



Human Dignity in Iceland

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Abstract

Human dignity is not explicitly used in the Icelandic constitution and it is not in general use as a legal term in Iceland. The concept entered into Icelandic law in the twentieth century via international instruments which refer to it, some of which have also formed the basis for constitutional amendments.

Human dignity seems to be viewed as the foundation of human rights and therefore indirectly as an important principle of the Icelandic constitution, even though it is not mentioned in the text or the preparatory works. This is evidenced by the parliamentary records concerning the Draft Constitution of 2011 and by practice. As such, it is not easily enforceable alone but has value for interpretation and as a general principle.

Human dignity plays a role in many legislative Acts in the field of health law and has been referred to by the courts and the Parliamentary Ombudsman a few times.

One must be careful to note, that the lack of usage of the term human dignity does not necessarily entail that human dignity is insufficiently protected in a

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particular jurisdiction. Some practice and the main fields in which the term could be important are therefore discussed here.

Keywords

Iceland · Human Dignity · International Agreements · Sexual Violence · Health Law

1 Introduction

The Icelandic Constitution of 1944 does not refer to human dignity. It is therefore not a term that is in common use in Icelandic legal thinking. However, it has been suggested that a provision on human dignity be added to the constitution, and the term does appear in some domestic legislation and has been utilised in a number of court cases. This will all be described in the following. This work is primarily new, since looking at Icelandic law through the prism of human dignity is a novelty. But of course, the choice of perspective does not change the content of constitutional law.

Human dignity is of course part of many international agreements that Iceland is party to. Since Iceland is primarily a dualist country, such international agreements are in most cases not viewed as part of domestic law even though the state is bound by them and domestic law is interpreted to the extent possible so as to be in harmony with them. Some human rights conventions that refer to human dignity have, however, been incorporated into Icelandic domestic law and thus have the status of ordinary Acts of Parliament.

Court cases mention human dignity a number of times: in the context of sentencing in criminal cases but also in the context of human rights. In one instance, the Supreme Court affirmed with a reference to its rationale a decision by a District Court, which stated that “Respect for the human dignity of all persons is the foundation that international human rights instruments and the constitutions of democracies build on” (District Court of Reykjavík, in case that came before the Supreme Court as case no. 461/2001).

It should be noted at the outset that the “state” of the law concerning human dignity is not necessarily best described by simply noting that the term is not in common use in Icelandic law. For instance, the European Court of Human Rights has not found Iceland in violation of any of the articles that primarily concern human dignity (art. 3, P13) and has never discussed it in its judgements concerning Iceland. Neither have other international bodies that Iceland is party to.

In what follows, the first line of inquiry will be on the concept of human dignity and the Constitution. Then, references to human dignity in general legislation will be examined and a closer look given to international agreements and their status in Icelandic law. Finally, court decisions concerning human dignity will be analysed and conclusions drawn.

Some characteristics of Icelandic law which matter for this overview should be mentioned here. First of all, Iceland is part of the Scandinavian legal family, with a

legal system and legal theory which most closely resembles that of Norway and Denmark. This entails that it accepts precedent, customary law, unwritten principles and tradition of culture to a greater extent than many civil law jurisdictions (Tryggvadóttir et al. 2010). It has a written constitution and the courts exercise judicial review of legislation's constitutionality. At the time of writing, the court system is two-tiered: the district courts and then one Supreme Court. There is no specialised constitutional court: constitutional cases are decided by ordinary courts and then by the Supreme Court. Judicial review is an active part of Icelandic constitutional law (Thorarensen 2016; Helgadóttir 2009a). It is traditionally a dualist country, which means that international obligations, even though binding on the state, are not necessarily viewed as part of domestic law unless incorporated by an Act of Parliament (see most recently Hrd. 80/2016 but also Helgadóttir 2009b). However, laws are construed so as to be in accordance with international obligations, to the extent possible (Hrd. 125/2000 and others).

2 Human Dignity in Iceland

2.1 Human Dignity and the Constitution

2.1.1 The Constitution no. 33/1944

The Constitution of Iceland (no. 33/1944) does not explicitly mention human dignity. It shares that characteristic with the constitutions of neighbouring Norway and Denmark. Sweden and Finland, by contrast, mention human dignity in their constitutions.

The human rights chapter of the Icelandic constitution was revised in 1995. The aim of the revision was to modernise the Constitution and to take into account the international obligations that Iceland had taken on in the field of human rights. While many additions and revisions of individual rights were modelled or based on international human rights obligations, no mention was made of human dignity either in the text or the preparatory works.

The origins and models for the “new” constitutional provisions matter, however, because they were listed in the preparatory works for the constitutional amendment. The preparatory reports thus cited and referred to a vast number of international instruments, many of which protect or refer to human dignity, such as the European Social Convention, the International Covenants, the European Convention on Human Rights, hereinafter ECHR and others. The citations and discussions of those instruments in the preparatory works of the constitution give those instruments a certain status as sources to look at when interpreting the Constitution, but has also influenced how Icelandic courts referred to those instruments (Helgadóttir 2002). The fact that human dignity is a fundamental principle of human rights conventions is therefore important for the interpretation and understanding of the Icelandic Constitution, not only from the point of view of ideological history but also because whatever influences the interpretation and application of international human rights norms is interesting in the context of Icelandic constitutional law, after these amendments.

Both parliamentary documents and court cases show that Icelandic legal theory accepts unwritten constitutional principles (see in general Helgadóttir 2013). This is also unanimously accepted in legal literature and laws have been held to be inconsistent with such principles and thus invalid. The most famous examples are historical: The principle of equality and principles of protection of privacy until such norms became part of the constitutional text in 1995. Against this background, it is interesting to note that in a 2001 case concerning racial hate speech, the District Court judge wrote:

Respect for the human dignity of all persons is the foundation on which international human rights instruments and the constitutions of democracies build and that protection cannot be set aside by referring to freedom of speech, see also the exceptions allowed therein. Conduct which is in breach of legislation enacted to protect individuals and groups of people from racial prejudice and racism can therefore not be justified based on freedom of speech. (Hrd. in case no. 461/2001)

The accused was then convicted of hate speech. The Supreme Court added some comments but otherwise unanimously endorsed the rationale of the lower court. The limitations of freedom of expression allowed by the Icelandic Constitution mirror those in article 10 of the ECHR, except that instead of the ECHR requirement that a limitation should be “necessary in a democratic society”, the limitation should (under the Icelandic constitutional law) be “consistent with democratic traditions”.

It would have been perfectly sufficient to base the limitation of the accused’s freedom of expression on the need for “the protection of the rights or reputation of others”. It must therefore be presumed that the court believed in and intended the reference to human dignity to add to the rationale of the Court. It is thus perfectly clear, that at the very least, the notion of human dignity played a role in the interpretation of the article on free speech, even though human dignity is not explicitly mentioned in the Constitution. This is just one case, and even though the Supreme Court endorsed the lower court’s rationale, it would presumably be going too far to even argue that this establishes human dignity as an unwritten constitutional principle. It is noteworthy, however, that in the District Court judgement (this element was, as far as this author can see not endorsed by the Supreme Court judgement, since it made its own comment on the balance) it seems that human dignity was viewed as an even stronger counterpoint to freedom of expression than the right to privacy. This is evident in that the right to privacy and free speech need balancing, while it is stated clearly in the District Court judgement that the protection of human dignity cannot be set aside by reference to free speech.

This case strengthens the argument that human dignity is viewed as the foundation of human rights and therefore indirectly as an important principle of the Icelandic Constitution, even though it is not mentioned in the text or the preparatory works.

2.1.2 The Draft Constitution of 2011–2013

In 2010–2013, a constitutional process took place, in which a Constitutional Council drafted a new Constitution. The draft was then amended by Parliamentary

Committee (see [Alþingistiðindi 2012–2013](#)) and debated in Parliament but not adopted. Since, other constitutional proposals have been based on it, and it will form part of the basis for further constitutional reform (see the Platform of the new government which took power on 11.1.2017, forsaetisraduneyti.is/verkefni/rikisstjorn/stefnuyfirlusing/). It has thus not been completely abandoned. The Constitutional Council decided to include an article on human dignity in its draft:

Human dignity

All shall be guaranteed a right to life with dignity. Human diversity shall be respected in every way.

In the explanatory comments regarding this article, the Constitutional Council referred firstly to article 3 of the Convention on the Rights of Persons with Disabilities (hereinafter CRPD) which states that amongst the

principles of the present Convention shall be: Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons . . .

It also cited article 3 of the United Nations Declaration of Human Rights, on the right to life, liberty and security of person. It also noted that

Respect for the individual, his wishes and situation, shall be shown from the cradle to the grave. Human Rights are universal. The authorities shall ensure that they are respected in all circumstances. ([Frumvarp til stjórnarskipunarlaga 2011](#))

It also noted that the idea was well expressed in article 1 of the German Basic Law and protected in many other constitutions. The Constitutional and Supervisory Committee of Althingi (the Icelandic Parliament) kept the article unchanged in the Draft Constitution it submitted to Parliament, but a new explanatory note was written. It states:

This is a new provision. Its goal is to consolidate the ideological basis of all human rights protection, which is respect for human dignity, encompassing respect for human diversity. This article forms, along with the articles on equality and the right to life, the basis of other articles on human rights. It is most closely linked to article 10 on protection against violence, those aspects of article 11 which concern the protection of the right to self-determination, article 22 on social rights, article 23 on the right to health and health care, article 27 on habeas corpus and article 29 prohibiting the death penalty, torture or other inhumane or degrading treatment or punishment and the prohibition of forced labour.

The article is modelled after article 1 of the United Nations Declaration of Human Rights which states that all human beings are born free and equal in dignity and rights. The preambles of many international human rights instruments emphasise human dignity as the foundation of human rights, amongst them the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The European Court of Human Rights has referred to the respect for human dignity, along with freedom, as being the very core of the European Convention. The relatively new Charter of Fundamental Rights in the European Union also states in article 1 that human dignity is inviolable and that it must be respected and protected. (<http://www.althingi.is/altext/141/s/0510.html>)

The explanatory report referred to the preparatory works by the Constitutional Council and noted that the aim of the article was (according to the Council) to ensure that everyone had the possibility of full participation and taking active part in society. It then added:

For further explanation, the Constitutional Council refers to idea of the article being comparable to article 1 in the German Basic Law, where it is stated that it shall be the duty of all state authority to respect and protect inviolable human dignity, which is the basis of every community, of peace and of justice in the world. It may be added that the German Constitutional Court has described this article as the fundamental value and principle of the Constitution, which influences all other articles. The importance of article 8 will therefore primarily be manifested by influencing the interpretation of other articles on human rights. (ibid)

The explanatory comment also mentions the possible importance of the article in relation to the circumstances of prisoners and medical patients and in the fields of life sciences and technological developments. Finally, the relationship of this article and equal protection is noted (ibid).

This matters even though the Draft Constitution was not adopted. The Constitutional Council chose to add a clause on human dignity and to refer to international instruments and the German Constitution Basic Law, but perhaps more importantly the majority of the Constitutional and Supervisory Committee of Althingi made the same decision and linked the proposed article even closer to the concept of human dignity as a foundational principle, to the German Basic Law and to international human rights instruments. It is noteworthy that in spite of the proposed article on human dignity being a novelty, the Parliamentary Committee saw the addition – of an article which would primarily be influential regarding the interpretation of other rights – as a “consolidation” of the ideological basis of all human rights protection in the Constitution.

2.2 Human Dignity in Other Legislation

2.2.1 Introduction

Evaluating human dignity in Icelandic legislation is complicated a bit by different interpretations (mannleg reisin is the most current translation; but “göfgi”, literally “quality” is used as a translation of dignity in, e.g. the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, all of which Iceland has ratified. “Mannhelgi” – literally “human sanctity” is used to mean “security”, e.g. in article 5 of the ECHR, but has also strong relations to human dignity. It is a concept used to denote the legal protection of those rights closest to the human being: life, security, honour and private life (Lögræðiorðabókin 2008). It thus covers certain aspects of human dignity and is used in a number of laws in the field of health care, as will be discussed in more detail below.

2.2.2 Laws Referring to Human Dignity or Related Concepts

Of the five to six Acts of Parliament which refer directly to human dignity, four are based on or incorporate international agreements: Act on the Execution of the Convention on Cluster Munitions, no. 83/2015; Act on the Free Movement of Workers Within the European Economic Area no. 105/2014; Act on the European Convention on Human Rights, no. 62/1994; and Act on the Convention on the Rights of the Child, no. 19/2013.

In the ECHR and Convention on Cluster Munitions, explicit references to human dignity are found in the Preambles: the Preamble to Protocol 13 and the Preamble to the CCM. These are thus not legally enforceable provisions. Dignity is similarly found in the Preamble to EU Regulation no. 492 of 2011 (on freedom of movement for workers within the Union), which is the Regulation incorporated in the Act on the Free Movement of Workers.

The Act on the Convention of the Rights of the Child incorporates the UN Convention on the Rights of the Child. That convention mentions human dignity numerous times. First in its Preamble, where it is noted that states consider

... in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world

and that they bear

in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom

and consider that the

child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

Five articles of the Convention refer to human dignity: Article 23 on the rights of children with disabilities mandates that “States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” Article 28 (on school discipline) mandates that states “shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” Article 37 states that children “. . . deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.” Article 39 on recovery and reintegration states that “. . . recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”, and finally article 40 notes that “States Parties recognise the right of every

child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth. . . ." These examples are important, because even though human dignity is recognised as the foundation of human rights, e.g. under the ECHR, these provisions of the Convention on the Rights of the Child are the clearest examples of legally enforceable rules on human dignity (as opposed to references to it in a preamble or as a general fundamental norm) which have been incorporated into Icelandic domestic law.

A mention should be made here of the vast number of international obligations founded on and referring to human dignity, which Iceland has ratified but not incorporated. Examples are inter alia the European Social Charter, the CRPD, the two International Covenants and the Oviedo Convention. It was mentioned before that in Iceland, laws are construed, as far as possible, to be in accordance with the country's international obligations (Hrd. 125/2000 and others). This makes no great difference, however, in the case of fundamental principles like human dignity, which are in great part meant to be influential through interpretation of other legal norms. To be concrete, it is unclear and unlikely that human dignity as a principle and goal of the CRPD is any less effective in Icelandic law because the Convention has not been ratified. Laws will be interpreted to be in accordance with international conventions that Iceland is bound by all the same. This will be discussed in further detail in Sect. 2.2.3.

The two remaining Acts are the Media Act (no. 38/2011) and the Act of the Rights of Patients (no. 74/1997). The Media Act states in article 37, that marketing shall not diminish or erode respect for human for human dignity. This article has never been invoked before the Media Commission or before the courts.

In the Act on the Rights of Patients, no 74/1994, article 24 states that "A dying patient has the right to die with dignity." But the Act also mentions "human sanctity" – which in some cases is intended to be a translation of human dignity – in a number of contexts. Article 1 states:

The aim of this Act is to ensure certain rights to patients, in accordance with general human rights and the sanctity of the human being and to thus strengthen their legal status vis-a-vis the health system and support confidential relationship which shall exist between patients and health workers.

The Supreme Court has once referred to this purpose of the Act, but without elaborating on it (Hrd. 199/2005). The Act then sets out the rights of patients – to health care, information, confidentiality, the alleviation of suffering, the right to deny treatment, etc. – all important aspects of human dignity. Article 17 of the Act is entitled "Respect for the human sanctity of the patient" and states:

Health care personnel and others who, in the course of their duties, interact with a patient shall treat him with respect. No one shall take part in the treatment of a patient unless he or she plays a necessary role in the treatment. A health worker shall be careful to undertake necessary treatment in such a manner that extraneous persons do not witness it and that information on a patient's treatment be available only to the relevant health care personnel.

Three other Acts in the same field also refer to “human sanctity”. The Act on Scientific Research in the Health Sciences (no. 44/2014) states as a basic principle that

Scientific Research in the Health Sciences shall be based on respect for the human sanctity of the participants. Human rights shall not be sacrificed for the good of science and society.

The preparatory note refers to this being based on article 1 of the Oviedo Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine and article 3 of its additional protocol. Article 1 states that Parties to the Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. “Sanctity” is thus here a translation of the English word “dignity”.

The Act on Health Care Records no. 55/2009 states that human sanctity and the right to self-determination of patients shall be respected when records are compiled and stored (article 2). The explanatory note refers, concerning the definition of human sanctity, to the Act on the Rights of Patients; to article 5 of the ECHR (where the English term is security, not dignity); and notes that it is closely linked to the concept of the self-determination of patients.

Finally, Act no. 57/2012 on the rights of persons in sexual identity crises states in its article 1 that the purpose of the Act is to “ensure that persons in sexual identity crises are equal to others before the law, in accordance with human rights and human sanctity”.

2.2.3 Conclusions

The majority of those Acts of Parliament which refer to human dignity or human sanctity are based on international agreements. The concept of human dignity is thus coming into Icelandic law primarily via international agreements. Of course, that does not in any way negatively affect the force or status of those Acts. Conversely, many of those Acts – those who incorporate the main human rights treaties – have extra force in practice, since the conventions are international obligations which Iceland is bound by as will be discussed in more detail below; conventions that have influenced the drafting of the Constitution and that will be enforced by international organs. The Acts of Parliament incorporating those agreements are thus important laws and in spite of them having formally the same status as all other Acts of Parliament, some scholars have described them as “semi-constitutional” (Lindal 2001). Many other scholars have not gone that far, even though they agree that being an international obligation, mentioned in the preparatory works of the Constitution as well as incorporated in a general Parliamentary Act, makes the force of those norms at least more complex than that of ordinary Acts of Parliament. The status of human dignity in legislation must be viewed in light of this, as well as the court cases described below.

The Convention on the Rights of the Child, discussed above, is the only incorporated international convention, which makes multiple references to human dignity,

not only as a fundamental principle but also in concrete circumstances and provisions. Other conventions (such as the CRPD) which rely to a great extent on the concept of human dignity both as a founding principle and in the context of legally enforceable provisions have not yet been incorporated, which means that they are not part of domestic law but does not necessarily detract from the force of their fundamental principles, as described above.

A number of acts in the field of health law refer to human dignity without being explicitly based on international treaties. It can be safely concluded that health law is a field in which human dignity is explicitly named as a fundamental value in most relevant acts.

2.3 Case Law Referring to Human Dignity

2.3.1 Cases in Which Human Dignity Is Held to Be of Importance in Penal Matters

In three cases, the Supreme Court has noted, when sentencing convicted persons, that the sexual and physical assaults of which they had been found guilty were *inter alia* “suited to humiliate the victim and deprive her of human dignity” (Cases no. 67/2009, 243/2007). Given the tradition of very short court decisions, it must be presumed that this factor influenced the sentencing.

2.3.2 Cases That Concern International Obligations

Many cases touch on human dignity because the parties base their arguments on international treaties that Iceland has ratified and or incorporated. The status of those treaties that have been incorporated into domestic legislation is clear, but the status of those international instruments which Iceland has ratified but not incorporated will be discussed below.

In the Supreme Court, parties have referred to human dignity in the European Social Charter (Hrd. 53/2009 and 430/2007, concerning bullying in the workplace). The Court did not address these arguments. Similar references to the Oviedo Convention discussed above are found in Hrd. 151/2003, which was an important case concerning the compiling of health and genetic information. The same was true there, however: the Supreme Court did not address the argument concerning human dignity and also did not do so in Hrd. 177/1998 either. In the latter case, the University of Iceland was held not to have taken all necessary steps to enable a blind student to pursue her studies in accordance with Icelandic law and international treaties. She had mentioned *inter alia* human dignity in the Covenant on Civil and Political Rights. But in this case, the Supreme Court stated clearly, when discussing the right to education, that before the ECHR was incorporated “it was deemed correct to interpret Icelandic law in accordance with the Convention, as it is an accepted norm in Nordic law that laws should, to the extent possible, be interpreted so as to be consistent with the international instruments that the state has accepted.” This phrasing was repeated in Hrd. 125/2000 and describes the status of unincorporated international treaties. In that case (in which human dignity was not

mentioned, but which concerned minimum standards of social security) constitutional provisions were interpreted in light of a number of international treaties.

The fact that domestic laws will, to the extent possible, be construed so as to be in accordance with international obligations means that all the international obligations that Iceland has ratified and which are built on or discuss human dignity will have an impact in Icelandic law. This principle of interpretation is particularly important for fundamental values like human dignity – which will thus be of importance in the interpretation of many laws. This is also why parties to cases argue based on, e.g. the ESC and the Oviedo Convention, even though they have not been incorporated into Icelandic law.

It must be noted that in a case in 2016, concerning the right to consumer-directed personal assistance, the Supreme Court refused to accept the argument that a particular article in the Act on the Matters of Persons with Disabilities had incorporated the Convention on the Rights of Persons with Disabilities and noted that “the cited provision in article 19 of the CRPD, which has not been incorporated into Icelandic law, cannot increase the duties of offering service to people with disabilities which are stipulated by law” (Hrd. 80/2016). This is in answer to a particular argument from the parties and does not, I argue, detract from the settled practice of interpreting Icelandic law in light of international obligations.

The Parliamentary Ombudsman has twice, in his opinions, emphasised that respect for human dignity is necessary in the prison system and in the behaviour of prison staff. In a case concerning a guard who called an inmate “a bloody fool”, the Ombudsman noted: “I also insist that prisoners be treated in an objective manner and with respect for their human dignity as the guiding light” (UA 8544/2015). In a much older case (from 1999) the Ombudsman made a similar statement, also citing article 1 of the European Prison Rules in support of his position (UA 2805/1999).

2.3.3 Other Cases Concerning Human Dignity

As mentioned in the introduction, the Reykjavík District Court discussed human dignity in a case concerning hate speech from 2001. The accused, a member of the association “White Iceland” had given a racist and hateful interview but argued that it fell within his freedom of expression.

In addition to the relevant discussion of human dignity, the case shows some of the characteristics concerning international instruments, which are described above. The International Convention on the Elimination of All Forms of Racial Discrimination formed the background for the provision of hate speech in the Icelandic Penal Code. The ECHR was cited alongside the Constitution regarding the scope of freedom of speech.

The District Court wrote:

Respect for the human dignity of all persons is the foundation that international human rights instruments and the constitutions of democracies build on and that protection cannot be set aside by referring to freedom of speech, see also the exceptions allowed therein. Conduct which is in breach of legislation enacted to protect individuals and groups of people from

racial prejudice and racism can therefore not be justified based on freedom of speech. (Hrd. 461/2001, decision of the District Court judge)

The Supreme Court came to the same conclusion but did not address human dignity directly. The prosecutor argued before the Supreme Court that it was

Clear from the decisions of the Human Rights Commission and the European Court of Human Rights that freedom of speech could not be utilized to abuse other rights and freedoms and that anti-racist legislation is necessary in a democratic society to protect minorities, otherwise they would not be democracies.

The Court wrote:

The accused has a right to his opinions and to express them under the 1st and 2nd paragraphs of article 73 of the Constitution as amended by article 11 of Act no. 97/1995, see also article 10 of the ECHR. No limitation can be put on the freedom of the accused to hold opinions on the nationality, colour and race of people and his freedom to publicly express them can, under paragraph 3 of article 73 only be limited if it is in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others and such restrictions are deemed necessary and in agreement with democratic traditions. Against the freedom of expression of the accused stands the right of people to be free from attack based on their nationality, colour or race, and which is protected by article 233a of the penal code, see also article 65 of the Constitution. It is therefore necessary to evaluate, like the District Court judge did, which shall take precedence: His freedom to publicly express these statements under article 73 of the Constitution or the rights of those whom he attacks without any provocation.

[. . .]When the interview is read as a whole and the statements of the accused evaluated in that context, the statements must be viewed as trying to establish the superiority of white people vis-a-vis people of other colour...The statements of the accused do thus constitute behaviour which falls squarely within the orbit of article 233a of the penal code. That provision is aimed at preventing racial discrimination and racism and thus has a legitimate purpose and the limitations that it puts on freedom of expression are necessary and in accordance with democratic traditions. The decision of the District Court to convict the accused is thus upheld with reference to other aspects of its rationale.

The Supreme Court thus not only endorses the rationale of the District Court but also bases its own additional comments on the same balancing test, even though it does not mention human dignity specifically. In the opinion of this author, this is therefore an important case concerning human dignity as a fundamental norm in Icelandic law.

The other case concerned surrogacy. An Icelandic couple brought children, born to a surrogate mother but genetically the husband's children, to Iceland. The couple had been determined as parents by a US Court. The Icelandic authorities registered the husband as the father but the wife as the children's "stepmother". As such, she was entitled to seek to adopt them, but the couple sued the state registry in order for her to be recognised as the children's mother. The case never reached the Supreme Court, but the District Court mentioned human dignity in two different contexts:

The status of stepmother is, in many important respects such as in the case of a divorce or death, not equal to that of a mother. With regard to the human dignity of [the wife], the Court

is of the opinion that it is important as such for the state to recognise her as a full mother under Icelandic law.

And later, it notes that taking into account article 8 of the ECHR and article 71 of the Icelandic Constitution,

it is the opinion of the court that the application for *A* to be registered as the children's mother would have to go obviously and seriously against the public order, see also the issues in the European Court of Human Rights' decision in the case of *Paradiso and Campanelli vs. Italy* from 27 January 2015.

Finally, the court noted that

As previously discussed, there is nothing to show that the fundamental rights or human dignity of [the surrogate mother] were detracted from in such a way that accepting the motherhood of *A* would go against the Icelandic sense of justice for that reason. (District Court of Reykjavik 661/2015)

It should finally be mentioned that given the lack of a provision on human dignity in the Constitution and in most laws, there are of course numerous cases in which the term human dignity – and related terms – is never mentioned but which concerns it nonetheless. Hrd. 125/2000 is a prime example. There, the Supreme Court found that social security payments to disabled persons who were part of relatively wealthy households (i.e. married to wealthy people) were unconstitutionally low, citing many international conventions, *inter alia* on the right of each individual to support his or her family. These are considerations of human dignity, even though the court never uses that term.

2.3.4 Conclusions Concerning Practice

The examples we have of the utilisation of the term human dignity in Icelandic law concern prisoners (in the practice of the Parliamentary Ombudsman); sexual assaults, in which cases depriving a victim of human dignity is viewed as increasing the seriousness of the offense; hate speech and surrogacy. Taken as a whole, the court practice shows the importance of the influence of international instruments and the ways of thinking developed in the context of those instruments. It may even be viewed as treating human dignity as a fundamental principle. Unwritten constitutional principles are accepted in Icelandic law, as mentioned before, and the only point of indecision on that point is that the Supreme Court did not make the statement on human dignity as the fundament of all constitutions and conventions itself but instead referred to the rationale of the District Court.

3 Conclusion

So what is the legal concept and meaning of human dignity in Iceland? The concept of “human dignity” has entered into Icelandic law in the twentieth century via international (legal) instruments which refer to it, but certain aspects of human

dignity are also part of the very old legal concept of “mannhelgi” which literally means human sanctity and protects life, limb, honour and private life. The mix-up between those two terms is further confused by the fact that this term “human sanctity” is sometimes used in the field of health law as the Icelandic term for “human dignity” and sometimes as a translation of other terms, notably “security”.

No particularly “Icelandic” meaning seems attached to the term human dignity: Instead it is viewed as the basis of human rights, at the core of the ECHR and understood in the general meaning found in human rights treaties. The clearest discussion of the content of the norm is found in the opinion of the Constitutional and Supervisory Committee of Althingi (the Icelandic Parliament) from 2013.

In part because human dignity is not a term used in the constitution, it is not in general use as a legal term. Human dignity has, however, been mentioned in courts a number of times, as parties argue based on international treaties. As Iceland is traditionally a dualist country, the status of international treaties is quite different based on whether they have been incorporated in domestic legislation or not. The only convention, which contains legally binding provisions on human dignity (as opposed to mentioning it in a preamble or as a general fundamental norm) which has been incorporated into Icelandic domestic law, is the UN Convention on the Rights of the Child. Some of the provisions there have the character of binding and easily enforceable legal rules, but they have never come before the courts. The term has also been used, and enforced, in administrative practice concerning prisoners.

Human dignity seems to be viewed as the foundation of human rights and therefore indirectly as an important principle of Icelandic constitutional law, even though it is not mentioned in the text or the preparatory works. This is evident from the parliamentary records concerning the Draft Constitution and from the hate speech case in 2001. As such, it is not easily enforceable alone but has immense value for interpretation and as a general principle. Laws and international obligations will thus be interpreted to be in harmony with this principle. That, I submit, is the main impact of the concept as such in Icelandic law.

It must be noted, however, that parties to cases refer to this concept frequently, that the courts use derogating from it as a factor in sentencing in criminal cases and that it is frequently used in health law.

Finally, one must be careful to note that the lack of usage of the term human dignity does not necessarily entail that human dignity is insufficiently protected in a particular jurisdiction. The main fields of law in Iceland where human dignity enters into public debate, even though it is not found in the law of that particular field are two: First, social security and tort law. People have argued before the courts that they should evaluate whether social security benefits are sufficient to sustain a life of dignity (Hrd. 237/2014) and that limitations on the amount of damages payable to those injured (in case they have been very highly salaried before their injury) are incompatible with “human sanctity”. Apart from this, human dignity and possible violations of it do not enter into legal or public debate. Secondly, it is frequently used in public debate regarding the rights and circumstances of people with disabilities, especially after the signature and later ratification of the CRPD.

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