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The principle of human dignity in the primary and AFSJ¹ secondary legislation of the European Union²

Zasada godności ludzkiej w unijnym prawie pierwotnym i prawie pochodnym obejmującym przestrzeń wolności, bezpieczeństwa i sprawiedliwości: This article presents the normative status of the principle of human dignity in the law of the European Union. The issue is portrayed with reference to primary and secondary legislation of the EU. The first field of analysis was the Treaties and the Charter of Fundamental Rights as primary sources of EU law. The examination of secondary law in the form of regulations, directives as well as soft law used to implement the policies regarding the area of freedom, security and justice was the subsequent stage. Having explored this, it was possible to formulate the thesis of this paper. It is believed that human dignity – as a principle of EU law – is a legally binding rule not only for the Member States but also for the third countries applying for EU membership. Human dignity is also one of the indivisible and universal values on which the European Union is founded.

Keywords: human dignity, fundamental rights, Charter of Fundamental Rights, individual, justice and home affairs (JHA)

Słowa kluczowe: godność ludzka, prawa podstawowe, Karta praw podstawowych, jednostka, wymiar sprawiedliwości i sprawy wewnętrzne (WSiSW)

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- ¹ AFSJ – The area of freedom, security and justice covers policy areas that range from the management of the European Union’s external borders to judicial cooperation in civil and criminal matters and police cooperation. It also includes asylum and immigration policies and the fight against crime (terrorism, organised crime, cybercrime, sexual exploitation of children, trafficking in human beings, illegal drugs, etc.). The creation of the area of freedom, security and justice is based on the Tampere (1999-04), Hague (2004-09) and Stockholm (2010-14) programmes. It derives from Title V of the Treaty on the Functioning of the European Union, which regulates the “Area of freedom, security and justice”; https://eur-lex.europa.eu/summary/chapter/justice_freedom_security.html?root_default=SUM_1_CODED%3D23 (2 July 2018).
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It is a commonplace that the principle of human dignity constitutes the basis as well as the *raison d'être* of human rights. The latter derive from the dignity of the human person who is the central subject for these principles³. The discussed value is guaranteed simply by virtue of a person being human, and is not dependent on any particular additional status, and thus cannot be damaged or disowned, in principle⁴. This view of dignity as inherent and special to all humans was later reinforced by the Judeo-Christian belief distinguishing man from other creatures. The epoch of the Enlightenment developed the idea of human dignity presenting individuals as those who should be treated as ends and not simply as means to an end. *In other words, humans have dignity to the extent that they are recognized as autonomous individuals having the capacity to make their own choices and determine their own destinies*⁵.

From the historical perspective it is clear that human dignity, first mentioned in the international legal documents after World War II, has become gradually more visible in the international and regional accords and conventions.

1. Human dignity as a principle in international law

The legal basis for the international protection of human rights was constituted by the Charter of the United Nations (CUN) signed in 1945. One of the aims of the CUN was *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small (...)*. The document underlined the universality of those principles and recognized the dignity and value of a human being as the basis of all human rights⁶. It also linked human dignity with human rights. As a result it became common that international human rights and humanitarian law instruments refer to human dignity⁷. The general principle according to which *all human beings are born free and equal in dignity and rights* was also affirmed

³ O. Schachter, *Human Dignity as a Normative Concept*, "The American Journal of International Law" 1983, vol. 77, no. 4, pp. 848–854.

⁴ C. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, "European Journal of International Law" 2008, vol. 19, no. 4, p. 657, <https://doi.org/10.1093/ejil/chn043> (30 April 2018).

⁵ A. M. Song, *Human dignity: A fundamental guiding value for a human rights approach to fisheries?* "Marine Policy" 2015, vol. 61, p. 167, <https://doi.org/10.1016/j.marpol.2015.08.013> (30 April 2018).

⁶ C. Mik, *Zbirowe prawa człowieka: analiza krytyczna koncepcji*, TNOIK, Toruń 1992, p. 27; T. Jasudowicz, *Kodyfikacja międzynarodowej ochrony praw człowieka* [in:] B. Gronowska i in., *Prawa człowieka i ich ochrona*, TNOIK, Toruń 2010, p. 56.

⁷ Ch. McCrudden, *op. cit.* p. 668.

in Article 1 of the Universal Declaration of Human Rights⁸. This manifesto was proclaimed by the UN General Assembly in 1948 and is treated as *a milestone document in the history of human rights*⁹. It was the first time that an international document set out fundamental human rights to be universally protected.

The significance of human dignity was reconfirmed by all states in the Vienna Declaration and in the Programme of Action adopted at the 1993 World Conference on Human Rights¹⁰. The former declares in its preamble, that *all human rights derive from the dignity and worth inherent in the human person*, and adds that the *human person is the central subject of human rights and fundamental freedoms*. Accordingly states obligated themselves to comply with internationally recognized human rights including human dignity. As a result a certain level of duties is imposed on those international actors. Respect as well as protection of human rights is a core element of this. One can also point to the Universal Declaration on Bioethics and Human Rights as an example of an international document full of references to human dignity¹¹.

The universality of human rights was first declared in the Universal Declaration of Human Rights. It declares the recognition of equal and inderogable rights for all members of the human community. As regards human dignity, the preamble of the Declaration mentions it in two places and three more articles refer to it (A.1, A.22 and A. 23). If human rights are reserved to an individual just because he or she is a human being, it is all the more obvious that an individual is entitled to human dignity as this rule is the source for human principles. Therefore the universal character is a *structural* feature of human dignity as well as human rights. Regardless of the fact whether this right is really respected or not¹².

By the end of the 1990s the principle of human dignity stood at the centre of all the ideas regarding human rights that the UN General Assembly provided. The guidelines for new human rights instruments underlined the fundamental character of those principles which derive from the inherent dignity of the hu-

⁸ Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, art. 1, U.N. Doc. A/RES/3/217A (1948).

⁹ The official website of the Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx> (9 April 2018).

¹⁰ "Human rights and fundamental freedoms are the birthright of all human beings"; Vienna Declaration and Programme of Action, adopted 25 June 1993, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., art. I, ¶ 1, U.N. Doc. A/CONF.157/23 (1993), reprinted in 32 I.L.M. 1661 (1993).

¹¹ The official website of the United Nations Educational, Scientific and Cultural Organization (UNESCO); http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html (22 April 2018).

¹² M. Piechowiak, *Pojęcie praw człowieka* [in:] L. Wiśniewski (ed.), *Podstawowe prawa jednostki i ich sądowa ochrona*, Wydawnictwo Sejmowe, Warszawa 1997, p. 18.

man person. However it is not only in international human rights legal documents that the dignity standard has been embedded. This principle has continuously appeared in the founding texts of regional integration organizations like the European Union for example. In this case human dignity became *central to the preambles to [...] human rights instruments, thus appearing to demonstrate a remarkable degree of convergence on dignity as a central organizing principle*¹³.

2. The principle of human dignity in the primary legislation of the European Union

Originally, there were no indications relating to human dignity and human rights in the Treaties of the European Union¹⁴. At the beginning of the European integration no reference to those principles seemed to be necessary. One should remember that the competence conferred to the European Communities by the Treaties in the 1950s pertained generally to the economic area so the possibility of affecting the rights of individuals was not apparent¹⁵. It was many years after political declarations on human rights were made by the EU institutions and the CJEU rulings that the changes in the primary law finally occurred¹⁶. First, the Member States, in the preamble to the Single European Act, declared their cooperation to promote democracy on the basis of the fundamental rights¹⁷. The regard for these principles was established in Article F(2) of the Maastricht Treaty. With the Treaty of Amsterdam for the first time ever the European Union confirmed that it is founded on the principles of liberty, democracy, respect for human rights and the rule of law (Article E). Human rights became an objective of the Common Foreign and Security Policy as well as of the development policy.

The respect for human rights and fundamental freedoms was reasserted in the preamble of the Treaty of the European Union amended by the Lisbon Treaty. The Member States of the EU confirmed their attachment to these standards. Notions expressed in the preamble also became a part of the so called European

¹³ Ch. McCrudden, *op. cit.*, p. 671.

¹⁴ M. Dybowski, *Prawa fundamentalne w orzecznictwie ETS*, C.H. Beck, Warszawa 2007, p. XI–XII; G. de Búrca, *The Road Not Taken: The EU as a Global Human Rights Actor*, “American Journal of International Law” 2011, no. 105, pp. 7–21; <http://ssrn.com/abstract=1705690> (13 February 2016).

¹⁵ J. Duteil de la Rochère, *Fundamental Rights in the Global and European Law Order* [in:] G. Anthony, J.-B. Auby, J. Morison, T. Zwart (ed.), *Values in Global Administrative Law*, Hart Publishing, Oxford and Portland, 2011, p. 300.

¹⁶ B. Brandtner, A. Rosas, *Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice*, “The European Journal of International Law” 1998, no. 9, p. 470.

¹⁷ Single European Act, O.J. 29 June 1987 L 169, p. 1.

values stated in Article 2 TEU. However it is the first time in the history of the European integration that the principle of human dignity was incorporated into the Treaties. The wording of Article 2 TEU is as follows

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Undoubtedly Article 2 TEU together with the preamble is, as regards axiology, the most deeply reaching provision of the Treaty of the European Union. So it constitutes not only a legal but also philosophical basis for the existence and development of European integration. Therefore it is believed that human dignity and fundamental rights are part of the very essence of the EU¹⁸.

Moreover Article 2 TEU makes the link between human dignity and an obligation for the respect of this principle. The second sentence of this norm underlines the fact that all the Member States are bound by that duty. By this the norm of Article 2 expresses a fundamental normative rule of the legal system¹⁹. As a consequence Article 2 TEU has some concrete legal effects.

Firstly, with respect to the accession to the EU a European state has to comply with the human dignity principle while applying for membership (according to Article 49 TEU any European state which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union)²⁰. Secondly, in the event of a serious breach of the human dignity principle by a Member State a suspension of the rights resulting from the membership of this State to the EU may be applied (according to article 7(2) TEU the European Council [...] may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations)²¹. Thirdly, it is also one of the first objectives of the EU to promote human dignity as is mentioned in Article 3(1) TUE – albeit internally²². The connection of Article 2 with Article 3(1) TEU establishes the enhanced normative quality of the protection of human dignity. A similar link between Article 2 TEU and Article 1 of the Charter of Fundamental Rights, constituting the inviolability of human dignity, means that

¹⁸ J.-C. Piris, *The Lisbon Treaty. A Legal and Political Analysis*, CUP 2010, p. 72.

¹⁹ L. Bosek, *Gwarancje godności ludzkiej i ich wpływ na polskie prawo cywilne*, Wydawnictwo Sejmowe, Warszawa 2012, p. 237.

²⁰ J.-C. Piris, *op. cit.*, p. 71.

²¹ *Ibidem*, p. 72.

²² *Ibidem*.

Article 2 expresses a basic norm of the public order. So any violation of human dignity may result in the application of sanctions specified in Article 7 TEU²³.

Moreover there are two provisions of the Treaty on European Union – Article 3(5) and Article 21 TUE – connecting the issue of human dignity with the EU external policy. From the perspective of the former rule upholding and promoting values defined in Article 2 TUE externally is of vital importance. It has to be done by contributing to

peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

It is argued that Article 3(5) TUE consists of three sections. Constituting the EU objectives to *promote* the EU's values and interests abroad is the first one. The obligation to achieve these objectives is the second one. Finally, this could be done – on the basis of Declaration No. 41 TEU – with resort to Article 352 TFEU²⁴.

No less important are provisions of Article 21 TUE as it is an introductory regulation for the whole of Title V of the Treaty of the European Union determining all forms of the EU's external action including the Common Foreign and Security Policy. According to the first paragraph of Article 21:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

As regards the involvement of the European Union in the promotion of human dignity externally Article 21 TUE seems to be the key provision of the Treaties. There is no doubt that the EU committed itself to conduct some type of action having extraterritorial effects. However there are no provisions determining the way it has to be done. It means the European Union is obliged to achieve the objectives of Article 2 TUE, including the principle of human dignity, without choosing any particular courses of action²⁵.

²³ L. Bosek, *op. cit.*, p. 238.

²⁴ L. Bartels, *The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects*, "The European Journal of International Law" 2014, no. 4, p. 1073.

²⁵ *Ibidem*, pp. 1073–1075.

The final question relates to the respect for human dignity as regards a state applying for the membership of the European Union. The legal basis of the membership is defined in Article 49 TEU. It provides that each European state can apply for EU membership on condition that it respects the principles of Article 2 TEU and is committed to support them. In this way it was established that the values of Article 2 TEU have become the principal criteria of EU membership. *Ipsa facto* these principles – including human dignity – have become common guidelines not only for the Member States but also for applicant third countries. The fact that countries aspiring to the EU are also obliged to observe so called the European values of Article 2 TEU results from Article 49(2) TEU. It reads

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

3. Human dignity as a decisive principle in the Charter of Fundamental Rights

Referring to human dignity the preamble of the Charter identifies this principle as one of the *indivisible, universal values* on which the European Union is founded²⁶. This reference is emphasized in Article 1 as human dignity is declared inviolable. Therefore it must be respected as well as protected²⁷. Moreover everyone has the right to life, no one shall be condemned to the death penalty or executed, and everyone has the right to respect for his or her physical and mental integrity, from which the prohibition of eugenic practices and human cloning, torture, slavery and forced labour is derived (Articles 1–5 of the Title 1 of the Charter). So all the rights and principles expressed in part one of the Charter are linked directly with human dignity in respect to the content of Article 1. Some authors go even further, claiming that the guarantees articulated in Articles 2–5 of the

²⁶ Charter of Fundamental Rights of the European Union, O.J. 14 December 2007 C 303, p. 1.

²⁷ The wording of Article 1 of the Charter follows the formulation of Article 1 § 1 of the German Constitution of 1949 almost verbatim; W. Heyde, *Article 1 – Human Dignity* [in:] EU Network of Independent Experts on Fundamental Rights, *The Commentary of the Charter of Fundamental Rights of the European Union*, June 2006, p. 23; <https://sites.uclouvain.be/cridho/documents/Download.Rep/NetworkCommentaryFinal.pdf> (4 May 2018).

Charter may be the realization of the right expressed in Article 1²⁸. However it is uncontested that the principle of human dignity covers aspects of the physical existence of an individual²⁹.

The wording of the second sentence of Article 1 stresses the fact that human dignity *must be respected and protected*. In accordance with Article 51 § 1 sentence 1 all the institutions as well as the Member States to which the Charter is addressed should take into account the obligation for ensuring that respect and protection.

“Must be respected” means, they are not allowed to impair human dignity. Correspondingly the individual has a fundamental right towards these organs to reject interferences with his dignity. It is a right for everyone, not only an expression of a fundamental conviction. With this, Article 1 is not only a fundamental right in itself, but it constitutes the real basis of fundamental rights. – The competent institutions are further obliged “to protect” human dignity. Thus, in their sphere of influence they are ordered and obliged to protect people from interferences with human dignity by third parties³⁰.

It is not only of symbolic importance that the Charter stresses the inviolability of human dignity in the first Article. By this one of the document’s main ideological cornerstones has been laid down under the text. It is an expression of the fact that human dignity is a free-standing right. As the principle is not linked with other rights listed in the Charter its status, is not dependent on and not weakened by this. In the light of *the Explanations relating to the Charter of Fundamental Rights the dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights*. As a result one cannot use the rights laid down in this Charter to harm the dignity of other people. *The dignity of the human person being the part of the substance of the rights laid down in this Charter must therefore be respected, even where a right is restricted³¹.*

One cannot omit Article 31, which is a specific manifestation of respect for human dignity, because it states that every *worker has the right to working condi-*

²⁸ L. Bosek, *op. cit.*, p. 209.

²⁹ E. Morawska, *Konstrukcja normatywna praw podstawowych w Unii Europejskiej w Karcie Praw Podstawowych Unii Europejskiej* [in:] C. Mik, K. Gałka (ed.), *Prawa podstawowe w prawie i praktyce Unii Europejskiej*, TNOIK, Toruń 2009, p. 54.

³⁰ W. Heyde, *Article 1 – Human Dignity* [in:] EU Network of Independent Experts on Fundamental Rights, *The Commentary of the Charter of Fundamental Rights of the European Union*, June 2006, p. 25; <https://sites.uclouvain.be/cridho/documents/Download.Rep/NetworkCommentaryFinal.pdf> (4 May 2018).

³¹ Explanations relating to the Charter of Fundamental Rights, O.J. 14 December 2007 C 303, p. 2; despite the fact that the explanations do not have the status of law they are a tool of interpretation intended to clarify the provisions of the Charter.

tions which respect his or her health, safety and dignity. One may argue that given the connection between Article 31 of the Charter and Article 1 on human dignity, Article 31 is a provision 'with very significant normative weight and importance'³². It is claimed that people at work are especially vulnerable to a loss of dignity. *The rights to enjoy safe and decent conditions of work...and to have limited working hours...mark their bearers as respectable human beings, not mere tools until they wear out.*³³ Moreover there is some convergence, according to *The Explanations*, between Article 31(1) of the Charter and Article 26 of the Revised European Social Charter of the Council of Europe, which provides that all *workers have the right to dignity at work*³⁴. Recognition and respect of the rights addressed to the elderly to lead their life of dignity is another aspect of the discussed principle.

4. The principle of human dignity in the secondary legislation of the European Union regarding the norms of the area of freedom, security and justice

With respect to the secondary law of the European Union human dignity has also been incorporated into regulations and directives. Some of them had protected human dignity before the Charter of Fundamental Rights came into force. In general terms the amount of the legal acts referring to this principle is quite remarkable.

It is worth analysing the set of legal measures based on the Title 5 of the TFEU Area of Freedom, Security and Justice. Some of them refer directly to human dignity. The purpose of taking into account this principle while making laws may be found in the Communication of 2009. It is the Commission which declared in this document that *[t]he area of freedom, security and justice must above all be a single area in which fundamental rights are protected, and in which respect for the human person and human dignity, and for the other rights enshrined in the Charter of Fundamental Rights, is a core value*³⁵.

So, for example the preamble of the directive on preventing and combating trafficking in human beings and protecting its victims refers to the Charter and

³² A. Bogg, *Article 31* [in:] S. Peers (ed), *The EU Charter of Fundamental Rights; a commentary*, Hart Publishing, Oxford and Portland 2014, pp. 836–837.

³³ E. Anderson, *Human Dignity as a Concept for the Economy* [in:] M. Düwell (ed.), *The Cambridge Handbook of Human Dignity, interdisciplinary perspectives*, Cambridge University Press, Cambridge 2014, p. 496.

³⁴ Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163; <http://www.refworld.org/docid/3ae6b3678.html> (5 May 2018).

³⁵ Communication from the Commission to the European Parliament and the Council "An Area of Freedom, Security and Justice – Serving The Citizen", COM(2009)262 final, of 10 June 2009.

declares the observance of all the principles recognized by the Charter³⁶. As it is stated the objective of the directive is to ensure full respect for human rights and principles. Therefore this law must be implemented accordingly. A similar objective is indicated in the directive laying down minimum standards for the reception of asylum seekers³⁷. The preamble says that *this Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity [...]*. Exactly the same wording was applied in the directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees which is no longer in force³⁸. In this context our attention is also drawn by the directive establishing the European Protection Order. The aim of the directive is protecting a person *against a criminal act by another person which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity* and enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State³⁹. The above legal act was reinforced by the regulation on mutual recognition of protection measures in civil matters⁴⁰. It was to ensure that civil protection measures are recognized all over the EU.

In the light of human dignity the issue of scanning technologies (body scanners) used at EU airports seems to be interesting. The legal basis for these technical devices is the regulation establishing a common aviation security regime⁴¹. This legal act *lists a number of methods which may be used for passenger screening – covered by EU standards and safeguards – for example, hand search, walk-*

³⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ 15 April 2011 L 101, p. 1.

³⁷ Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ 6 February 2003 L 031, p. 18.

³⁸ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 30 September 2004 L 304, p. 12.

³⁹ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, OJ 21 December 2011 L 338, p. 2.

⁴⁰ Regulation (EU) no. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ 29 June 2013 L 181, p. 4.

⁴¹ Regulation (EC) No 2320/2002 of The European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security, OJ 30 December 2002 L 355, p. 1.

*through metal detection, hand-held metal detection and explosive trace detection*⁴². The application of passenger screening as a method to be used at airports was part of the Commission proposal. Nonetheless according to the European Parliament the proposed scanning device has *a serious impact on the right to privacy, the right to data protection and the right to personal dignity, and therefore needs to be accompanied by strong and adequate safeguards*⁴³. Finally the Commission reconsidered its position and took into account the perspective of respect for human dignity:

*[t]he capability of some screening technologies to reveal a detailed display of the human body (even blurred), medical conditions, such as prostheses and diapers, has been seen critically from the perspective of respect for human dignity and private life*⁴⁴.

Apart from Treaty obligations there are a number of soft law documents of strategic character adopted by the EU to pursue human dignity and fundamental rights' objectives internally.

As regards the Area of Freedom, Security and Justice it is accentuated that needs and rights of the persons concerned shall be at the centre of this EU policy. The Commission communication of 2005 concerning terrorist recruitment referred to the principle of human dignity in its introduction⁴⁵. Moreover it declares that it is of vital importance *to maintain the crucial balance between different fundamental rights in this area, particularly the right to life on the one hand, and the right to freedom of expression and privacy on the other*. The document also points to the need for removing terrorist propaganda from the internet. Any activity of this type would be a derogation

to the Internal Market clause which Member States may use to take measures, such as sanctions or injunctions, to restrict the provision of a particular online service from another Member State where there is a need to protect certain identified public policy interests such as prevention, investigation, detection and prosecution of criminal of-

⁴² M. Stec, *Trading Human Rights for Public Security*, "Polish Review of International and European Law" 2011, Inaugural Issue, pp. 149–151.

⁴³ European Parliament resolution of 23 October 2008 on the impact of aviation security measures and body scanners on human rights, privacy, personal dignity and data protection, P6_TA(2008)0521.

⁴⁴ Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU airports, Brussels, COM(2010) 311 final, 15 June 2010, p. 12.

⁴⁵ Communication from the Commission to the European Parliament and the Council concerning terrorist recruitment – Addressing the factors contributing to violent radicalization, COM(2005)0313 final, 21 September 2005.

*fences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons*⁴⁶.

No less important is the prevention of and fight against trafficking in human beings, committed for the purpose of sexual or labour exploitation. This issue was an objective of the Commission communication of 2005 on fighting trafficking in human beings⁴⁷. The communication recalls Article 5(3) of the Charter of Fundamental Rights which prohibits human trafficking in the context of inviolable human dignity. In the light of the *Explanations relating to the Charter Article 5 (3) stems directly from human dignity and takes into account recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks*. However one should remember about the non-binding legal status of the Charter. Moreover the Charter's provisions are addressed to the Member States only insofar as they are implementing Union law.

The importance of human dignity and human rights in the EU's external policy was confirmed by the European Commission as early as the 1990s⁴⁸. Next, the strategy for promoting human rights and democracy in third countries was announced by the Commission in 2001⁴⁹. It prioritized the incorporation of human rights into EU policies, programmes and projects to conduct a more coherent external action. In response to this document the Council admitted the necessity for coherence and consistency of all the EU actions with as well as their openness for human rights values⁵⁰. In 2012 the Council adopted *EU Strategic Framework and Action Plan on Human Rights and Democracy*⁵¹. The document adduced Article 21 of the Treaty

⁴⁶ Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ 17 July 2000 L 178, p. 1.

⁴⁷ Communication from the Commission to the European Parliament and the Council, *Fighting trafficking in human beings: an integrated approach and proposals for an action plan*, COM (2005)0514 final, 18 October 2005.

⁴⁸ Commission Communication to the Council and the Parliament, *Human Rights, Democracy and Development Cooperation Policy*, SEC (91)61 final, 25 March 1991; Communication from the Commission to the Council and the European Parliament, *The European Union and the External Dimension of Human Rights Policy – From Rome to Maastricht and Beyond*, COM(95)567 final, 22 November 1995.

⁴⁹ Communication from the Commission to the Council and the European Parliament, *The European Union's Role in Promoting Human Rights and Democratisation in Third Countries*, COM(2001)252 final, 8 May 2001.

⁵⁰ Presidency Conclusions, Göteborg European Council, 15–16 June 2001.

⁵¹ Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (11855/12), 25 June 2012.

on European Union reaffirming the EU's determination to promote human rights and democracy through all its external actions⁵². Adopted in July 2015, the Action Plan on Human Rights and democracy 2015–2019 was the next step of the EU to contribute to pursuing its objectives in relation to external action⁵³.

In October 2016 the Council adopted conclusions on the EU Global Strategy on Foreign and Security Policy⁵⁴. The document confirmed that *the EU is committed to a global order based on international law, which ensures human rights, sustainable development and lasting access to the global commons*. Furthermore the necessity for more joint action between the internal and external dimensions of the EU external policies was endorsed with the obligation to mainstream human rights across policy areas. In relation to the neighbouring countries the effort of promoting human rights should be advanced by dialogue and support with the long-term engagement of the EU.

5. Summary

This article has focused on the principle of human dignity. It is widely regarded as one of the central objectives of international human rights law. Moreover one can discover references to human dignity in the international and regional accords. It became a standard after the Second World War.

The EU formally committed itself to advocate human dignity by amending the Treaty of the European Union in Lisbon. The lack of axiological references in the Treaties at the beginning of the European integration resulted from the functional character of this then new political and legal process in Europe. The political objectives of the integration defined in the Treaties were to be achieved by the economic means. The general change – as also regards the inclusion of the principle of human dignity into the law of the European Union – came with the works on the Constitutional Treaty. It became the base for the future amendments of the European Treaties resulting in the Lisbon Treaty. As it came into force in 2009 the dignity principle was implemented into the primary law for the first time ever. Now, not only it is the rule binding for the Member State countries but also for the states applying for membership in the European Union. The Charter of Fundamental Rights declared the principle of human dignity as one

⁵² A. Egan, L. Pech, *Respect For Human Rights As a General Objective of the EU's External Action*, Working Paper no. 161 – June 2015; electronic copy from https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp161-170/wp161-egan-pech.pdf (11 February 2016).

⁵³ Council Conclusions on the Action Plan on Human Rights and Democracy 2015–2019 (10897/15), 20 July 2015.

⁵⁴ Council conclusions on the Global Strategy on the European Union's Foreign and Security Policy (13202/16), 17 October 2016.

of the indivisible and universal values and stressed its importance from the perspective of these principles on which the European Union is founded.

With respect to the EU secondary legislation, there is a good number of directives and regulations referring to human dignity. This article discussed these legal measures for which the legal basis is the provisions of Title 5 of the TFEU "Area of Freedom, Security and Justice". Some of them refer directly to human dignity in their preambles or declare the objective of the law as to ensure full respect for human dignity and human rights. One should also pay attention to soft law documents of strategic character adopted by the EU in the AFSJ to pursue human dignity and fundamental rights' objectives. In this case the soft law documents stress the obligation of the EU to focus on needs and rights of the persons concerned by the AFSJ policy. The importance of human dignity and human rights in the EU's external policy was also confirmed by the soft law. In this case the latest document of key importance is the EU Global Strategy on Foreign and Security Policy. It confirms the EU commitment to international law and human rights, including human dignity.

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