Human Dignity in Liechtenstein

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Abstract

The history of law of the Principality of Liechtenstein featured some forerunners of human dignity for about 200 years. In 1812, the Prince already adopted the Austrian ABGB including the famous § 16 that respects each human being as a person with rights. The constitution of 1818 did not comprise any basic rights, whereas the new constitution of 1862 did grant only the nationals but not all human beings civil rights. The constitution of 1921 that is in force nowadays implicated the concept of human dignity. In 2005 human dignity was integrated into the constitution explicitly as an individual right. Art. 27bis of the Liechtenstein constitution, which embodies human dignity, is in line with German, Swiss and European legal norms, constitutes an individual right that can be invoked before court and beyond is the rationale of all basic rights. In the law of Liechtenstein, human dignity is *inviolable*. Yet like every legal norm, human dignity can and must be interpreted. An important aspect of

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human dignity with reference to the legal order is the idea of an objective for the legislation. Due to the late implementation of human dignity as a constitutional norm, so far the constitutional court had only once to deal with it.

Keywords
Principality of Liechtenstein · Human dignity

1 Introduction

The Principality of Liechtenstein is one of the smallest countries in Europe with less than 40,000 inhabitants. As an independent state, it has had a legal order of its own since the demise of the Holy Roman Empire in 1806 of course. But of which tradition is the protection of human dignity? Can it be invoked before court or does it influence the country's legislation? What is the significance of this concept in legal practice? The following chapter will answer these and similar questions.

2 Constitutional Law

2.1 Constitutional History

One of the youngest norms of the Liechtenstein Constitution[1] is the protection of human dignity that had not been implemented until the year 2005.[2]

Yet there were some indications of human dignity within the legal order of Liechtenstein for about 200 years. After the demise of the Holy Roman Empire, whereof the Principality of Liechtenstein had been a part, in 1806 Prince Johann I.[3] became a member of the Napoleonic Confederation of the Rhine and got the full inner sovereignty (Art. 26 Treaty of the Confederation of the Rhine[4]). The Prince of Liechtenstein, as an enlightened but absolute ruler, used his new plenitude of power to modernize his country by realizing a reform of the administration and one of the laws. However, the people had no influence on these reforms. During the first few years, the reform of the law comprised, for example, a new tax regime and the fiscal equal treatment of all subjects and all aliens (§§ 2 and 3 Steuerverordnung 1807[5]) 'according to their capability' (§ 12 par. 1 Steuerverordnung 1807). Furthermore, the serfdom was abolished by declaring all 'stalwart subjects to be free people'[6]

[1]Hereinafter LV (LGBl. 1921 Nr. 15, available at https://www.gesetze.li, all internet sources last visited on 16th of September 2017).

[2]LGBl. 2005 Nr. 267, available at https://www.gesetze.li.

[3]1760–1836, born in Vienna, Prince and Austrian Field Marshal (commander-in-chief).

[4]Available at http://www.westfaelische-geschichte.de/que811.

[5]Available at http://www.e-archiv.li.

[6]Translations by Cyrus Beck.

(Verordnung betreffend Aufhebung der Leibeigenschaft 1808[7]). In 1809, the substantive 'Landammannverfassung' (constitution), which had originated from the times of the Holy Roman Empire, was repealed and gradually replaced with private, criminal and police law that formed a new substantive constitution (Brauneder 1988, pp. 94–95). The repeal of the 'Landammannverfassung' on the one hand meant, for example, the repeal of the people's right to participate in the tax collection and in the administration, but the adoption of the Austrian 'Allgemeine Bürgerliche Gesetzbuch'[8] on the other hand included the famous § 16 which respects every human being as a person with rights (See below Sect. 3).

The Principality of Liechtenstein was a member state of the German Confederation from its founding in 1815 until its demise in 1866. The first adjective constitution of 1818, the so-called 'landständische Verfassung',[9] originated from that period. It was issued by the Prince without any contribution by the people and only to fulfil Art. 13 of the Treaty of the German Confederation[10]. (Beck 2015a, p. 45) The 'landständische Verfassung' comprised only 17 paragraphs and did not include any basic rights. Above all, the constitution determined the compositing of a weak parliament ('Landstände') and contained a *negative legal reservation*, i.e., the 'Landstände' were explicitly not allowed to play a part in the legislation (§ 16 LstV). Solely §§ 12 and 13 LstV embodied a tang of the Enlightenment (see Vogt 1990, p. 129) by declaring the fiscal equal treatment and by forbidding the 'Landstände' to benefit some individuals or castes.

The German Revolution of 1848 also seized the smallest German state resulting in upheavals in Liechtenstein. The people chiefly demanded a new constitution that should contain a freely elected parliament, the legal reservation, the control of the state budget and civil rights. The bloodless revolution made the reigning Prince grant some concessions (See generally Geiger 1970, pp. 55–71). The 7th of April 1848 Prince Alois II.[11] issued the constitutional promise[12] which held the prospect of a modern constitution. The new parliament should contribute to the legislation and the taxation (no. 3 Verfassungsversprechen). The new 'Landtag' (parliament) should discuss a revised communal statute (no. 5 Verfassungsversprechen) and it should discuss how to enhance the economy and the educational system of the country (no. 8 and 9 Verfassungsversprechen). Subsequently the people's representatives and the Princely deputy were developing a draft constitution[13] that was partly issued by

[7]Available at http://www.e-archiv.li.

[8]Hereinafter ABGB (Amtliches Sammelwerk der vor dem 1. Januar 1863 erlassenen Rechtsvorschriften in bereinigter Form, available at https://www.gesetze.li).

[9]Hereinafter LstV (available at http://www.e-archiv.li).

[10]Available at http://www.westfaelische-geschichte.de/que814.

[11]1796–1858, born in Vienna, Prince, entrepreneur and conservative reformer.

[12]Hereinafter Verfassungsversprechen (available at http://www.e-archiv.li).

[13]Hereinafter Verfassungsentwurf 1848 (available at http://www.e-archiv.li).

the Prince. Unfortunately, the provisory constitution was yet abolished in 1852 in the course of the backlash within the German Confederation (See generally Geiger 1970, pp. 94–96, 105–106, 120 and 181). The draft constitution comprised numerous basic rights, for example, property (§ 19 Verfassungsentwurf 1848) and personal liberty (§ 48 Verfassungsentwurf 1848), but it did not protect human dignity by guaranteeing the nationals only these basic rights (for example § 47 Verfassungsentwurf 1848). On the all-German level the Frankfurt Parliament unsuccessfully tried to incorporate into the 'Reichsverfassung' the term:

> Society has to guarantee everyone an existence which is in accordance with human dignity and human essence.[14]

The people of Liechtenstein held on to the wish for a modern constitution even after returning to the absolutistic constitution of 1818 (Geiger 1970, p. 251). Subsequently the focus of the constitutional history remained upon the rights of the community members and the nationals, but did not focus on the general human rights. Consequently the 'konstitutionelle Verfassung' of 1862[15] (constitution), which still based upon the Treaty of the German Confederation and was issued by Prince Johann II.[16] after tough bargaining (See Geiger 1970, pp. 252–281) with the people's representatives, established indeed the Liechtenstein 'Rechtsstaat' (constitutional state) (Beck 2012, p. 202), but according to the German tradition its civil rights still only protected the nationals (§ 5 konstitutionelle Verfassung 1862, the so-called 'Staatsbürgertum' (See Oestreich 1978, p. 85)). The paramount achievement of the constitution of 1862 was the *legal reservation* ('Vorbehalt des Gesetzes' (see generally Beck 2015b, pp. 109–118)), i.e., the Prince could not issue, repeal, revise, or declare the authenticity of any law without the Parliament's contribution and consent (§ 24 par. 1 konstitutionelle Verfassung 1862). On the other hand the Prince retained the competence to issue statutory orders including emergency decrees in case of a state emergency by himself (§ 24 par. 2 konstitutionelle Verfassung 1862) (See Beck 2012, pp. 199–200; see Beck 2015b, pp. 131–132).

The current Constitution of 1921 was enacted by the Prince and the Parliament by a complete revision of the 1862 Constitution. The outstanding features of the Constitution are the dualistic entrenchment of the power of the state in the reigning Prince and the People (Art. 2 LV), the control of constitutionality (Art. 104 LV) and the direct democratic political rights (Art. 64, 66 and 66bis LV). Human dignity was not mentioned explicitly. However, human dignity was contained implicitly in the Constitution of 1921 because the basic rights held within the constitution can be seen as forming a part of the human dignity concept.[17]

[14]Cited in Stern 2006, p. 12. Translation by Cyrus Beck.

[15]Available at http://www.e-archiv.li.

[16]1840–1929, born in Eisgrub (Moravia), Prince and philanthropist.

[17]Regierung des Fürstentums Liechtenstein 2005a, pp. 13–14; see Bußjäger 2012, p. 118; see Schweizer 2006, pp. 746–747.

2.2 Development of Art. 27bis LV

The development of the protection of human dignity in the current Liechtenstein Constitution had its seeds in the direct democratic political rights of this Constitution. In March 2005 the committee 'Für das Leben' (life-affirming) registered a worded initiative concerning the constitution with the Princely Government according to Art. 64 par. 1 let. c and par. 4 LV read in conjunction with Art. 80 and 85 Volksrechtegesetz[18]. The legal institute of the popular initiative means that citizens can propose changes to the Constitution whereupon the Parliament is forced to take a decision on the proposal. If the Parliament rejects the proposal, a popular referendum must be held. However, the Princely sanction is essential for any amendment. The committee managed to collect the necessary numbers of 1,500 signatures of eligible voters within 6 weeks (see Art. 80 par. 4 let. b read in conjunction with Art. 85 par. 1 VRG).[19] The initiative was aimed at the amendment of Art. 14 LV that states that the '*highest responsibility of the State shall be to promote the overall welfare of the People*' and that '*the State shall be responsible for establishing and safeguarding law and for protecting the religious, moral and economic interests of the People*'. The initiative wanted to augment Art. 14 LV, which is programmatic and is not justiciable (Schweizer 2006, p. 752), with the protection of human life from the conception to the death and with human dignity.[20]

The 'Landtag' (Parliament) was considering the initiative according to Art. 82 par. 1 VRG, but did not come up to the necessary qualified majority (Art. 112 par. 2 LV) when voting on the initiative.[21] However, the Parliament exercised its right to make a counter proposal (Art. 82 par. 3 VRG) for the following plebiscite on the initiative (Art. 82 par. 2 VRG).[22] This counter proposal comprised, inter alia, the protection of human dignity (Art. 27bis LV) and was sanctioned by the Liechtenstein voters, whereas the popular initiative was overwhelmingly refused. Ironically, the protection of human dignity with a legal import according to European legal culture became a part of the Liechtenstein constitution due to a popular initiative[23]

> That was aimed at denying people [constitutionally] any voice and any self-determination in matters of their own lives.[24]

[18]Hereinafter VRG (LGBl. 1973 Nr. 50, available at https://www.gesetze.li).

[19]See Regierung des Fürstentums Liechtenstein 2005b, p. 3.

[20]See Regierung des Fürstentums Liechtenstein 2005b, Beilage.

[21]See Landtag des Fürstentums Liechtenstein 2005a, pp. 846–868.

[22]Landtag des Fürstentums Liechtenstein 2005a, p. 867.

[23]In Switzerland, human dignity became a part of the federal constitution only in 1992. Besides, it embodied a counter proposal against a restrictive popular initiative as well (Rütsche 2011, p. 8 and 8 f. 8).

[24]The saying of a member of parliament (Landtag des Fürstentums Liechtenstein 2005a, p. 862. Translation by Cyrus Beck).

2.3 Legal Import of the Initiative

2.3.1 Conception Manner of Death Human Dignity

The popular initiative 'Für das Leben' (life-affirming) was refused by the Liechtenstein voters, but its interpretation and especially its refusal has an influence on the interpretation of the extent of protection of the right to life and human dignity (see Schweizer 2006, p. 749). The initiative had the following wording:

> Art. 14. The highest responsibility of the State shall be to protect human life from the conception to the natural death and to promote the overall welfare of the People. For this purpose, the State shall be responsible for establishing and safeguarding law and for protecting human dignity and the religious, moral and economic interests of the People.[25]

The committee launched the initiative on the grounds that there is a permanent scientific and technological progress and that there is an increase in social pressure and in the disorientation of the individuals and of the social groups. Due to this situation, the individuals should be protected comprehensively from infringements of their lives and dignity. The constitutional duty of the state to protect people should be the basis for relevant legal norms and it should embody an obligation to the state to issue such norms.[26] The committee aimed in particular at a very strict regulation of abortion, euthanasia and genetic research according to the Christian order of values.[27]

The outstanding new content of the popular initiative was the normative regulation of the duration of human life. With a view to the Catholic context that was stressed in the explanation of the initiative, the 'conception' can be understood as the fertilization 'in vivo' and 'in vitro'. However, the term 'natural death', which does not try to define a point of time but a manner of death, cannot be interpreted exactly. The human death thus refers to a result of factors that are intrinsic to the individual, as for example old age or disease. Consequently, every human impact on a human being's health or body that leads to death is a violation of the right to life. Although the initiative did not define a point of time of the 'natural death', one can see the brain death that is declared as decisive by the current medical science, as in accordance with the initiative. However, for example, there uncertainty exists as to how to construe a suicide that is not supported by a third party (see generally Schweizer 2006, pp. 743–744).

[25]Regierung des Fürstentums Liechtenstein 2005b, Beilage. Translation by Cyrus Beck.

[26]For the topic of the 'liberal' approach to human dignity within the meaning of protecting and extending the sphere of individual choice on the one hand and the 'conservative' approach to human dignity within the meaning of imposing limits on the legitimate sphere of individual choice on the other hand see Brownsword 2014, p. 1 and passim.

[27]See generally Regierung des Fürstentums Liechtenstein 2005a, pp. 4–5.

2.3.2 Interpretation

The pursued amendment of Art. 14 LV is remarkable because this norm is not contained in Chap. IV of the Constitution ('General Rights and Obligations of Liechtenstein Citizens'), but is contained in Chap. III which is captioned 'Responsibilities of the State'. The norms of Chap. III legally reach from mere purposes of the state to aims of the state and state tasks and finally to classical civil rights (see Schweizer 2006, p. 751).

A systematic interpretation of the pursued new Art. 14 LV leads to a mere state task that neither would have changed the normative character of this article nor would have comprised a new basic right.

> The protection of human dignity constitutes the basis of every legal order anyway.[28]

Initially, a grammatical interpretation leads to the same result because the initiative linked the '*highest responsibility of the State*' to the protection of human dignity and did not mention a certain '*right*'. But with a view to the Liechtenstein constitutional interpretation, which adjudicates certain norms out of Chap. IV of the constitution also to be '*rights guaranteed by the Constitution*' (Art. 104 par. 1 LV), and the definite wording of the initiative, a possible basic right cannot be excluded (see Schweizer 2006, pp. 752–753).

A subjective-historical interpretation, which tries to figure out the will of the historic constitutional legislator (see Kramer 2013, p. 123), implies a civil right even more distinctly. The committee at least used the words '*duty of the state to protect*' that is '*guaranteed*' in its explanation of the initiative.[29] Furthermore, the Parliament construed the right to life and the protection of human dignity as 'individual rights' and repudiated the idea of a state task.[30]

2.4 Legal Import of Art. 27bis LV

2.4.1 The Parliamentary Debate

The counter proposal of the 'Landtag' comprised on the one hand human dignity according to Art. 27bis LV and on the other hand the right to life according to Art. 27ter LV. Hereinafter the legal meaning of Art. 27bis LV only (but still) will be scrutinized.

In November 2005, the Liechtenstein voters and the Prince sanctioned Art. 27bis LV that reads as follows:

1. Human dignity shall be respected and protected.

[28] Schweizer 2006, p. 752. Translation by Cyrus Beck.

[29] Regierung des Fürstentums Liechtenstein 2005a, p. 5. Translation by Cyrus Beck.

[30] Landtag des Fürstentums Liechtenstein 2005a, p. 847. Translation by Cyrus Beck.

2. No one may be subjected to inhuman or degrading treatment or punishment.[31]

In the parliamentary debate of the 21st of September 2005, the normative regulation of the duration of human life, as it was contained in the initiative, was criticized for being too restrictive and for creating uncertainty. Besides, the right to life and human dignity were declared as basic rights that do not belong to the chapter on '*Responsibilities of the State*' according to the Liechtenstein constitutional system.[32]

Art. 27bis par. 1 LV was elaborated by the two big factions of the Liechtenstein parliament and embodies an adoption of Art. 7 of the Swiss Federal Constitution. The drafters of the counter proposal conveyed that they originally had intended to propose a wording based on Art. 1 par. 1 of the German 'Grundgesetz': '*Human dignity is inviolable. It must be respected and protected*'.[33] The factions finally did not choose the latter wording because of the term '*inviolable*'. According to their opinion, this term was '*too strong*' and '*could convey that the state would have to protect human dignity at any time and in an extensive and absolute way which did not correspond with reality*'.[34] A deputy mentioned that it was no accident that Art. 3 ECHR formulated the protection of human dignity negatively by *prohibiting* torture and inhuman or degrading treatment or punishment.[35] With a view to Art. 27bis par. 2 LV, a Member of Parliament said that torture was not mentioned explicitly but represented a qualified form of the inhuman or degrading treatment and was already a part of the Liechtenstein constitution because Art. 10 par. 2 LV declared the prohibition of torture to be resistant to emergency decrees. Furthermore, the reference to Art. 3 ECHR was indicated.[36]

One Member of Parliament tabled a counter motion to the proposed Art. 27bis par. 1 LV that corresponded to the original wording of the counter proposal that corresponded to Art. 1 of the Charter of Fundamental Rights of the European Union and originally to Art. 1 par. 1 of the German 'Grundgesetz' in turn: '*Human dignity is inviolable. It must be respected and protected*'. The opposition member called the adoption from the Swiss Confederation '*rather weak*' because it construed human dignity as a right that could be interpreted and legally relativized and adjusted to new conditions by limiting it. According to the opposition member, the counter motion in contrast construed human dignity as a civil right that had to be implemented by the 'Staatsgerichtshof' (constitutional court) directly and was not allowed to be

[31]An English version of the Liechtenstein constitution is available at http://www.llv.li/files/rdr/Verfassung-E-01-02-2014.pdf.

[32]See Landtag des Fürstentums Liechtenstein 2005a, pp. 846–847.

[33]Translation by Cyrus Beck with reference to art. 1 of the Charter of Fundamental Rights of the European Union.

[34]Translation by Cyrus Beck.

[35]However, the guarantee of human dignity dictates that human beings in need must not be refused any help in any case (see Mastronardi 2008, p. 51).

[36]See generally Landtag des Fürstentums Liechtenstein 2005a, pp. 847–848.

relativized by laws. The member of parliament enunciated that human dignity thereby became '*an unalterable benchmark in our constitutional state*', '*comparable with the principle of equality*' and '*a leading point of the constitution*'.[37]

Finally, the parliamentary votes were only 6 for the counter motion, but 23 of 25 for the counter proposal twice.[38]

2.4.2 Meaning

Art. 27bis par. 1 LV (respect and protection of human dignity) is a general norm, whereas Art. 27bis par. 2 LV (prohibition of inhuman or degrading treatment or punishment) is a special norm, i.e., the latter is an example of the former but they are not one and the same substantive rule.

The meaning of human dignity has been characterized by a millenniums-old history of philosophy, but it has become a legal concept more recently, too. In the Principality of Liechtenstein the guarantee of human dignity is acknowledged as a basic right and is seen as the constituting principle of all the basic rights (Bußjäger 2012, p. 115 et seq). With a view to the adoption of Art. 27bis par. 1 LV from Switzerland, the protection of human dignity can be construed as the heart and the starting point of the other basic rights whereby this protection outlines the meaning of the basic rights and is a guideline for their interpretation and concretization. Furthermore, the guarantee of human dignity represents a '*subsidiary basic right*' that can be invoked possibly if no other civil right comprises a case. Consequently, the guarantee of human dignity represents the primary and subsidiary civil right likewise.[39] Human dignity as a legal concept currently is understood as a universal and pluralistic concept and is concretized within the framework of the international human rights standards (Bußjäger 2012, p. 117). Finding a sustainable positive definition of the essence of human dignity is very difficult because of the many attempts at a definition that already exist. The German Constitutional Court, for example, therefore attempts to converge the concept in particular by analysing the violation of human dignity (Teifke 2011, p. 34). In Liechtenstein and abroad, human dignity means *being human*, but it does not simply mean certain human modes of behaviour.[40] Some aspects of human dignity are for example:

[37]See generally Landtag des Fürstentums Liechtenstein 2005a, p. 852. Translation by Cyrus Beck.

[38]Landtag des Fürstentums Liechtenstein 2005a, p. 867, and Landtag des Fürstentums Liechtenstein 2005b, p. 1354. However, a systematic interpretation leads to the result that a single approval by an absolute majority would have been adequate according to art. 82 par. 3 VRG read in conjunction with art. 45 of the former Parliamentary Rules of Procedure (LGBl. 1997 Nr. 61, available at https://www.gesetze.li) because it is about a *counter proposal*, but it is not about a parliamentary constitutional revision according to art. 112 par. 2 LV whose qualified majority amends the constitution directly on condition that the Prince sanctions it but without the necessity of a plebiscite. Batliner 1993, p. 142–143, seems to fail to recognize the systemic difference between a counter proposal and a constitutional revision.

[39]See Schweizerischer Bundesrat 1997, p. 140.

[40]As a prelegal and prestate groundwork human dignity exclusively can be recognized metaphysically (see Seifert 1997, p. 172).

- Human beings have to be respected and protected *for their sake* (see Seifert 1997, p. 178), they are a purpose and they must not be used as a tool.
- Human beings have a legal personality and they must not be degraded to a mere object (see below Sect. 2.4.3 in fine).
- Human beings can be self-determined (see below Sect. 4 in fine) and they must not be other-directed completely.
- Human beings maintain freedom of choice and they must not be brought to heel by coercive measures.
- Human beings are free to live in their privacy and they must not be exposed.
- Human beings have to be treated equally and they must not be discriminated against (See Bußjäger 2012, p. 117 with reference).

The following phrase represents a short summary of the aspects above: '*Human dignity guarantees the right to acknowledgement of the free and autonomous personality*'.[41]

The special norm of Art. 27bis par. 2 LV builds on Art. 3 ECHR which implies that the corresponding court rulings and doctrine have to be considered. The human physical and psychical integrity is the legally protected good whereby every '*treatment*', i.e., all forms of state activity, and in particular every 'punishment', i.e., sanctions, is included. Torture is not mentioned in Art. 27bis par. 2 LV explicitly, but it is an aspect of this rule on the basis of the '*argumentum a maiori ad minus*'. Besides, in the Principality Art. 3 ECHR is a part of the substantive constitution. Ultimately, Art. 10 par. 2 LV declares the prohibition of torture to be resistant even to emergency decrees and Liechtenstein joined the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[42] already in 1990. Due to the nearly identical wording of Art. 27bis par. 2 LV and Art. 3 ECHR, the extents of protection are supposed to be identical (see generally Bußjäger 2012, pp. 121–122 with references).

2.4.3 Extent of Protection

As already mentioned, in Liechtenstein the guarantee of human dignity is acknowledged as a basic right that can be invoked before court (Höfling 2014, p. 225). Initially, the systematic position of Art. 27bis LV within Chap. IV ('General Rights and Obligations of Liechtenstein Citizens') in front of the catalogue of civil rights leads to this result. Besides, the 'Landtag' (Parliament), which initiated the norm, wanted the protection of human dignity to be understood as an individual right

[41]Teifke 2011, p. 66 with reference. Translation by Cyrus Beck.

[42]LGBl. 1991 Nr. 59, available at https://www.gesetze.li.

[43]Landtag des Fürstentums Liechtenstein 2005a, pp. 847 and 849.

[44]See Dreier 2013, pp. 121–127, but who himself is critical hereof. See the chapter '▶ Human Dignity in Germany' within this handbook.

and to place it among the basic rights.[43] In Germany[44] and in Switzerland[45], where the models of Art. 27bis LV are to be found, the legal situations are similar.

As mentioned above, the Constitution of 1862, which established the Liechtenstein tradition of civil rights, guaranteed these rights to the nationals only. This legal situation was transferred to the totally revised Constitution of 1921 (see Hangartner 1986, p. 129) and even these days the personal extent of protection is not applicable to noncitizens in any case albeit most of the basic rights apply to aliens as well (Höfling 2012, p. 66). However, because of the fundamental character of the guarantee of *human* dignity, it does not apply to nationals only but to all human beings (see Mastronardi 2008, p. 36). With a view to the temporal extent of protection, the legislator has to make decisions. In this regard the European Court of Human Rights, for example, has not made a point about the protection of the prenatal life that is mandatory (Schweizer 2006, pp. 759–760).

With a view to the judicature in Switzerland, the Liechtenstein protection of civil rights in general can be seen as a manifestation of the protection of human dignity so that Art. 27bis par. 1 LV is a subsidiary basic right, in fact as to Art. 27bis par. 2 LV, too, that is a special norm as to the first paragraph. The protection of human dignity therefore is comparable to the prohibition of arbitrary action (Höfling 2014, p. 230) that is a subsidiary basic right as well. However, the prohibition of arbitrary action is an aspect of human dignity in turn which results in the latter being subsidiary in respect to the former as well. In legal practice, the significance of human dignity is slight because it represents a general norm, whereas the other basic rights represent special norms (See generally Bußjäger 2012, pp. 119–120). However, the '*subsidiarity*' of human dignity is not meant in the strict sense of the word. If grave violations are not comprised by any other civil right, Art. 27bis par. 1 LV still provides protection. Furthermore, the violation of a special basic right for example the right to life can additionally be a violation of the guarantee of human dignity (see Höfling 2014, p. 231).

With reference to the prohibition of torture and of '*inhuman treatment*', the special norm of Art. 27bis par. 2 LV is resistant to emergency decrees (Art. 10 par. 2 LV). An interpretation that is compatible with international law especially with Art. 3 ECHR leads to the result that the newer content of Art. 27bis par. 2 LV as a whole cannot be suspended by emergency decrees although Art. 10 par. 2 LV does not mention the 'degrading treatment'. In the area of law enforcement primarily acts such as arrest and house search, which affect personal liberty, are protected (see generally Bußjäger 2012, p. 123).

As for how a possible third-party effect of human dignity, i.e., the question whether private legal relationships can violate the guarantee of human dignity as well, the following statement must be taken into consideration: '*this civil right in*

[43]Landtag des Fürstentums Liechtenstein 2005a, pp. 847 and 849.

[44]See Dreier 2013, pp. 121–127, but who himself is critical hereof. See the chapter '▶ Human Dignity in Germany' within this handbook.

[45]Müller and Schefer 2008, p. 1. See the '▶ Human Dignity in Switzerland' within this handbook.

principle has no third-party effect'[46]. This assumption, however, is far too apodictic. The guarantee of human dignity is '*the basis of every legal order*'[47] and is not binding for the state only. Admittedly, the influence of human dignity on private law is supposed to manifest via spill-over effects and protection obligations most times, especially when considering that legal acts which violate human dignity are nugatory already according to the applicable norms of the private law (see Dreier 2013, p. 129).

The question of the possible limitation of this civil right is perhaps the most important aspect about human dignity. Because of the wording '*inviolable*' within Art. 1 par. 1 of the German constitution, human dignity cannot be relativized according to the prevailing but controversial doctrine in Germany, i.e., the meaning of human dignity implies its limitation (Höfling 2014, p. 227). During the parliamentary debate on the popular initiative 'Für das Leben' and the counter proposal in Liechtenstein, the inviolability and therefore the limitation of human dignity was being discussed. As mentioned above, the two factions amended their counter proposal by withdrawing the term '*inviolable*'. With reference to the Swiss legislative materials to the new Constitution of 1999, most members of Liechtenstein's parliament considered the term '*inviolable*' to be too strong and declared an extensive and absolute protection of human dignity by the state not corresponding to reality.[48] A counter motion to the counter proposal by another member of parliament in turn contained the inviolability. According to the deputy, this wording guaranteed the direct implementation by the constitutional court and evaded a relativization by laws.[49] Art. 27bis par. 1 LV rules '*to respect*' human dignity on the one hand and '*to protect*' it on the other hand which represents the classic double function of the basic rights. The state must not violate human dignity (defence right) and it has to protect every human being from violations by private individuals (right to protection) (Höfling 2014, p. 225). Actually and contrary to the opinion of the members of parliament, the term '*inviolable*' does not need to be explicitly mentioned in order to constitute the character of the guarantee of human dignity that had had validity before it was added to the Liechtenstein constitution, because of its fundamental meaning. In such a way the rhetorical question: '*how one could imagine human dignity "coming off second best" in comparison to other objects of legal protection*'[50] is justified. (see Höfling 2009, pp. 116–117) However, it should be pointed out that human dignity and the explicit prohibition of inhuman or degrading treatment or punishment can and have to be interpreted ever just like any other legal norm despite their 'absolute' (see Bußjäger 2012, p. 122; see Höfling 2014, p. 229) character and that every interpretation of the law is time-dependent and therefore changeable.

[46]Bußjäger 2012, p. 121, in particular 123. Translation by Cyrus Beck.

[47]Schweizer 2006, p. 752; Rütsche 2011, p. 21, is critical hereof.

[48]See Landtag des Fürstentums Liechtenstein 2005a, p. 847.

[49]See Landtag des Fürstentums Liechtenstein 2005a, p. 852.

[50]Höfling 2014, pp. 228–229. Translation by Cyrus Beck.

Particularly the lack of relativization in conjunction with the double function of the guarantee of human dignity in practice already leads to dilemmatic '*collisions of dignity*'. An example of this is the case of the 11 years old Jakob von Metzler who was kidnapped and murdered by an exceptionally ruthless offender in Germany in 2002. The arrested offender stated that the victim was at the mercy of him but refused to reveal the whereabouts and the state of health of the victim so that the question arose if a so-called '*torture to save people's life*' was lawful. In this case, the constellation '*dignity* versus *dignity*' emerged because the offender's dignity had to be respected on the one hand and the dignity of the kidnapped boy had to be protected on the other hand (Art. 1 par. 1 German 'Grundgesetz', see Art. 27bis par. 1 LV). With a view to the Liechtenstein law, it may be stated that a 'torture to save people's life' would violate Art. 3 ECHR and Art. 27bis par. 2 LV as well. Besides, Art. 10 par. 2 LV clarifies that the prohibition of torture is even resistant to emergency decrees, i.e., it cannot be relaxed even in case of a state of emergency. Nevertheless, in a similar case, the state of Liechtenstein would be constitutionally obligated according to Art. 27bis par. 1 LV to take the necessary steps to save a victim from being degraded to a mere object by a life-threatening and inhuman situation. The dilemmatic structure of this extreme case cannot be overridden by an alleged '*asymmetric relation*'[51] between the defence right and the right to protection that can be detected by no interpretation method, regarding Art. 27bis par. 1 LV at least. 'The law reaches its limits'.[52]

3 Legislation

In 1812 already, the adoption of the Austrian ABGB marked the beginning of the legal acknowledgment of every human being as a person with rights. As already mentioned, in the nineteenth century of course § 16 ABGB represented substantive constitutional law:

> Every man has inborn rights, which are already apparent from reason, and is therefore to be considered as a person. Slavery or bondage and the exercise of a power having reference to it, is not permitted in these countries.[53]

Already the alleged most important creator of the ABGB, Franz von Zeiller[54] who was influenced by the idea of natural law, recognized in this paragraph human beings as '*sensuously reasonable beings*', as '*free beings*' and as a '*self-purpose*'[55]. Thereby the outer liberty of human beings, i.e., the subjective right to act freely in

[51]Höfling 2007, p. 528. Translation by Cyrus Beck.

[52]Dreier 2013, p. 133. Translation by Cyrus Beck.

[53]Translation by Winiwarter 1866, p. 7.

[54]1751–1828, born in Graz, legal scholar and university rector.

[55]von Zeiller 1811, p. 102. Translation by Cyrus Beck.

every respect, was limited by the purposes of the other free beings. According to Zeiller, every human being had to be regarded as a person and they were not allowed to be objectified and to be used as a means to an end. Consequently, slavery and bondage were not permitted and the legislator, whose obligation was to save the rights, could not be expected to save slavery and bondage. The prohibition of slavery and bondage did not apply nationals, i.e., the holders of the general rights of Liechtenstein citizens, only, but applied aliens on the state territory as well and therefore tended towards a human right. The '*inborn rights*' according to § 16 ABGB then expressed the actual idea of modern human rights (Brauneder 1987, p. 7) but which were not enumerated in the ABGB because of the danger of misinterpretation (See generally von Zeiller 1811, pp. 102–106). Nowadays the unrevised § 16 ABGB explicitly is construed as the guarantee of human dignity under private law which makes possible to acknowledge newly differentiated personality rights independently of their establishment among the constitutional basic rights (see Posch 2012a, p. 6). However, according to § 17 ABGB, the inborn rights can be legally restricted albeit presumption militates in favour of their unrestrictedness. The restrictions must not negate the rights totally but lawful contractual restrictions are possible, too. Furthermore, this paragraph means that a behaviour that does not violate the rights of third parties and is in accordance with the legal restrictions is legitimate on the basis of everyone's lawful freedom (see generally Posch 2012b, p. 1).

The civil rights do not contain functions that concern the subjective rights solely, but contain functions that concern the objective law in order to strengthen the former as well. The clarification of objective legal functions, however, has in comparison to the one of subjective rights remained incomplete so far. The definition of goals and the policy for the whole legal order, especially for the legislation, are important objective legal contents (see Höfling 1994, pp. 55–57). In particular the second aspect of Art. 27bis par. 1 LV ('*Human dignity shall be [. . .] protected*'.) comprises the state task to take action in accordance with human dignity. With regard to possible legal instruments, the legislator has got a broad margin for evaluating, valuing and shaping whereby a review by the constitutional court is possible. Due to the legislation, there emerges spill over of the guarantee of human dignity that has an effect on private legal relationships (see Stern 2006, pp. 64–66).

The court rulings of the Liechtenstein 'Staatsgerichtshof' show that the Liechtenstein Legislator generally disposes of an ample creative leeway as for the wording of the norms that aim at the protection of the basic rights. A possible inactivity of the Legislator can be criticized, but the Constitutional Court has only (but still) the competence to review laws and to overrule them in case of a breach of international law or unconstitutionality (Art. 104 par. 2 LV), but it cannot decide whether and how the Legislator has to perform the constitutional tasks. Therefore, there is no mandate for the Legislator to act that is enforceable in the Court. However, a sanction of the popular initiative 'Für das Leben' would not have changed the ample creative leeway of the Legislator and the absence of a Legislator's mandate for action which is enforceable in the court (See generally Schweizer 2006, pp. 756–758). In the area of the important civil rights, the interpretation of the constitution has to

meet all requirements regarding the clarity of the method and the practicability of the interpretive results in people's real lives. (Schweizer 2006, p. 763).

The protection of human dignity is relevant in all fields of legislation (Schweizerischer Bundesrat 1997, p. 141). The prosecution and the execution of a sentence represents the '*classic*' cases of application of the guarantee of human dignity. Besides that, the modern challenges of the civil right to human dignity are found in areas such as: the care of elderly persons in retirement homes and similar institutions; the intensive-care medicine and palliative care; as well as healthcare in general and in specifically, for example as regards cosmetic surgery. Finally, in the areas of media law[56] and e-commerce, a close relationship to human dignity can also be seen. The lack of relativization, i.e., the absence of a legal reservation, of human dignity results in the Legislator's permanent obligation to save every human being from a violation of their dignity (see generally Bußjäger 2012, pp. 120–122).

4 Adjudication

As far as can be seen, the 'Staatsgerichtshof' (Constitutional Court) of the Principality of Liechtenstein up to now have only once dealt with the young explicit Constitutional wording guaranteeing an extensive protection of human dignity.[57]

The case concerned a person who had an alcohol-related amnestic syndrome, a combined disorder affecting both social behaviour and the emotions, and was supposed to have a physical personality disorder, both of which were ascertained by an expertise.[58] After the person had been compulsorily committed several times to a mental institution, which had been affirmed by court, the 'Landgericht' (Court of the first instance) enacted the partial legal incapacitation and appointed an assistant. The partial legal incapacitation meant that the affected man was only able to commit himself legally (by contract or similar means) or to give up rights with the consent of the assistance as legal representative. The Court drew on another institution stay and an additional expertise. This expertise advised that the man be placed in a mental institution for longer periods due to his alcoholism and squalidness and ascribed an inability to conduct some administrative tasks, personal budget control and simple everyday activities, for example personal hygiene. According to the Court a care dependency or a need for supply that was caused by a mental weakness often generated a legal need for action, for example, the commitment to a mental

[56]For example art. 41 par. 1 let. a Media Law (LGBl. 2005 Nr. 250, available at https://www.gesetze.li) that prohibits advertisement which violates human dignity.

[57]A possible violation of the guarantee of human dignity was mentioned but was not examined in detail for example yet in the ruling Staatsgerichtshof 2012/158, available at http://www.gerichtsentscheidungen.li. For two earlier decisions on art. 3 ECHR see Bußjäger 2012, p. 124.

[58]Staatsgerichtshof 2009/18, Sachverhalt, recital 1., available at http://www.gerichtsentscheidungen.li.

[59]See generally Staatsgerichtshof 2009/18, Sachverhalt, recitals 5.-5.3, available at http://www.gerichtsentscheidungen.li.

institution that had to be up to the assistance's discretion against the incapacitated person's will in case of need.[59] Furthermore, the Court of the Second Instance and the Supreme Court did not grant remedies against the ordinance of the legal incapacitation.[60]

The incapacitated person thereafter filed an individual application to the Constitutional Court that was directed against the last decision of the Princely Supreme Court. The complainant claimed, inter alia, a violation of the guarantee of human dignity according to Art. 27bis par. 1 LV. With reference to the Swiss doctrine, the complainant argued that the '*ratio legis*' of the right to human dignity lay in the prohibition of ordering a specific image of man and that human dignity implied that every human being could decide himself or herself how their dignity was formed. According to the complainant, his path of life was a manifestation of his individuality that is guaranteed by the Constitution and that should not be aligned to an image of man or a social image by regulatory actions like a partial legal incapacitation, even if the image might be objectively more adequate. Furthermore, he indicated the lack of relativization of the guarantee and that the legal incapacitation violated the right to human dignity by 'penalizing' the complainant's previous lifestyle.[61]

The 'Staatsgerichtshof' did not approve the individual application because, inter alia, the complainant's human dignity had not been violated by the decision of the Princely Supreme Court.[62] In the rather cursory reasons for the judgement the Constitutional Court stated that due to the adoption of Art. 27bis par. 1 LV from Switzerland one could refer to the Swiss doctrine and adjudication. With regard to the Swiss Federal Court the 'Staatsgerichtshof' referred to the guarantee of human dignity as a guiding principle for every government activity. According to the Court, human dignity was the innermost core and therefore the basis of all civil rights and liberties, served to construe and to specify these rights and was a '*subsidiary basic right.* 'In particular cases human dignity could have a separate meaning, whereas the open content of the norm could not be determined conclusively positively. The content of the norm then '*applies to the essence of humanity and of the human beings that finally is not identifiable*'[63]. The Court stated that the constitutional norm displayed particular references to more special basic rights and especially to the constitutional rights of personality. As for the concrete case, the Court could not recognize that the complainant's dignity was affected '*specifically*' due to the partial legal incapacitation. The legal incapacitation of the complainant did not represent per se a contempt of his person or dignity, a denunciation of his individual being or a humiliation due to his property. The partial legal incapacitation due to the risk of

[60]Staatsgerichtshof 2009/18, Sachverhalt, recitals 6. and 8., available at http://www.gerichts-entscheidungen.li.

[61]See generally Staatsgerichtshof 2009/18, Sachverhalt, recitals 9.2-9.2.2, available at http://www.gerichtsentscheidungen.li.

[62]Staatsgerichtshof 2009/18, Begründung, recital 6., available at http://www.gerichtsentscheidungen.li.

[63]Translation by Cyrus Beck.

self-endangerment could not be seen as a violation or negation of the complainant's value because it just acted as protection. The Constitutional Court ended its explanations on the complaint alleging a violation of the guarantee of human dignity by linking the complainant's plea, which contained a wish for an autonomously dignified way of life, especially to the more specific right to personal liberty (Art. 32 par. 1 LV and Art. 8 par. 1 ECHR) but which was not violated either.[64]

The 'Staatsgerichtshof' acknowledged the guarantee of human dignity as a basic right that can be invoked before court by examining separately a possible violation of the guarantee within the scope of the constitutional complaint procedure wherein the violation of rights guaranteed by the Constitution only can be claimed (Art. 15 par. 1 Gesetz über den Staatsgerichtshof[65]). Furthermore, the Constitutional Court recognized human dignity as inviolable, i.e., it cannot be relativized, by referring to it as '*innermost core*' of all civil rights and liberties. A peculiar difficulty was represented by '*the protection of human dignity against oneself*'[66] that was also argued by the complainant[67], but unfortunately was not discussed profoundly by the Constitutional Court. Although the judicial authorities in this case did not base the partial legal incapacitation on human dignity, the '*self-endangerment*' and the '*protection of the complainant*'[68] were mentioned without referring to the *self-determination* which is implied by human dignity. If one thought ahead on this shortened and apodictic reasoning, human dignity no longer would be a promise of freedom in favour of all human beings, but a governmental authority to intervene, what would throw the meaning of human dignity into reverse (see Dreier 2013, p. 150).

5 Conclusion

Although Liechtenstein's history of the civil rights was focusing on the protection of nationals only, § 16 ABGB defined every human being as a self-purpose over 200 hundred years ago and therefore signifies the old legal tradition of the idea of human dignity within the small principality. The contemporary Constitution of 1921 comprised the concept of human dignity implicitly, until in the year of 2005 human dignity was integrated into the Constitution explicitly as an individual right that is inviolable and can be invoked before court, like in Germany and Switzerland. It is a

[64]See generally Staatsgerichtshof 2009/18, Begründung, recitals 3.-3.5, available at http://www.gerichtsentscheidungen.li.

[65]LGBl. 2004 Nr. 32, available at https://www.gesetze.li.

[66]See Dreier 2013, p. 149. Translation by Cyrus Beck.

[67]Staatsgerichtshof 2009/18, Sachverhalt, recital 9.1.4, available at http://www.gerichtsentscheidungen.li.

[68]Staatsgerichtshof 2009/18, Begründung, recital 3.3, available at http://www.gerichtsentscheidungen.li. Translation by Cyrus Beck.

guideline for the interpretation of all the other basic rights and represents a subsidiary basic right. In legal practice, the significance of the protection of human dignity is slight because it represents only (but still) a general norm, but it also comprises the state task to take action in accordance with human dignity, for example, in the legislation. In this day and age, the protection of human dignity against oneself is a very challenging legal issue because it contains the danger of throwing the meaning of human dignity into reverse, not only in Liechtenstein.

6 Cross-References

▶ Human Dignity in Germany
▶ Human Dignity in Switzerland

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