**SW 14 – Human Dignity in Europe**

**Room 4.A05**

08:30 – 08:45 **Introduction**

*Klaus Mathis*

**Part 1 Chair:** Gergely Deli

08:45 – 09:20 **Human Dignity in Belgium**

*Koen Lemmens, KU Lueven, Lueven Centre for Public Law*

09:20 – 09:55 **Human Dignity in Sweden**

*Mona Hahghou Strindberg, Lawyer Prio Advokatbyrå, Stockholm, Sweden*

09:55 – 10:30 **Human Dignity in Great Britain and Northern Ireland**

*Daniel Bedford, University of Portsmouth, Portsmouth, UK*

10:30 – 11:00 **Coffee Break**

**Part 2 Chair:** Daniel Bedford

11:00 – 11:30 **Human Dignity in Malta**

*David Edward Zammit, University of Malta, Msida, Malta*

11:30 – 12:00 **Human Dignity in Bulgaria**

*Martin Belov, University of Sofia St. Kliment Ohridski, Sofia, Bulgaria*

12:00 – 12:30 **Human Dignity and Constitutional Pluralism. Limits and Possibilities of Two Constitutional Principles in Times of Deep Political Dissension**

*Marcos Maliska, UniBrasil - Centro Universitário, Curitiba, PR Brasil*

***-Abstract-***

Constitutional pluralism requires a fundamental consensus on certain things, which, of course, also contemplate the notion of human dignity. Deep political dissent can misrepresent the notion of pluralism and unduly override the constitutional limits of consensus, leading to the relativization of the dignity of the human person. Throughout its existence, the Brazilian Constitution of 1988 experienced a broad consensus among the main political actors regarding the effectiveness of human rights and values of the Charter. However, recently, the country has witnessed the significant growth of conservative political thinking incompatible with the Constitution. Political discourse began to be permeated by direct attacks on human rights in general, but especially on the rights of minorities. This situation requires the system of controls of the constitutional order to establish clear substantive limits to politics, determining the conditions of the political game and reaffirming the normativity of the principles of pluralism and human dignity

12:30 – 13:00 **Human Dignity as a Biopolitical Device?**

*Antonio Pele, Pontifical Catholic University of Rio de Janeiro*

***-Abstract-***

The concept of human dignity has been acknowledged by the European Union Law thanks to in particular the European Charter of Fundamental rights. The latter holds human dignity as one of its ‘universal values’ (preamble), and designs specific rights that ensure the respect of human dignity (chapter 1). At the same time, the Court of Justice of the European Union has frequently used this notion in order to regulate certain European Union members’ policies and other economical rights and liberties of the European Union (i.e. Omega, 2004; Oliver Brüstle v. Greenpeace eV, 2011; C–148/13 a C–150/1, 2014). Taking into account this background, this paper aims to understand the articulation between on the one hand, the concept of human dignity within the EU realm of human rights and the rule of law and on the other, the notion of human dignity used in the frame of EU adjudication related to economic issues. The paper will use some specific cases in order to show that human dignity is not simply used to protect the intrinsic worthiness of the human person, but also to regulate biological, ethical and social dimensions of ‘human’ life. The paper will reckon on Foucault’s notion of ‘biopolitics’ – that is the regulation and the enhancement of the life of the population – in order to show that within some specific EU policies, human dignity can be defined as biopolitical device aiming to govern certain aspects of the human and social existences.

13:00 – 14:00 **Lunch**

**Part 3 Chair:** Renato Rabbi Baldi

14:00 – 14:30 **Human Dignity in Bosnia Herzegovina**

*Damir Banovic, University of Sarajevo, Bosnia and Herzegovina*

14:30 – 15:00 **Human Dignity in Romania**

*Maria Lia Pop, University of Oradea, Romania*

15:00 – 15:30 **Human Dignity in Albania**

*Arta Vorpsi, Tirana Faculty of Law, Albania*

15:30 – 16:00 **Coffee Break**

**Part 4 Chair:** Maria Lia Pop

16:00 – 16:30 **Human Dignity in Hungary**

*Gergely Deli, Széchenyi István University, Győr, Hungary*

16:30 – 17:00 **Human Dignity in Poland**

*Marta Soniewicka, Jagiellonian University, Krakow, Poland Justyna Holocher, Pedagogical University of Krakow, Institute of Political Science, Krakow, Poland*

17:00 – 17:30 **On the Dignity Clauses in the Constitutions - An Analysis in the Context of the Philosophical Foundations of Human Rights**

*Zeynep İspir, Ankara University Faculty of Law, Turkey*

***-Abstract-***

There are different views on the characterization of human dignity in law such as taking the concept as a constitutional principle, or a general concept, or the ultimate aim of law. If we take into account the grave violations of human rights witnessed in the history of humanity, it is indeed understandable to appeal to the mediation of law to prevent the reoccurrence of those calamities and devastations. In order to strengthen the status of the concept, legal actors think that human dignity as a value that has to be protected and for this reason it should be a part of positive law (i.e., as a legal right or a legal principle), especially as a constitutional regulation.

The constitutionalism movements prevailing after the Second World War brought the concept of dignity under the purview of positive law and this ignited theoretical debates among lawyers –for instance, debates on the place of the dignity clauses in the constitutions, the form of the related regulations, the legal property of the concept and its relation with basic rights; debates on the question whether the concept should be taken as a right or as a principle and in case it is taken as a right whether it is an absolute one or not; debates on the meaning and consequences of including the dignity concept in law not as a right *per se* but an objective principle or a value. In the meantime, the legal systems which do not have in their constitutions a separate clause (such as in the German *Grundgesetz*) devoted to human dignity cannot avoid discussing the human dignity-law relation, both because of the other legal regulations they have and also because of the international legal instruments, especially those on human rights. There are also some criticisms against considering human dignity only as a legal category and including it in law-making and in the practice of law. For example, the concept is found too broad or too strong in terms of being a legal right. Actually most of the debates on this topic seem to attempt to include the concept of human dignity in legal systems in an appropriate form and content. How is it possible to do this? Is codification of human dignity as a separate clause in the constitutions the only way to protect the value of the human being in law?

In this paper, I will try to put forward the difference between “human dignity as a right” and “human dignity as a source of deduction of a right” from an ethical-philosophical perspective. In this context, I will focus on the concept of human dignity as a source where human rights are deduced from, instead of conceptualizing it as a legal category that we find in human rights documents and constitutions. I shall assert that this alternative way enables us to connect dignity and law more effectively in different conditions. Furthermore, the paper will offer an ethical-based human rights approach to discuss the possibility of this connection by taking into consideration the Constitution of the Republic of Turkey, which does not have a clause specifically devoted to human dignity.

17:30 – 18:00 **The Principle of Proportionality, Human Dignity and the Jurisprudence of the Argentinian Supreme Court. An Analysis Based on the Thought of Robert Alexy**

*Renato Rabbi Baldi, Universidad de Buenos Aires, Argentina*

***- Abstract-***

I

I propose to examine the relationship between “judgements of proportionality and human dignity”. Professor Alexy considers this to be “one of the most contested questions in the debate about the normative structure of human dignity”. With this in mind, I shall initially offer a brief review of some of the essential differences between rules and principles and its influence over the principle of proportionality and the concept of human dignity (II). I shall then apply these ideas on a renowned case in the Argentine Supreme Court (“Gualtieri Rugnone”, 2009) (III). Following this, I shall make some critical considerations to Alexy’s construction of human dignity as a “rule”, and propose, following freely Alexy’s thought, some ideas related to consider human dignity as a “principle” (IV).

II

According to Alexy, two conceptions stand in opposition: “the absolute conception” supports that the guarantee of human dignity counts as a norm that takes precedence over all other norms in all cases”. That “implies that balancing is precluded. This means that each and every interference with human dignity is a violation of human dignity. Thus, justified interference with human dignity becomes impossible. By contrast, proportionality analysis is intrinsically connected to the distinction between justified and unjustified interferences. A proportional interference is justified and is, therefore, constitutional”. On the contrary, “the relative conception says that the question of whether human dignity is violated is a question of proportionality. With this, the relative conception is not only compatible with proportionality analysis, it presupposes it”. Alexy refers that this concept is controversial, though it is said “that the relative construction leads to a devaluation of human dignity”. Even though he does not believe so (thesis that I agree), Alexy considers that it is possible to support the “absolute conception” in some cases (thesis that I do not agree). I shall consider these aspects in the following case.

III

The issue was “whether the appellant of legal age and allegedly the son of persons (…) that disappeared during the last military dictatorship, should be obliged under the constitution to undergo a blood test to determine his DNA. The above-mentioned refused and cited his right to privacy and identity…”.

The Justices gave three answers. One, upheld the appeal though it represents an invasion of this person’s privacy. A second one reached the opposite decision, by saying that it was necessary to “fulfil the State’s obligation to protect the victims and investigate and prosecute the perpetrators of serious crimes”. The third one admit the appeal but with different arguments.

The first two opinions regards the respect of human dignity reflected (in the right to privacy or in the State’s in solving crimes) as an unbreakable “rule” to be protected and not questioned. This principle would therefore always “outweigh” all others. The third one, on the contrary, observes that the case “reveals an extraordinary clash between values and principles”. Thourgh “the court must reach a balanced decision which assesses the importance of each principle in each individual case”. Thus, on one hand, the ruling maintains that “the alleged biological family’s right to know the truth” will be respected “when they are informed of the apellant’s identity”, but –and here we can say that the alleged biological family’s right is adjusted- without “the other victim who was abducted having to assume a new personal or legal identity”. And, on the other hand, the authorisation of the blood test also *adjusts* the optimization of allegant’s right to freedom of action. However, the ruling rejects the use of physical coercion for two reasons: (a) “it would be difficult to justify it constitutionally (…) when dealing with (…) alleged victims (…) of the crime under investigation”, and (b) “all possible means of obtaining genetic material by less intrusive than means physically restraining the victim must be first exhausted”. The ruling not only plausibly summarizes Alexy’s theoretical hypotheses on the relationship between rules and principles and the way to apply the latter. What is of interest here is that it also treats human dignity as a “principle” which in my opinion is a long way from “devaluation” it as the absolute thesis of dignity suggests. Rather than this, given the nature of the first two rulings, an “absolute” conception of human dignity would paradoxically lead to the opposite conclusion.

IV

In the last part of the paper, it is studied Alexy’s opinion that a construction of human dignity as a “rule” has certain value, according a number of arguments, among others, “the clear cases” and the “object formula”. However, there are arguments and exemples (some of them given by Alexy himself) that would show the weakness of this thesis. Therefore, the paper proposes: (1) that perhaps it would be appropriate to leave the semantic “relative theory” (*relative Theorie*) of human dignity because of its ambiguity. Instead I prefer to consider that human dignity has an *absolute basis* which is inherent to the human condition. However, i*t does not necessarily follow that it may be considered as absolute* (and much less as *relative*) simply because people coexist and perpetual changes thus take place amongst them; (2) that this absolute basis must be “adjusted” in any case. That is why balancing is the most thorough way of ensuring this absolute as a natural consequence of the interaction between individuals in society. Nonetheless, this is a far cry from suggesting that this dignity be suspended or nullified. Human dignity always endures; it adapts itself, as in the Lesbian Rule proposed by Aristotle, to all sorts of situations to achieve *epikeia*, or in other words, “higher justice”, whatever the case in contention; (3) that it should be considered to discard the idea of human dignity as a “rule”. As Teifke’s objection points out, “the rule of human dignity ‘does not have an independent meaning`” since – Arthur Kaufmann also emphasized this point – “a rule construct for human dignity is possible, but devoid of content”, while the “content of the level of the rule depends completely on the content of the level of the principle”. In short, the formulation of a “rule” for human dignity reminds me of the constructs of the *ius naturale* rationalist authors of the eighteenth century: their intentions were unquestionable but their results were rather simplistic and decidedly impractical. As mentioned before, this is because the content of human dignity “comprises” (or, to put it better, *feeds off*) the details of each particular situation throughout the work of practical reasoning, in the way the aristotelian approach of law tradition had developed.

18:00 – 18:15 **Conclusion**

*Klaus Mathis*

The remaining presentations are the research finding published in the “Handbook of Human Dignity in Europe” available here: [https://link.springer.com/referencework/10.1007%2F978-3-319-27830-8](https://link.springer.com/referencework/10.1007/978-3-319-27830-8)