case where the human being is used as an instrument, was seen – logically, I believe – by the French court as an act of disturbing public order, because it could generate in the collective consciousness a model of thinking with dangerous potential effects;

2. Cases where the victim is unable to defend oneself, or incapacitated by circumstances. Such circumstances, for instance, can be favoured by asymmetric relations. Asymmetry can derive from the nature of the relation (for instance, labour relations, or relations that cause bio-ethical issues), by structural malfunctioning (for instance, the public law relation between the state, represented by the public employee, and the citizen, is in many cases a relation of force favouring the former, even if this should not be the case), or by concrete circumstances.

3. Last, the gravity of the consequences of the violation is also a major alternative criterion to assess fairly the legitimacy of the intervention.

Regarding the act of naming the action/the lack of action a violation of dignity, I believe that the court should take into account the concept opposite to dignity (humiliation) and its most frequent manifestations, namely: a) obvious /ostentative indifference, b) obvious contempt, and c) cases where the human being is approached „as a means, not as a goal.”

References
Hayek, Friederich A. – The Constitution of Liberty, the European Institute, 1998;
Linte, Marius Dumitru – On dignity in law and more, Pandectele Române, no. 6 of June 2011;