



Human Dignity in Andorra

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Abstract

The Principality of Andorra is a special case within the European Community. Just in 1993, it became fully independent and, as a consequence, obtained its first constitution. Human dignity, however, had already been part of several Andorran statutes before 1993.

Additionally, it is remarkable that the constitution defines human dignity as “untouchable” in an abstract manner, while at the same time it is linked to several concrete categories such as education and labour. The latter is also provided for in

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legislation and case law. On top of all this, public Andorran law stipulates sort of a “professional dignity”, which is completely separate from the abstract term of human dignity. Accordingly, Andorra is a good example of how various terms of dignity can evolve in a small country.

Keywords

Various individual rights · Dignity of the person · Dignity and education · Dignity of workers · General-abstract concept · Dignity as basis of concrete reference points · Concept of professional dignity · Ancient Roman world

1 Introduction

Among the numerous states on the European continent, the status of the Principality of Andorra (*Principat d'Andorra*) is exceptional in several respects. The country, which was founded on 8 September 1287 as the condominium of the Bishop of Urgell and the Count of Foix (from 1594: the French Crown) (Marxer and Pállinger 2009), only gained full sovereignty in 1993, while the (representative) function of head of state continues to be fulfilled jointly by the Bishop of Urgell and the President of the French Republic. The (effective) executive function, on the other hand, is exercised by the Andorran Head of Government (Prime Minister), who, in turn, is appointed by the General Council (“*Consell General de les Valls*”; the legislature). Furthermore, the country has a diversified judicial system, which is dealt with in more detail below (Sect. 4). The foundation for law in the Principality of Andorra is provided by the Constitution of 4 May 1993.

With a territorial area of 468 km², Andorra ranks as the largest of Europe’s six microstates. Here we are talking about small entities which maintain their autonomy even within the wider context of European Union and whose sovereignty is recognized. Andorra is not a member of the European Union, however (Friese 2011, pp. 79 et seq.).

2 Constitution

2.1 Formation of the Constitution

As indicated above, the Constitution in force today took force on 4 May 1993, which coincides with the beginning of Andorra’s status as a sovereign state. With regard to the theme of human dignity, it is evident from looking at the Constitutional Council records of 1990–1992 that it was only accorded secondary importance during the formation of the Constitution. That said, even the first policy papers that had been written in preparation for creating the Constitution contained the demand that it should include a “Declaration of Rights” incorporating “the various types of rights (individual, social, human and civil and political rights)” (Actes 2006, p. 46). It is notable that the first papers laying the groundwork for a Constitution did not expressly make provision for human dignity but referred in a general way to the

rights of the human person (Actes 2006, p. 46. Note that reference is made to the Universal Declaration of Human Rights of 1948, which is also envisaged as taking effect in Andorra). Wording is found which affirms “recognition of the fundamental freedoms of the person” as a minimum requirement of a modern constitution (Actes 2006, p. 77). As a result, the discussion within the Constitutional Council remained rather persistently on this general level (Actes 2006, p. 99).

Against this backdrop, it is surprising that human dignity makes a relatively abrupt appearance in the papers documenting the formation of the Constitution: that is to say, in the draft version of 7 January 1992, Articles 1 (para. 2), 4 and 24 (later Article 20 para. 1) – all of which are already in the definitive form of wording that went on to be incorporated into the Constitution now in force (Actes 2006, p. 143). As to the underlying reasons for this, however, no further information is found. From the context it is apparent that these amendments were inserted within the administration, which was answerable to the General Síndic (president of the legislature). All that was emphasized in the Constitutional Council were the links with the constitutions of other countries (Actes 2006, p. 222) and – in the debate of 9 June 1992 – the references to the Universal Declaration of Human Rights of 1948 and the European Convention on Human Rights of 1950 (Actes 2006, p. 228).

Analysis of Constitutional Council records shows that in the course of the preparatory work on the Constitution, although many forms of wording were changed and ideas rejected, the content of the concept of “human dignity” barely featured in the debate or was viewed as uncontested.

2.2 Articles of the Constitution

As already indicated, human dignity is anchored in the Andorran Constitution in several places. At the very start, Article 1 para. 2 contains the following statement: “The Constitution proclaims that the action of the Andorran State is inspired by the principles of respect and promotion of liberty, equality, justice, tolerance, defence of human rights and dignity of the person.” The dignity of the person is thus expressly anchored in the Constitution as one of the objectives of state action. The noteworthy aspect of this article is that the defence of human dignity is not cited as the sole, superordinate principle but is treated as one of many aspects (state objectives) and is enumerated at the end of the list. This also precludes any sense that the values mentioned emanate from human dignity. Even so, this is mentioned in the first article of the Constitution, which confers central importance upon it nevertheless.

Further concretization is provided in Article 4 under the term on the rights and liberties of citizens, where human dignity is crystallized among the general principles as follows: “The Constitution recognises human dignity to be inalienable and therefore guarantees the inviolable and imprescriptible rights of the individual, which constitute the foundation of political order, social peace and justice.” It is already obvious from this passage that, in line with the wording of the German Basic Law, human dignity is defined as inviolable. It is notable how, in Article 4 – in contrast to Article 1 – the particular importance of human dignity comes to

prominence, being presented as the first foundational principle and even supported with the word “inviolable”.

In addition, dignity appears in Article 20 para. 1, where it is stated that “[a]ll persons have the right to education, which shall be orientated towards the dignity and full development of the human personality, thus strengthening the respect for freedom and fundamental rights.” It is interesting that, in this article, the theme of dignity is applied to the aspect of education – a link that is seldom made in the pan-European context. Here it is also of special interest here because this link does not feature again in the Constitution’s subsequent provisions, which instead emphasize other points.

Finally, human dignity is mentioned once again in Article 29: “All persons have the right to work, to their promotion through work, and to just income which shall guarantee a living befitting human dignity for themselves and their families, as well as to reasonable limitation of the working day, weekly rest and paid vacation.” This article might best be considered in the context of the tendency, observed in various European constitutions in the 1990s, to develop human dignity not only abstractly but also in relation to workers and their families. The first constitution to incorporate a provision of that kind (after the Second World War) was the Italian Constitution of 27 December 1947 (Article 36). It was otherwise an idea that would only be taken up again five decades later (in the Treaty of Lisbon and the Charter of Fundamental Rights of the European Union – Art. 31 para. 1 – for instance). Accordingly, it is evident that the Andorran Constitution operates with two aspects of dignity: with reference to a general-abstract concept (as in the German Basic Law), on the one hand, but also on the basis of concrete reference points (similarly to the Italian Constitution), on the other.

Regarding terminological usage, it is notable that human dignity (or the dignity of the human personality) is mentioned three times in the Andorran Constitution, whereas the dignity of the person is mentioned only once. However, no differentiation between these concepts is specified within the text. In any case, the frequency of usage and prominence (in Article 4) of the term “dignity” show that great significance is attached to dignity in the definitive version, contrary to the rather scanty discussions conducted when the Constitution was being formulated.

3 Legislation

3.1 Criminal Law

A notable feature is the inclusion of human dignity in the Andorran Criminal Code (*Code Pénal*). Under Title 13 (“Offences against the rights of workers”), Article 249 provides that a penalty will be imposed on anyone who creates working conditions which are (among other things) incompatible with human dignity. Likewise, Article 369 under the Title “Provocation to war” refers expressly to the “dignity of the person” as an element in determining the concrete penalty. In the same context, Article 467 para. 2 invokes “personal dignity” in relation to

“prohibited practices”, a category that specifically encompasses inhuman and degrading treatment.

It is especially noteworthy that even before the enactment of today’s Criminal Code (2005), a predecessor law from the year 1990 existed, which – even before the Constitution entered force – protected the dignity of the person. This particularly concerned Article 313, which made acts against the dignity of the person on the grounds of their gender subject to penalty (in this connection, see Sect. 4 below).

3.2 Public Law

At variance with the Criminal Code, where a concept of dignity relying on the Constitution was used, Andorran public law makes use of an additional concept. According to Article 66 of the *Code d’Administration*, holders of a public function have to “observe conduct of perfect dignity at all times” while in office. Article 67 proceeds to define the concept more specifically, to the effect that “the dignity of the public function” is meant. Accordingly, office holders have a right to adequate remuneration “which permits them to live with the dignity required by their function”. Furthermore, Article 57 no. 9 of the *Llei de la funció pública* (2000) states that the dignity of office holders is to be protected. The multiple references to “*dignitat de la professió*” and “*dignitat professionals*” in Andorra’s current Law on Advocates are to be understood in line with this concept of professional dignity (e.g., in the Preamble, Article 5, Article 13 no. 2, Article 14 no. 1, Article 15 no. 3, Article 17 no. 2, Article 26 nos. 3 and 4 of the *Llei de l’exercici de la professió d’advocat* (2014)). Thus, Andorra makes use not only of a general concept of dignity – like that in the German Basic Law, for instance – but also of a concrete concept. The latter derives from a long tradition that extends far back into antiquity. It is exemplified by Marcus Tullius Cicero, who considers dignity primarily as an attribute to be acquired personally, which is closely associated with the performance of public offices and can, accordingly, be earned, but also lost.

In contrast, the Law on the “*Tribunal des Comptes*” clearly adheres to the general concept of dignity set forth in the Constitution. The Preamble to that law states that the Constitution of Andorra proclaims the defence of human rights and of the dignity of the person, among other principles. In order to realize these principles in the state’s administrative practice, the said *Tribunal des Comptes* is established (Preamble of the *Llei del Tribunal de Comptes* (2000)). This is one of the organs of the General Council (legislature), its function being to oversee public expenditure and control the transparency of financial administration, financial accounting and the public administration in general.

3.3 Labour Law

Of greatest significance in practice is the treatment of dignity in labour law, specifically in the *Codi de relacions laborals* (2008). For instance, in Article

45 this provides that employment contracts must respect the dignity of workers. Likewise, any action that offends dignity must be refrained from (Article 74). Furthermore, exceptions from certain principles of the Code can only be made within the bounds of dignity (Article 75). In practice, this centres around Article 97 para. 1 lit. h, which generally prohibits any activity by the employer that violates the dignity of the employee as a person (“*seva dignitat com a persona*”). Article 105 proceeds to emphasize the circumstance that every offence against privacy and dignity will be treated as a serious one. A similar intention is expressed in Article 159 para. 2 of the Code. In this respect, it is notable how Andorra even developed its own codification for the rights of the worker at the beginning of the new millennium.

4 Administration of Justice

Andorra has several courts of justice, of which the *Batllia d'Andorra* (the Court of first instance for minor offences), the *Tribunal de Corts* (the Court of Appeal for minor offences and the Court of first instance for more serious cases) and the *Tribunal Superior d'Andorra* (Supreme Court) are of particular importance. In addition, there is a constitutional court, the *Tribunal Constitucional d'Andorra*.

Although both the Andorran Constitution and legislation referring to human dignity are comparatively recent, the law-administering instances of the state have already ruled on a certain number of cases in which dignity was the issue at stake. As in legislation, so in administration of law, the term “dignity” is interpreted comparatively broadly. It is of particular significance in labour law. The vast majority of the cases dealt with by the Supreme Court (*Tribunal Superior de Justícia d'Andorra*) concerning violations of dignity belong in this context. Deserving of specific emphasis is the observation, confirmed repeatedly in judicial rulings, that remuneration for work does not constitute a mere debt but is a component of the worker’s personal dignity; this is also affirmed to be covered by international conventions and is precluded from being subject to *ordre public* (“*el salari no és qualsevol deute, ja que constitueix per l’assalariat un caràcter vital i un element de la seva dignitat personal, raó per la qual queda protegit només per la Llei sinó pels convenis internacionals. La protecció del salari constitueix un dret indisponible d’ordre públic.*” In: *Sentència* TSJC.- 0000104/2016 of 30.06.2016 by the Supreme Court (*Tribunal Superior de Justícia d'Andorra*)).

One judgement of note, however, is a ruling handed down under the old Criminal Code about an unlawful killing, which simultaneously concerned an offence against dignity. The latter question arises due to the fact that one of the perpetrators calls a victim “*maricon*” (homosexual) and “*moña*”. For this reason, the question arose as to whether this could be treated as a violation of Article 313 a. *Code Pénal* (Actions against the dignity of the person based on their gender). The court came to the view that only under an extensive interpretation of the Criminal Code (“*a pena d’interpretació extensiva de la Llei penal*”) might the provision be taken to subsume sexual orientation. Accordingly, it acquitted the defendant of this charge (*Sentència*

24-01 of 24.10.2011 by the Supreme Court (*Tribunal Superior de Justicia d'Andorra*). Hence, court rulings appear to set certain limits on an unduly extensive interpretation of dignity.

5 Conclusion

Human dignity is anchored prominently in the Constitution of the Principality of Andorra, where it occurs twice as a general principle, while in two further articles, it is set in relation to concrete themes. There is a notable emphasis on the inviolability of human dignity, an aspect that aligns closely in terms of content with the German Basic Law. In contrast to the fact that it is mentioned multiple times in the Constitution, the concept of human dignity is found to have played a very minor role during the formation of the Constitution. To all appearances, this theme was uncontested or simply of no interest. Subsequently, however, the judiciary continued to engage with the theme in the course of the administration of law. Here, it seems more or less characteristic of Andorra that the concept of human dignity relates to a broad spectrum and is put to use for various matters that are only seldom connected in the discourse of jurisprudence.

This observation can also be pursued with regard to the level of legislation. Whereas on the constitutional level, exclusive use is made of a concept of dignity that refers generally to all individuals and is attributed to them all in equal measure, in the sphere of legislation, there is an interesting differentiation. While most fields of law – criminal law, for instance – likewise follow the Constitution's concept of dignity, in areas of public law associated with the performance of public functions, an approach is found that tendentially calls to mind the ancient understanding of dignity, which is associated with the particular office held. A notable finding in relation to legislation is the strong emphasis on the rights of employees, in which dignity again plays an integral part.

6 Cross-References

- ▶ [Human Dignity in Europe: Introduction](#)
- ▶ [Human Dignity in Germany](#)
- ▶ [Human Dignity in Italy](#)

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