

Human Dignity Principle

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1 Meaning and Position of Human Dignity in the Constitution – theoretical and dogmatic dimensions

Human dignity has not played a great role in legislation or case law in the United Kingdom (UK), although since the coming into force of the Human Rights Act 1998 (HRA 1998) in October 2000, it has been referred to a little more often in judicial discourse. Unlike most other European countries, the UK has no written constitution. The UK has signed and ratified the UDHR with its powerful statement in article 1, that ‘all human beings are born equal in dignity and rights’, but this is not part of domestic law. It has also signed and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and has incorporated this Convention into domestic law via the HRA 1998. Neither the ECHR nor the HRA 1998 refer to dignity, although the ECHR refers to the Universal Declaration of Human Rights (UDHR) in its preamble. However, the European Court of Human Rights, the court overseeing the ECHR, has held that the very essence of the Convention is respect for human dignity and human freedom.¹ This is referred to in UK case law. The Court has also emphasised ‘the positive obligation upon States to ensure respect for private life, including respect for human dignity ...’.² Human dignity plays a prominent role within the European Union (EU). The EU has adopted a Charter of Fundamental Rights of the European Union which starts with declaring, in its very first article, that ‘Human dignity is inviolable. It must be respected and protected’. The Explanations to the Charter declare that ‘human dignity is not only a fundamental right in itself but constitutes the real basis of fundamental rights’ and refers

¹ *S.W. v United Kingdom*, Application Number 20166/92, 22 November 1995, para. 44 (ECtHR). Repeated a number of times since, see: *Pretty v the United Kingdom*, Application Number 2346/02, 29 April 2002, para. 65 (ECtHR); *Elberte v Latvia*, Application Number 61243/08, 13 January 2015, para. 142 (ECtHR).

² *L v Lithuania*, Application Number 27527/03, 31 March 2008 para 56 (ECtHR).

to the UDHR and to the case law of the Court of Justice of the European Union (CJEU).³ The latter court has held that a fundamental right to human dignity is part of Union law.⁴ Article 1 of the EU Charter means, according to the Explanations to the Charter, ‘that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted’. The Charter contains an extensive number of fundamental human rights and has been part of UK domestic law since 2009 (article 6(1) Treaty on European Union (TEU)). Moreover, respect for human dignity is the first one of the founding values of the EU mentioned in article 2 TEU, while article 3 of the same treaty states that the aim of the Union is to promote these founding values. The EU Charter has played a role in domestic case law in interpreting EU Directives.⁵ The Treaty and Charter will cease to apply now the UK has left the EU and once the transition period ends. The domestic case law refers more often to the case law of the ECtHR and this ECHR regime will continue to apply to the UK. The ECtHR has sometimes referred to the EU Charter. For example, in *Bouyid v Belgium*, the ECtHR mentioned that, although the ECHR does not mention dignity, ‘the word “dignity” appears in many international and regional texts and instruments’.⁶ Among a long list of these international and regional instruments, the ECtHR mentions the preamble and article 1 of the EU Charter.⁷

The coming into force of the HRA 1998 has led to a greater emphasis on human dignity in legislation and judgments but there is still no frequent use of the concept. Munby gives four explanations: the lack of constitutional underpinning and the absence of any references to dignity in the HRA 1998 and the ECHR; the foundations of common law, where the currency is hard-edged facts rather than soft-edged concepts like human

³ Explanations relating to the Charter of Fundamental Rights [2007] OJ C 303/02.

⁴ *Netherlands v European Parliament and European Council*, C-377/98, ECLI:EU:C:2001:523, para. 70 (CJEU).

⁵ See: *R (on the application of Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033, paras 21, 87, 96, 113 and 115 (UKHC); *R (on the application of SG) v Secretary of State for the Home Department* [2016] EWHC 2639, paras 12, 86-87 and 159 (UKHC).

⁶ *Bouyid v Belgium*, Application Number 23380/09, 28 September 2015 (ECtHR Grand Chamber).

⁷ *Idem*, para. 47, under (e). The ECtHR also referred to the EU Charter in *McDonald v the United Kingdom*, Application Number 4241/12, May 2014, para. 33 (ECtHR).

dignity; a general lack of interest by the courts in jurisprudence and legal philosophy; and, in many cases – although not all - where dignity had a prominent role to play, lawyers had ready to hand the familiar concept of the ‘welfare of the child’ or the ‘best interests’ of the person involved.⁸

Despite the above, the HRA 1998 has increased the references to human dignity in legislation and case law. An example of the use of dignity in legislation is the Equality Act 2006, which imposes a statutory duty on the Equality and Human Rights Commission to exercise its functions (combining work in equality, human rights and good relations between different groups in society) with a view to encouraging and supporting the development of a society in which, among other issues, there is respect for the dignity and worth of each individual. This clearly links dignity and human rights.

An example of the use of dignity in case law can be found in *Ghaidan v Godin-Mendoza*, where Baroness Hale, in the House of Lords, considered that ‘Democracy is founded on the principle that each individual has equal value. Treating some as automatically having less value than others not only causes pain and distress to that person but also violates his or her dignity as a human being’. Hale referred to the fact that the essence of the ECHR is respect for human dignity and human freedom.⁹

2 Human dignity: definition, content and beneficiaries

The quote from Baroness Hale, in *Ghaidan v Godin-Mendoza*, suggests that human dignity is seen as a value that is attached to all human beings as human beings and on an equal basis. She followed the above with stating that treating someone as of less value than others is also damaging to society as a whole because it is a waste of human resources; it damages social cohesion; it is the reverse of the rational behaviour expected of government and state, which should justify making distinctions between people; and, ‘it is a purpose of all human rights instruments to secure the protection of the essential rights of members of minority groups, even when they are unpopular with the majority.

⁸ Munby, J. ‘Why do we ignore dignity? Some comments’. 2 *European Human Rights Law Review*, pp. 119-123.

⁹ *Ghaidan v Godin-Mendoza* [2004] 2 AC 557, House of Lords (HL), para. 132 (with a reference to *Pretty v the United Kingdom*, note 1, para. 65).

Democracy values everyone equally even if the majority does not'.¹⁰ This case does not give a definition of (human) dignity and this is a general trend in the domestic case law: dignity is referred to but not defined. The case law often makes a reference to the ECtHR jurisprudence and sometimes also to the UDHR.

The ECtHR has mentioned human dignity in relation to article 2 (right to life), article 3 (prohibition of torture, inhuman or degrading treatment) and article 8 (right to respect for private and family life).¹¹ The ECtHR also does not really define human dignity, although the use of human dignity in relation to article 3 suggests that torture, inhuman and degrading treatment amounts to indignity. This is confirmed by *Elberte v Latvia*, where the ECtHR held that 'treatment is considered "degrading" within the meaning of Article 3 of the Convention when, inter alia, it humiliates an individual, showing a lack of respect for human dignity'.¹² And, in *Pretty v the UK*, the ECtHR held that 'where treatment humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading ...'.¹³ In the same case, the ECtHR also considered that notions of quality of life were significant under Article 8, 'because, in an era of growing medical sophistication combined with longer life expectancies, many people were concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflicted with their strongly held ideas of self and personal identity'.¹⁴ This gives some indication of the content of human dignity.

Domestic legislation could also give some more explanation as to the content of 'human dignity'. For example, the Care Act 2014, which provides for adult social care, states, in section 1, that the duty of local authorities is to promote that individual's well-being and it describes a number of aspects of what well-being means. The first of this is personal

¹⁰ Ibid.

¹¹ Article 2: *Lopes de Sousa v Portugal*, Application Number 56080/13, 19 December 2017 (ECtHR); article 3: *Tyrer v United Kingdom*, Application Number 5856/72, 25 April 1978 (ECtHR) (para. 33: 'one of the main purposes of Article 3 ECHR is to protect a person's dignity and physical integrity'); article 8: *Goodwin v the United Kingdom*, Application Number 28957/95 11 July 2002 (ECtHR).

¹² *Elberte v Latvia*, note 1, para. 142.

¹³ *Pretty v the United Kingdom*, note 1, para. 52.

¹⁴ Ibid, para. 65; repeated in *McDonald v the United Kingdom*, note 7, para. 47.

dignity (including treatment of the individual with respect). The Equality Act 2010 provides protection against harassment in section 26 and defines harassment as unwanted conduct related to a protected ground which has the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the person targeted. All this suggests that human dignity is linked to respect for every individual human being; to feelings of personal self and individual identity; and, to not being treated in an inhuman, degrading, humiliating or hostile manner.

In both ECtHR and domestic case law, human dignity is often used to protect the rights of people belonging to vulnerable (minority) groups such as disabled people; prisoners; asylum seekers; people in care/health care; children; people subject to discrimination; and, people with a gender identity which is different from the majority.

3 Human Dignity and its Interpretation in the Constitutional Jurisprudence

Because the UK has no written constitution, there is no constitutional jurisprudence as such. However, the incorporation of the ECHR into domestic law by the HRA 1998 is important. This means that the fundamental rights guaranteed in the ECHR can be directly invoked in domestic court proceedings against public authorities; that a court or tribunal determining a question which has arisen in connection with a ECHR right must take into account the judgments, decisions, declarations and opinions of the ECtHR; and that, so far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with the Convention. If the Court is satisfied that a provision of primary legislation is incompatible with a Convention right, it may make a declaration of incompatibility. However, only the higher courts (Supreme Court and Courts of Appeal) can do so and such a declaration does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given and it leaves it up to the government to introduce legislative changes to deal with the incompatibility. The declaration of incompatibility is also not binding on the parties to the proceedings in which it is made. Therefore the HRA 1998 and its incorporation of the ECHR into UK law is important, but it does not take the place of a written constitution.

Although human dignity is still not referred to very often at any level, domestic courts, including the House of Lords and Supreme Court,¹⁵ have done so on occasion. *Ghaidan v Godin-Mendoza* was already examined above. Here a few other cases are discussed to illustrate how dignity is used. This discussion is restricted to decisions of the highest court in the UK, but this does not mean that dignity is not used in cases by lower courts.¹⁶ In *Carson and Reynolds*, which involved complaints of discrimination under article 14 ECHR, Lord Walker stated that, ‘in the field of human rights, discrimination is regarded as particularly objectionable because it disregards fundamental notions of human dignity and equality before the law’, with a reference to *Pretty v the UK*.¹⁷ Here, dignity was thus clearly linked to the right to equality and non-discrimination.

In *Adam*, a case concerning the lack of support for asylum seekers which left them homeless and destitute and which was claimed to be a violation of article 3 ECHR, Baroness Hale considered that the rights in articles 2 and 3 reflect ‘the fundamental values of a decent society, which respects the dignity of each individual human being, no matter how unpopular or unworthy she may be’.¹⁸ In the same case, Lord Brown also referred to *Pretty v the UK* and what was said there about degrading treatment in relation to article 3 ECHR.¹⁹ And, in *HJ (Iran) and HT (Cameroon)*, which concerned refugees who feared prosecution because of their sexual orientation if returned to their respective countries, Lord Collins and Sir John Dyson SJC both held that the right to dignity underpins the protections afforded by the Refugee Convention.²⁰ Lord Collins described persecution as ‘an affront to internationally accepted human rights norms, and in particular the core

¹⁵ The Appellate Committee of the House of Lords was the highest court in the UK until it was replaced, in 2009, by the Supreme Court.

¹⁶ For a more extensive discussion see: Bedford, D. ‘Human Dignity in Great Britain and Northern Ireland’. In: Becchi, P. and Mathis, K. (eds) *Handbook of Human Dignity in Europe*. New York: Springer, 2018. See also the cases in note 5.

¹⁷ *R (on the application of Carson) v Secretary of State for Work and Pensions, and R (on the application of Reynolds) v Secretary of State for Work and Pensions* [2005] UKHL 37, para. 49 (UKHL).

¹⁸ *R (on the application of Adam) v Secretary of State for the Home Department, R (on the application of Limbuela) v Secretary of State for the Home Department, and, R (on the application of Tesema) v Secretary of State for the Home Department* [2005] UKHL 66, para. 73 (UKHL).

¹⁹ *Ibid*, para. 93.

²⁰ *HJ (Iran) (FC) v Secretary of State for the Home Department and HT (Cameroon) (FC) v Secretary of State for the Home Department* [2010] UKSC 31, paras 101 and 113 respectively (UKSC).

values of privacy, equality and dignity'.²¹ These cases illustrate that respect for the dignity of each individual, whatever their status, is a fundamental value of a decent society.

In criminal law, dignity has, for example, been used to protect victims of crime. In *R v A*, Lord Slynn and Lord Hutton both stressed that, in trials concerning rape, the victim should be treated with dignity and should, where possible, be protected against indignity and humiliating questioning, although the rights of the defendant to a fair trial should also be taken into account.²²

These are just some of the cases of the House of Lords and the Supreme Court where dignity played a role in the considerations. These suggest that, in the UK case law, dignity is attached to all human beings in an equal and non-discriminatory manner and includes respect for their individual sense of self and self-identity. The case law also shows that dignity is often used to protect people who are in a situation which makes them vulnerable to infringements on their dignity.

4 References

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²¹ *Ibid*, para. 101.

²² *R v A (No 2)* [2001]UKHL 25, Lord Slynn: para. 46; Lord Hutton para. 142.

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