

## THE INFLUENCE OF NEW TECHNOLOGIES ON THE CONCEPT OF HUMAN DIGNITY IN EUROPEAN LAW

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**Abstract:** *Human dignity has been a central legal concept since the adoption of UDHR. Legal discourse distinguishes three legal concepts of human dignity: human dignity as a source of human rights, the right to human dignity, and the principle of human dignity. More recently, recognising the negative consequences of new technologies on future generations and human society, the Council of Europe and UNESCO make several references to the human dignity of human beings. These references raise the question of how new technologies influence the legal concepts of human dignity which have always been used to protect individuals who are already born.*

**Keywords:** *Human dignity, future generations, human beings, collective dignity*

### INTRODUCTION

Human dignity has been the subject of numerous philosophical and legal debates. Given the evolving meaning of human dignity over centuries, human dignity is hard to define. Challenging definitions leads some authors to view human dignity as a useless and empty concept unable to provide meaningful legal guidance.<sup>1</sup> However, since 1990, international human rights documents have made references to the human dignity of human beings, using the argument of human dignity to protect future generations.<sup>2</sup> The Council of Europe and UNESCO consider vagueness (or more precisely the wide and overreaching scope of human dignity) useful for protection against new technologies. In this paper, the term “new technologies” refers to relatively novel and fast-growing technologies with the potential to have considerable impact, both positive and negative, irrespective of intent for good use on the socio-economic domains where the most serious consequences are anticipated in the future, affecting interests of humanity, including future generations, and the extent and severity of such consequences are uncertain and ambiguous.<sup>3</sup>

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<sup>1</sup> MACKLIN, R. Dignity is a useless concept. It means no more than respect for persons or their autonomy. *BMJ*. 2003, Vol. 327, No. 7429, pp. 1419–1420. In: *The BMJ* [online]. [2023-11-28]. Available at: <<https://doi.org/10.1136/bmj.327.7429.1419>>; PINKER, S. The Stupidity of Dignity. In: *The New Republic* [online]. 28. 5. 2008 [2023-11-28]. Available at: <<https://newrepublic.com/article/64674/the-stupidity-dignity>>. For summary of main criticism of the concept of human dignity see WEINRIB J. Human Dignity and Its Critics. In: Gary Jacobsohn – Miguel Schor (eds.). *Comparative Constitutional Theory*. Cheltenham: Edward Elgar, 2018, pp. 167–186. In: *SSRN* [online]. 29. 5. 2017 [2023-11-28]. Available at: <<https://ssrn.com/abstract=2976495>>.

<sup>2</sup> See Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, Council of Europe, 1. 12. 1999) (Oviedo Convention); Declaration on the Responsibility of the Present Generations Towards Future Generations (UNESCO, 12. 11. 1997). Universal Declaration on the Human Genome and Human Rights (UNESCO, 11. 11. 1997).

<sup>3</sup> ROTILO, D., HICKS, D., MARTIN, B. R. What is an emerging technology? *Research policy*. 2015, Vol. 44, No. 10, pp. 1827–1843. In: *ScienceDirect* [online]. [2023-11-28]. Available at: <<https://doi.org/10.1016/j.respol.2015.06.006>>.

While new technologies hold great promises for individuals' well-being, life, and health, they simultaneously pose new risks for individuals, society, and humanity. New technologies influence ecosystems, resources, and the climate, and, thereby, shape living conditions for future generations. Furthermore, our self-perception as human beings undergoes a transformative shift. The latest biotechnologies, such as genome editing, empower current generations to shape the genetic characteristics of nature, including human beings. Benefits include the elimination of genetic diseases and adapting agriculture to a changing environment for secure food production. However, new technologies also raise profound concerns about the destruction of Earth's living conditions, the side effect of irreversible changes to the natural order or the commodification of babies who become objects of parents' decisions about their genetic make-up. New technologies might jeopardise individuals' (including future individuals') ability to make choices and regulate their own life (act as a self-determinate individual) or undermine their fundamental rights, such as the right to physical and mental integrity. Unfortunately, the concerns of future generations and humanity are often neglected. Future generations cannot seek protection from the human rights system as human rights are individual rights granted only to those already born. Human dignity has been always used to secure protection of individuals who are already born.

The paper aims to elaborate on the influence of new technologies on the concept of human dignity in European law. Firstly, the paper briefly summarises the philosophical concepts of human dignity that have influenced legal discourse. Secondly, the paper analyses the current concept of human dignity and its meaning according to the European human rights documents and case law issued by ECtHR and CJEU. The paper also refers to the case law of the Czech Constitutional Court. In the third and fourth parts, the paper elaborates on the influence of new technologies on human dignity by analysing the concept of human dignity related to the protection of future generations and by analysing the concept of collective dignity.

## I. HUMAN DIGNITY IN PHILOSOPHY

Philosophers have ascribed different meanings to human dignity. The paper summarises three main philosophical understandings of human dignity that influence legal discourse. Firstly, in antiquity, human dignity was understood as social esteem—a social status linked to an individual's position and role in society. In this context, everyone had to earn their status through their actions to acquire dignity.<sup>4</sup> Philosophers in antiquity did not perceive human dignity as inherent. Thomas Hobbes has a similar understanding of human dignity. Hobbes views human dignity as a value (market price) attributed to an individual by society based on their position, abilities, and qualities.<sup>5</sup>

The second understanding of human dignity, as an inherent quality of the individual, is more prominent in legal discourse. For instance, according to Thomas Aquinas, human

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<sup>4</sup> HENNETE-VAUCHEZ, S. A human dignitas? Remnants of the ancient legal concept in contemporary dignity jurisprudence. *International Journal of Constitutional Law*. 2011, Vol. 9, No. 1, p. 53. In: *Oxford Academic* [online]. 1. 1. 2011 [2023-11-28]. Available at: <<https://doi.org/10.1093/icon/mor031>>.

<sup>5</sup> HOBBS, T. *Hobbes Leviathan*. In: Richard Tuck (ed.). *Revised student edition*. Cambridge: Cambridge University Press, 1996, pp. 63–65.

dignity belongs to everyone by their likeness to God.<sup>6</sup> In the 17<sup>th</sup> and 18<sup>th</sup> centuries the concept of inherent human dignity was freed from religious influence. During this period, philosophers emphasised human beings as a member of society. Immanuel Kant developed the most influential theory of human dignity during this period. His theory was based on human rationality. The rational individual possesses moral freedom to regulate their behaviour as a person of senses. Because of rationality (and human dignity), individuals should be treated as ends in themselves and not as means to something else. Consequently, Kant emphasised the autonomy of individuals and the prohibition of objectification.<sup>7</sup>

At the turn of the 18<sup>th</sup> and 19<sup>th</sup> centuries, a third concept of human dignity that signified the dignity of human existence (dignified living conditions) developed. As a consequence, politics turned attention to the social conditions of the lower classes.<sup>8</sup>

## II. LEGAL CONCEPTS OF HUMAN DIGNITY

Many national and international human rights documents, court's decisions and scholars refer to human dignity. The paper briefly summarises three main legal concepts that have developed in legal discourse. Firstly, according to many authors, human dignity serves as a philosophical justification for the existence of human rights that serves to one main purpose to protect human dignity.<sup>9</sup> The fundamental idea is that humans possess equal worth and deserve respect because they share features that distinguish them from animals and things.<sup>10</sup> Humans have human dignity just because of their humanity.

The wording of human rights documents supports the understanding of human dignity as a source of human rights. The UDHR recognized “*the inherent dignity*”.<sup>11</sup> According to Eleanor Roosevelt, the recognition of inherent human dignity in UDHR “*was meant to explain why human beings have rights to begin with.*”<sup>12</sup> The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights explicitly in their preambles states that human rights derive from human dignity.<sup>13</sup> The understanding of human dignity as inherent dignity can be found in most European human rights documents. For instance, in the EU Charter<sup>14</sup> and the Czech Charter.<sup>15</sup> In-

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<sup>6</sup> STÖRIG, H. J. *Malé dějiny filozofie*. Praha: Zvon, 1991, p. 19.

<sup>7</sup> KANT, I. *Základy metafyziky mravů*. Praha: Svoboda, 1976, pp. 38–40.

<sup>8</sup> BAROŠ, J. Svoboda a rovnost v důstojnosti a právech. Základní práva a svobody obecně (komentář k čl. 1 Listiny). In: Eliška Wagnerová – Vojtěch Šimíček – Tomáš Langášek – Ivo Pospíšil a kol. *Listina základních práv a svobod. Komentář 1. vyd.* Praha: Wolters Kluwer, 2012, pp. 55–78.

<sup>9</sup> ANDORNO, R. International policy and universal conception of human dignity. In: Stephen Dillel – Nathan J. Palpant (eds.). *Human dignity in bioethics*. New York: Routledge, 2013, p. 129.

<sup>10</sup> BAROŠ, J. *Listina základních práv a svobod. Komentář 1. vyd.*

<sup>11</sup> Universal Declaration of Human Rights (UNGA Res 217 A(III), United Nations, 10. 12. 1948). Preamble. Art 1.

<sup>12</sup> McCRUDDEN, C. Human dignity and judicial interpretation of human rights. *European Journal of International Law*. 2008, Vol. 19, No. 4, p. 657. In: *Oxford Academic* [online]. 1. 9. 2008 [2023-11-28]. Available at: <<https://doi.org/10.1093/ejil/chn043>>.

<sup>13</sup> International Covenant on Civil and Political Rights (999 UNTS 171, United Nations, 16. 12. 1966), preamble. International Covenant on Economic, Social and Cultural Rights (993 UNTS 3, United Nations, 16. 12. 1966), preamble.

<sup>14</sup> Charter of Fundamental Rights of the European Union, *OJ C 326, 26.10. 2012, 391–407 (EU Charter)*, Art. 1. See Explanations 2007/C 303/02 relating to the Charter of Fundamental Rights, *OJ C 303, 14.12.2007, 17–35*, explanation on Art 1.

terestingly, even though, the ECHR does not mention human dignity,<sup>16</sup> the ECtHR interprets human dignity as a fundamental essence of the ECHR and emphasises the purpose of human rights to protect human dignity.<sup>17</sup> Therefore, human dignity serves as a barrier against public authority disregarding the human rights framework and compels public power to interpret human rights within the bounds of human dignity.<sup>18</sup> Human dignity is of interpretative importance for determining the minimum standard of human rights protection to guarantee a dignified life.

Secondly, many national constitutions, including the Czech Charter, incorporate the subjective right to human dignity.<sup>19</sup> Also, the EU Charter enshrines the subjective right to human dignity.<sup>20</sup> Advocate General Jacobs in his opinion on case C-377/98 asserted that “*dignity is perhaps the most fundamental right of all, and is now expressed in Article 1 of the Charter*”.<sup>21</sup>

Because human dignity is closely tied to the social status of the individual, human dignity as a free-standing right can provide protection only to honour, reputation, and name. Other aspects of personal life, such as integrity, are protected through one own’s subjective human rights.<sup>22</sup> The limited applicability of human dignity as a free-standing right supports the opinions on the uselessness of human dignity. However, the Czech Constitutional Court and the ECtHR often argue by the subjective right to human dignity itself or by the subjective right to human dignity in connection with other subjective rights, particularly the right to privacy and integrity, as human dignity is an inherent part of those rights.<sup>23</sup>

Thirdly, many national courts consider human dignity to be an absolute constitutional value. For instance, the Czech Constitutional Court stated that human dignity is “*an in-*

<sup>15</sup> Usnesení předsednictva České národní rady č. 2/1993 Sb., o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku České republiky (Czech Charter), Art 1. See also Constitutional court decision file n. IV. ÚS 412/04 dated 7.12.2005 and Constitutional court decision file n. II. ÚS 2268/07 dated 29. 2. 2008.

<sup>16</sup> The ECHR (European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols (ETS 5, Council of Europe, 1950) (ECHR) does not mention human dignity. The explicit reference to the inherent dignity of all human beings may be found only in the Protocol No. 13 concerning the abolition of the death penalty.

<sup>17</sup> See *SW v UK* and *CR v UK* (1996) 21 EHRR 363, para 44 and 42; *Christine Goodwin v UK* (2002) 35 EHRR 18, para 90; *Pretty v UK* (2002) 35 EHRR 1, para. 65. The ECtHR uses human dignity in line with the UDHR as an argument in the wider context of the case, as a normative tool and as the fundamental essence of the particular right concerned. See BUYSE, A. The role of human dignity in ECHR case law. In: *ECHR blog* [online]. 21. 10. 2016 [2023-11-28]. Available at: <<http://echrblog.blogspot.com/2016/10/the-role-of-human-dignity-in-echr-case.html>>.

<sup>18</sup> BARTOŇ, M. Čl. 1 Svoboda, rovnost, důstojnost. Charakteristika základních práv. In: Faisal Husseini – Michal Bartoň – Marian Kokeš – Martin Kopa a kol. *Listina základních práv a svobod. Komentář*: Praha: C. H. Beck, 2021; LE MOLI, G. The Principle of Human Dignity in International law. In: Mads Tønnesson Andenæs (ed.). *General Principles and the Coherence of International Law*. Leiden: Brill Nijhoff, 2019, p. 360. In: *doi Foundation* [online]. [2023-11-28]. Available at: <[https://doi.org/10.1163/9789004390935\\_021](https://doi.org/10.1163/9789004390935_021), ISBN: 9789004390935>.

<sup>19</sup> Czech Charter, Art. 1. See also Czech Constitutional Court decision file n. II. ÚS 1191/08 dated 14. 4. 2009 and Czech Constitutional Court decision file n. II. ÚS 171/12 dated 15. 5. 2012. Basic Law for the Federal Republic of Germany in the revised version as last amended by the Act of 19. 12. 2022 (Federal Law Gazette I p. 2478), Art. 1.

<sup>20</sup> EU Charter, Art. 1.

<sup>21</sup> Case C-377/98 *The Netherlands v European Parliament and Council of the European Union* [2001] ECR I-07079, Opinion of AG Jacobs delivered 14. 6. 2001, para 197.

<sup>22</sup> HORÁK F. Lidská důstojnost v ústavním právu: legitimní argument nebo axiom? *Jurisprudence*. 2017, Vol. 5, No. 4.

<sup>23</sup> See Czech Constitutional Court decision file n. IV. ÚS 412/04 dated 7. 12. 2005. Czech Constitutional Court decision file n. I. ÚS 1586/09 dated 6. 3. 2012. *Pretty v UK* (2002) 35 EHRR 1. *Christine Goodwin v UK* (2002) 35 EHRR 18. *Selmouni v Netherlands* (2000) 29 EHRR 403.

*disputable constitutional value that cannot be limited or balanced by other rights and interests by law or jurisprudence*<sup>24</sup> and is of the highest and most general purpose of law.<sup>25</sup> According to the CJEU, human dignity is a general principle of law that does not contravene the establishment of human dignity as a right.<sup>26</sup> Even though the Czech Constitutional Court refers to value and CJEU to principle, both mean the same thing.<sup>27</sup> The paper further refers to the principle of human dignity.

Unlike the right to human dignity, the principle of human dignity has an objective character. The courts have developed two main approaches to the principle of human dignity. The first approach emphasises the autonomy of human beings, relating to free will (the ability to decide about one's own life and happiness) and self-realisation. Legal personality and legal capacity reflect this approach.<sup>28</sup> The principle of human dignity means respecting the individual's right to decide for themselves, to create one's own destiny, even if the decision is self-destructive or self-humiliating.<sup>29</sup> The second approach emphasises the prohibition of objectification. Placing an individual to the role of an object, when they become a mere means of state power and are reduced to a generically interchangeable thing, is against human dignity.<sup>30</sup> For example, in Germany, the Federal Constitutional Court held that the law allowing the shooting down of a civil aircraft hijacked by terrorists for use as a weapon in a terrorist attack on a football stadium violated human dignity. According to the Federal Constitutional Court, passengers of aircraft cannot be objectified and sacrificed in the interest of protecting the wider public - potential victims of terrorist attack.<sup>31</sup> Because an individual cannot be fully free to decide for themselves if they are an object of the law, and vice versa, the two approaches are usually complementary. However, what if individuals voluntarily objectify themselves? In the case of dwarf-tossing,<sup>32</sup> peep-shows,<sup>33</sup> or laser game<sup>34</sup> the courts prioritised the prohibition of objectification over the autonomy of individuals and upheld bans imposed by public authorities on these activities.

In summary, legal theory distinguishes three concepts of human dignity: human dignity as a source of human rights, the right to human dignity, and the principle of human dignity. Nevertheless, the courts often mix these concepts together.<sup>35</sup>

<sup>24</sup> Czech Constitutional Court decision file n. Pl ÚS 3/14 dated 20. 12. 2016.

<sup>25</sup> Czech Constitutional Court decision file n. II. ÚS 2268/07 dated 29. 2. 2008.

<sup>26</sup> Case C-36/02 *Omega* [2004] ECR I-09609, paras 32 - 34. Case C-377/98 *The Netherlands v European Parliament and Council of the European Union*, para 70.

<sup>27</sup> The legal doctrine does not establish the consensual difference between principles and values.

<sup>28</sup> Czech Constitutional Court decision file n. I. ÚS 557/09 dated 18. 8. 2009. Constitutional Court decision file n. IV. ÚS 412/04 dated 7. 12. 2005.

<sup>29</sup> See court's decision on freedom to commit a suicide, e.g., Czech Constitutional Court decision file n. I. ÚS 2078/16 dated 2.1.2017, German Federal Constitutional Court (BVerfG) Judgement of the Second Senate 2 BvR 2347/15 dated 26. 2. 2020. *Pretty v UK* (2002) 35 EHRR 1.

<sup>30</sup> Czech Constitutional Court decision file n. I. ÚS 557/09 dated 18. 8. 2009. Constitutional Court decision file n. IV. ÚS 412/04 dated 7.12. 2005. *Siladine v France* (2006) 43 EHRR 16. *Bouyid v. Belgium* (2016) 62 EHRR 32.

<sup>31</sup> German Federal Constitutional Court decision (BVerfG), Judgement of the First Senate 1 BvR 357/05, dated 15. 2. 2006.

<sup>32</sup> Human Rights Committee decision, Communication No 854/1999: *Manuel Wackenheim v France*. 26/7/2002. CCPR/ C/75/D/854/1999.

<sup>33</sup> German Federal Administrative Court decision BVerwGE 64, 274, 1 C 232.79, dated 15. 12. 1981.

<sup>34</sup> Case C-36/02 *Omega*.

<sup>35</sup> HORÁK, F. *Lidská důstojnost v ústavním právu: legitimní argument nebo axiom?* pp. 11–13.

### III. HUMAN DIGNITY AND NEW TECHNOLOGIES

The consequences associated with the use of new technologies may impact future generations and the human species itself. The Explanatory Report to the Convention on Human Rights and Biomedicine (Oviedo Convention), that aims to safeguard the dignity and identity of all human beings, both as individuals and as members of the human species, in the field of medicine and research,<sup>36</sup> states, “*It is no longer the individual or society that may be at risk but the human species itself.*”<sup>37</sup> The responsibility and duty towards the human community and future generations are explicitly mentioned in the preambles of the EU Charter and 13 constitutions of EU Member States, including the Czech Constitution.<sup>38</sup> The commitment to protect future generations also underlines the principle of intergenerational solidarity and sustainable development in Articles 3 and 21 of the TEU.<sup>39</sup> The principle of sustainability aims to ensure that the needs of current generations are met without compromising the needs of future generations.<sup>40</sup>

The protection of future generations is not only a matter of environmental law but due to biotechnological development, also the matter of autonomy of future generations to be able to decide about themselves. For example, genome editing technology enables current generations to influence the genetic constitution of future generations, thus, affecting their ability to make their own decisions about their life and health. Human genome editing might lead to commodification of future children. Because the principle of human dignity relates to autonomy and to prohibition of objectification, the human dignity of future generations is at stake.<sup>41</sup>

Since the 1990s, international human rights documents have acknowledged the necessity of protecting future generations and humankind in the face of environmental and biotechnological threats.<sup>42</sup> All these documents justify the protection of humanity and future generations by reference to human dignity. Could human dignity really relate to future generations? The human rights discourse distinguishes three concepts of human dignity. Identifying the concept of human dignity that relates to future generations might not only provide an answer to this question but is also essential for balancing the protection of in-

<sup>36</sup> Oviedo Convention, Preamble and Art 1. Explanatory Report to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine’ (ETS. 164, Council of Europe, 4.4.1997), paras 14 and 17-19.

<sup>37</sup> Explanatory report to the Oviedo Convention, para 14.

<sup>38</sup> GÖPEL, M., ARTHELGER, M. How to Protect Future Generations Rights in European Governance. *Intergenerational Justice Review*. 2010, Vol.10, No. 1, p. 5. In: *Intergenerational Justice Review* [online]. 4. 10. 2010 [2023-11-28]. Available at: <<http://dx.doi.org/10.24357/igjr.5.1.468>>.

<sup>39</sup> Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326/13 (TFEU).

<sup>40</sup> World Commission on Environment and Development’s, Our Common Future. Brundtland report 1987, para 27 and 49. In: *United Nations Department of Economic and Social Affairs Sustainable Development* [online]. [2023-11-28]. Available at: <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>>.

<sup>41</sup> DÜWELL, M. Human dignity and Future Generations. In: Marcus Düwell – Jens Braarvig – Roger Brownsword – Dietmar Mieth (eds.). *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*. Cambridge: Cambridge University Press, 2014, pp. 551–552. In: *Cambridge University Press* [online]. 5. 3. 2015 [2023-11-28]. Available at: <<https://doi.org/10.1017/CBO9780511979033.040>>.

<sup>42</sup> See Oviedo Convention; Declaration on the Responsibility of the Present Generations Towards Future Generations; Universal Declaration on the Human Genome and Human Rights.

dividuals who are already born and have human rights (including the right to human dignity) and the protection of future generations, whose number and existence are uncertain.

According to Article 3 of the UNESCO Declaration on the Responsibilities of Present Generations Towards Future Generations, present generations should ensure the maintenance and perpetuation of humankind with due respect for dignity. The declaration recognizes the obligations of current generations towards future generations. Although the original draft of the declaration proposed using the term “rights of future generations”, the final text of the declaration uses the terms “obligation” and “dignity” instead.<sup>43</sup> The reason for this choice may be that rights are granted only to living persons.

Similarly, the Oviedo Convention<sup>44</sup> does not associate the concept of rights with the protection of future generations. The Oviedo Convention distinguishes between the concepts of rights and dignity. This dichotomy is not without meaning. Whereas the Oviedo Convention connects the concept of human rights with the term “everyone”, the concept of human dignity relates to term “human beings”.<sup>45</sup> The Council of Europe has chosen the concept of “human being” because of its general character.<sup>46</sup> According to the Explanatory Report to the Oviedo Convention, when referring to human rights, the Oviedo Convention relates to the protection of human rights guaranteed by the ECHR. Explanatory Report to the Oviedo Convention also explains, that the concept of dignity holds essential value and forms the basis for most values and principles in the Oviedo Convention.<sup>47</sup> Because the ECtHR held that human rights are granted to born individuals only,<sup>48</sup> the Oviedo Convention clearly refer to the principle of human dignity.

The same distinction between use of the term “human being” and “everyone” is apparent in the wording of Article 3(1) of the EU Charter, which contains the right to physical and mental integrity, and Article 3(2) of the EU Charter, which prohibits the eugenic practices, reproductive cloning, etc. While paragraph 1 is introduced by the word “everyone”, in paragraph 2 the term “everyone” is replaced with the broader term “human being”.

Moreover, the wording of the Oviedo Convention and UNESCO Declaration on the Responsibilities of Present Generations Towards Future Generations suggests that future generations do not possess rights. Because the future generations do not exist, they lack personality and the ability to subjectively perceive the violation of their rights and advocate for themselves. As the right to human dignity is a subjective right to dignified treatment based on social status, future generations cannot have a subjective right to human dignity. Human dignity can only be attributed to future generations in the objective

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<sup>43</sup> Draft Declaration on the Safeguarding of Future Generations (151/EX/18, Executive Board, 1997).

<sup>44</sup> Even though, the Oviedo Convention has not been ratified by all Member States of the Council of Europe (only 26 Member States of the Council of Europe ratified Oviedo Convention and other 6 signed it (without ratification), only 17 Member States of the EU ratified the Oviedo Convention), the principles contained in the Oviedo Convention may constitute the minimum standard of protection and thus, the Member States are obliged to comply with these provisions. See the cases where ECtHR cited Oviedo Convention even though the States involved did not ratify the Oviedo Convention, e. g. *Evans v The United Kingdom* (2007) 43 EHRR 21; *Costa and Pavan v Italy* (54270/10, 28 August 2012); *Parrillo v Italy* (2016) 62 EHRR 8 etc.

<sup>45</sup> Oviedo Convention, Art.1.

<sup>46</sup> Explanatory Report to the Oviedo Convention, para 9.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Vo v France* (2004) 40 EHRR 12.

manner of what is and is not considered dignified for any human being. Thus, as the principle of human dignity.

The CJEU and the ECtHR have addressed the issue of the human dignity of future generations, particularly in the context of the human dignity of the human embryo and foetus. Both courts have extended protection of human dignity to the embryo without granting protection of human rights, particularly the right to life.<sup>49</sup> According to the CJEU and the ECtHR, human dignity does not necessarily imply the granting of human rights protection. In the light of the ECtHR and CJEU decisions, the concept of human dignity as a source of human rights is no longer supportable in the realm of new technologies. Consequently, attributes defining the granting of human rights and freedoms need to be more comprehensive.

In summary, the references to human dignity of human beings refer to the principle of human dignity. The principle of human dignity means not treating any human being as an object and not depriving any human being of autonomy.

#### IV. COLLECTIVE HUMAN DIGNITY

The wording of the mentioned human rights document and case law suggests that human dignity can be attributed not only to individuals who are not yet born but also to human beings collectively. References to collective human dignity are not new. Recognizing collective dignity often serves as an argument in favour of the human rights of minorities (human dignity as the source of human rights).<sup>50</sup> For example, Rhoda E. Howard argues that while human rights are always individual, human dignity can be either individual or collective. She explains that the recognition of the collective dignity of indigenous people is closely related to acknowledging the values of their collective way of life.<sup>51</sup> However, individuals can seek the protection of collective interests and values through individual human rights.<sup>52</sup> The claim to human dignity for providing minorities with some sort of agency is not necessary, because the human dignity of minorities needs to be viewed as a social construct granted by society. Corporate personhood is also not based on human dignity.

<sup>49</sup> C-34/10 *Oliver Brüstle v Greenpeace eV*. [2011] ECR 2011 I-09821. *Parrillo v Italy* (2016) 62 EHRR 8. In the case *Parrillo v Italy* ECtHR applied the principles of Oviedo Convention, even though Italy did not ratify the Oviedo Convention. The human dignity of embryo was also upheld in decisions issued by Committee on the Rights of Persons with Disabilities and by Committee on the Elimination of Discrimination against Women (see Committee on the Rights of Persons with Disabilities, Comments on the draft General Comment No36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights. CCPR/C/GC/36, 2018, p. 1. In: *United Nations Human Rights Office of the High Commissioner* [online]. [2023-11-28]. Available at: <<https://www.ohchr.org/en/hrbodies/ccpr/pages/gc36-article6righttolife.aspx>>; Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: China, 36th ses. CEDAW/C/CHN/CO/6, 2006, para 17. In: *United Nations Official Document System* [online]. [2023-11-28]. Available at: <<http://undocs.org/CEDAW/C/CHN/CO/6>>.

<sup>50</sup> WERNER, M. *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*. pp. 344–346.

<sup>51</sup> HOWARD, R. E. Dignity, community and human rights. In: Abdullahi Ahmed An-Na'im (ed.). *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. Philadelphia: University of Pennsylvania, 1995, p. 84. In: [online]. [2023-11-28]. Available at: <<https://doi.org/10.9783/9780812200195.81>>.

<sup>52</sup> *Ibid.*, p. 349.



The situation differs in the case of human dignity of human beings and future generations. Human dignity provides an argument to restrict practices (e.g., human genome editing, human cloning) that do not affect the rights of already existing persons. No individual can seek protection through human rights. Some authors argue that the claim to human dignity of human beings relates to nature and its essence.<sup>53</sup> Those authors consider any intervention in the human genome to be against the essence of human beings and, thus, against human dignity. Indeed, Article 24 of the Declaration on the Genome states that any interference with germ lines are against human dignity. The weakness of this approach is that it is based on the existence of a certain superpower, either nature or God, in which humans are not supposed to interfere. According to Miguel Beriain, such approach would mean that other medical practices that irreversibly affect the human genome, e.g., chemotherapy, are against human dignity.<sup>54</sup> Other authors argue that human dignity relates to society and its values.<sup>55</sup> For instance, Jürgen Habermas speaks about dignity of human life that results from the self-understanding of human beings as members of society.<sup>56</sup> Interfering with the genetic constitution of offspring creates an asymmetry between those who decide about editing and those who are the object of the decision. The result is the objectification of human life.<sup>57</sup>

Human dignity means the protection of the ability to make autonomous decisions and protection against objectification. The principle of human dignity provides objective protection to all human beings. The benefit of collective human dignity of human beings is the ability to protect non-existing entities against practices that might contravene their autonomy and lead to objectification. An individual concept of human dignity could not justify a general prohibition of these practices, as an *ad hoc* assessment on case-by-case basis would be required. Furthermore, unlike the human dignity of minorities (or concerned group), the human dignity of human beings belongs to all human beings. It is not necessary to make distinctions between groups of human beings.

## CONCLUSION

Human dignity has remained a central legal concept since the adoption of UDHR. The paper has illuminated three distinct legal concepts of human dignity: human dignity as a source of human rights, the right to human dignity, and the principle of human dignity. Historically, all three concepts have been used to protect individuals who are already born

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<sup>53</sup> NELSON, A.-U.C. An Appraisal of the Ethics of Genetic Modification of Embryos and Its Implications on the Dignity of Human Species. *Medicine and Law*. 2016, Vol. 35, No. 4, pp. 512–513; ANNAS, G. J. Human Rights and the American Bioethics: Resistance is Futile. *Cambridge Quarterly of Healthcare Ethics*. 2010, Vol. 19, No. 1, pp. 141–150. In: *Cambridge University Press* [online]. 22. 12. 2009 [2023-11-28]. Available at: <<https://doi.org/10.1017/S0963180109990338>>.

<sup>54</sup> BERIAIN, I. M. Human dignity and gene editing: Using human dignity as an argument against modifying the human genome and germline is a logical fallacy. *EMBO Rep*. 2018, Vol. 19, No. 10. In: *EMBOpress* [online]. 21. 9. 2019 [2023-11-28]. Available at: <<https://doi.org/10.15252/embr.201846789>>.

<sup>55</sup> MAYDEN, R. L. A hierarchy of species concepts: The denouement in the saga of species problems. In: Michael F. Claridge – Hassan A. Dawah – M. R. Wilson (eds.). *The units of biodiversity*. London: Chapman & Hall, p. 105.

HOWARD, R. E. Dignity, community and human rights.

<sup>56</sup> HABERMAS, J. *The future of human nature*. Cambridge: Polity Press, 2003, pp. 67–77.

<sup>57</sup> *Ibid.*, p. 63.

against undignified treatment. At its essence, human dignity implies that individuals should have the autonomy to make decisions and should not be treated as mere means. In the light of various consequences, both positive and negative, of new technologies, the Council of Europe and UNESCO have invoked the notion of human dignity to safeguard the future autonomy and subjectivity of future generations. Moreover, the ECtHR and ECHR have already acknowledged the protection of the human dignity of the embryo and foetus as representatives of future generations. The paper posits that human dignity as the principle protects future generations without necessarily conferring upon them human rights.

Therefore, new technologies have impacted the legal understanding of human dignity. The concept of human dignity as the source of human rights is no longer tenable. The principle of human dignity serves to safeguard autonomy and prevents objectification of individuals not yet born. In addition, invoking the argument of human dignity of human beings or future generations to proscribe some practices conflicting with their dignity implies the collective aspect of human dignity. Standing at the crossroads of technological development, human dignity should become a central concept for assessing the acceptability of new technologies in practice.