

DIGNITY IN THE JURISPRUDENCE OF EUROPEAN COURT OF HUMAN RIGHTS

Jakub J. Czepek

Cardinal Stefan Wyszyński University in Warsaw, Poland

j.czepek@uksw.edu.pl

ORCID: 0000-0001-7741-7806

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Summary: The notion of dignity is the underlying conceptual foundation of international law of human rights in. It is also the basis for guarantees of all human rights in general, irrespective of the protected individual, scope, character of the right or freedom or irrespective of the particular generation of human rights. Dignity is also the concept that evades its exhaustive definition. The European Convention on human Rights (ECHR) does not contain the term “dignity” in its core text. It can be found only in the preamble to the additional protocol to the ECHR n°13. Despite that fact, the case-law of European Court of Human Rights (ECtHR) refers to the notion of dignity frequently and in numerous aspects. The purpose of this article is to analyze the ECtHR’s jurisprudence referring to the notion of dignity in order to examine the Court’s approach in this regard. Due to the limited framework of the study, it will focus mostly on articles 3 and 8 of the Convention.

Keywords: dignity, personal dignity, European Court of Human Rights, prohibition of torture, respect for private and family life home and correspondence.

1 Introduction

The notion of dignity is a complex one. It is the underlying conceptual foundation of international law of human rights. It is also the basis for guarantees of all human rights in general, irrespective of the protected individual, scope and character of the right or freedom or irrespective of the particular generation of human rights. The notion of dignity is a wide and very capacious. This concept is also very difficult to define. It somehow evades complete and exhaustive definition or rather doesn’t allow to be restrained by an exhaustive definition. This fact is enabling the wide interpretation of dignity and contributes to its capacious character.

The fact that dignity evades its exhaustive definition, on one hand, may be positive, as enabling wide application of the notion. However, on the other hand, lack of exhaustive definition may lead to conceptual ambiguity in respect of notion of dignity. In most of the cases, analyzing dignity in the context of human rights entails mentioning several types of human dignity. The most basic types

include personal dignity, dignity of a person and dignity of personality¹. Other classifications may include status dignity, inherent dignity, passive and active dignity². Some authors also aim at explaining this phenomenon in a very detailed manner, which leads to discovery of numerous conceptual bases for dignity³.

The notion of dignity has been widely introduced in the second sentence of the preamble of the United Nations Charter (UN Charter). The Charter reaffirms “faith in fundamental human rights, in the dignity and worth of the human person”⁴. Dignity as a concept has also been enshrined in numerous international human rights treaties and documents. It was mentioned in the very first sentence of preamble to the Universal Declaration of Human Rights (UDHR), where it was stressed that “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”⁵. Similarly, it was mentioned in the preamble to the International Covenant on Civil and Political Rights (ICCPR). The ICCPR repeats the first sentence of preamble to the UDHR and adds the recognizes that human rights “derive from the inherent dignity of the human person”⁶.

The European Convention on human Rights (ECHR) does not contain the term “dignity” in its core text. It can be found only in the preamble to the additional protocol to the ECHR n°13⁷. Despite that fact, the case-law of European Court of Human Rights (ECtHR) refers to the notion of dignity frequently and in numerous aspects. Nevertheless, the Court’s approach in this regard can’t be perceived as comprehensive or exhaustive. In certain cases, the ECtHR focuses on the notion of human dignity in a very structured and comprehensive way. However, on other occasions, the Court’s approach may seem rather casuistic or even instrumental. If analyzed as whole, the ECtHR case-law mentioning the notion of dignity may be either well-prepared and thoughtful or instrumental, which leaves rather erratic overall impression.

The notion of dignity doesn’t seem to be properly ‘unpacked’ by the Court. The ECtHR has developed impressive case-law regarding doctrines used in its

1 GRONOWSKA, Bożena, JASUDOWICZ, Tadeusz, BALCERZAK, Michał, LUBISZEWSKI Maciej, MIZERSKI, Rafał. *Prawa człowieka i ich ochrona. Second Edition*. Toruń: TNOiK, 2010, p.106–108.

2 VALENTINI, Laura. Dignity and Human Rights: A Reconceptualization. *Oxford Journal of Legal Studies*, 2007, vol. 37, no. 4, p. 863.

3 PIECHOWIAK, Marek, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*. Lublin: Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego 1999, p.197–223.

4 UN Charter, 26 June 1945, Preamble.

5 Universal Declaration on Human Rights, General Assembly, resolution 217 A (III), A/RES/3/217 A, 10 December 1948, Preamble.

6 International Covenant on Civil and Political Rights, 16 December 1966, Preamble.

7 See European Convention on Human Rights, 4 November 1950; Protocol n°13 to the ECHR concerning the Abolition of Death Penalty in all Circumstances, 3 May 2002, Preamble.

jurisprudence, such as living instrument⁸ or margin of appreciation⁹. The notion of dignity could be properly examined by the Court in a very similar exhaustive and explanatory manner. The ECtHR seems to be equipped with all the necessary instruments to achieve this goal, but chooses not to do so. The reasons for this are the particular scope and character of the notion of dignity. The purpose of this article is to analyze the ECtHR's jurisprudence referring to the notion of dignity in order to examine the Court's approach in this regard. Due to the limited framework of the study it will focus mostly on articles 3 and 8 of the Convention.

When referring to the notion of dignity, the Court seems to approach it either on general terms or referring to "dignity" in respect of particular provision of the ECHR concerning violation of an individual right. The first approach is very comprehensive and focuses on the concept of human dignity in its broad sense, while the second one tends to refer individually to dignity in the context of violation of a particular right. Both approaches should be analyzed separately.

2 The "general" approach to the notion of dignity

The "general" approach to the notion of dignity seems to be focusing on this concept with due consideration. In this regard, the Court analyses dignity as the underlying foundation of all human rights and freedoms. This approach seems a very comprehensive attempt to "unpack" the notion of dignity within the ECHR framework. In this regard the Court focuses on dignity as wider concept, which derives from numerous international human rights documents. It should be stressed, that this approach is not applied by the ECtHR too often and is mostly limited to the citation of relevant human rights treaties.

The Court expressed this approach in *Bouyid v. Belgium*, where it exhaustively reiterated most relevant international human rights document referring to the notion of dignity¹⁰. In *Bouyid v. Belgium* the ECtHR explicitly referred to the "concept of dignity". This section consists of reiteration of numerous references to the relevant human rights treaties, which relate to the notion of dignity. The Court starts with quotation of the preamble to the Charter of the United Nations and the UDHR¹¹. In reference to the notion of dignity, the ECtHR also quotes UN Declaration on the Elimination of All Forms of Racial

8 MOWBRAY Alastair. The Creativity of the European Court of Human Rights, *Human Rights Law Review*, 2005, vol. 5, no. 1, 2005, p. 60–71; BABOULENE, George. Has the Elastic Interpretation of Human Rights Law Led to the 'Living Instrument' Approach to the ECHR Interpretation Being Inherently Flawed?. *Exeter Law Review*, 2023, vol. 48, p. 49–56; ECtHR judgment *Tyrer v. U.K.*, 25.04.1978, app. no. 5856/72, § 31; ECtHR judgment *Bayatyan v. Armenia*, 07.07.2011, app. no. 23459/03, § 102; ECtHR judgment *Pretty v. U.K.*, 29.04.2002, app. no. 2346/02, § 54.

9 LETSAS, George. Two concepts of the margin of appreciation. *Oxford Journal of Legal Studies*, 2006, vol. 26(4), 705–732; ECtHR judgment *Parillo v. Italy*, 27.08.2015, app. no. 46470/11, § 40, 43.

10 ECtHR judgment *Bouyid v. Belgium*, 28.09.2015, app. no. 23380/09, § 45–47.

11 UDHR, Preamble; art. 1.

Discrimination¹², International Convention on the Elimination of All Forms of Racial Discrimination¹³, International Covenant on Civil and Political Rights¹⁴, International Covenant on Economic, Social and Cultural Rights¹⁵, Convention on the Elimination of All Forms of Discrimination against Women¹⁶, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹⁷, Convention on the Rights of the Child¹⁸, International Convention for the Protection of All Persons from Enforced Disappearance¹⁹, Convention on the Rights of Persons with Disabilities²⁰, Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty²¹, Optional Protocol to the Convention on the Rights of the Child on a communications procedure²², Optional Protocol to the International Covenant on Economic, Social and Cultural Rights²³ and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women²⁴.

The Court noted that some of the regional human rights texts and instruments also refer to the concept of dignity²⁵. In this regard the ECtHR mentioned American Convention on Human Rights²⁶, Final Act of the Helsinki Conference on Security and Cooperation in Europe²⁷, African Charter on Human and Peoples' Rights²⁸, Convention for the Protection of Human Rights and Dignity of the

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- 12 UN Declaration on the Elimination of All Forms of Racial Discrimination, 20 November 1963.
 - 13 International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, Preamble.
 - 14 International Covenant on Civil and Political Rights, 16 December 1966, Preamble, art. 10.
 - 15 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Preamble, art. 13.
 - 16 Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Preamble.
 - 17 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Preamble.
 - 18 Convention on the Rights of the Child, 20 November 1989, Preamble, Articles: 23 § 1, 28 § 2, 37, 39 and 40 § 1.
 - 19 International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, Articles 19 § 2 and 24 § 5 (c).
 - 20 Convention on the Rights of Persons with Disabilities, 12 December 2006, Preamble, art. 1, art. 3 (a); see also Articles 8 (a), 16 § 4, 24 § 1 and 25.
 - 21 Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty, 15 December 1989, Preamble.
 - 22 the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 19 December 2011, Preamble.
 - 23 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 10 December 2008.
 - 24 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6 October 1999; see also *Bouyid v. Belgium*, § 45–46.
 - 25 *Bouyid v. Belgium*, § 47.
 - 26 American Convention on Human Rights, 22 November 1969, Articles 5 § 2, 6 § 2 and 11 § 1.
 - 27 Final Act of the Helsinki Conference on Security and Cooperation in Europe, 1 August 1975, Principle VII.
 - 28 African Charter on Human and Peoples' Rights, 27 June 1981, Article 5.

Human Being with regard to the Application of Biology and Medicine²⁹, Charter of Fundamental Rights of the European Union³⁰, Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances³¹ and Council of Europe Convention on Action against Trafficking in Human Beings³².

Despite comprehensive reference to the above legal acts, the Court seems to be ending its analysis of the notion of dignity at this point. The lack of interest in wider analysis of the notion of dignity should be explained by the complexity of the issue, its “undefinable” scope and underlying character in relation to all human rights and fundamental freedoms. These are the reasons why the Court seems to be “evading” the attempts of definition of this concept.

However, on several occasions some of the ECtHR judges referred to the notion of dignity in their individual opinions. Such reference was expressed in the joint dissenting opinion of judges Spielmann and Jebens, added to the *Vereinigung Bildender Künstler v. Austria*³³. The judges emphasised that the concept of dignity prevails throughout the European Convention on Human Rights, even if it is not expressly mentioned in the text of the Convention. However, the Court has made it clear in its case-law that “[t]he very essence of the Convention is respect for human dignity and human freedom.”³⁴ The dissenting judges also quoted: E. Decaux, who stressed “The foundation of human rights cannot be anything other than the ‘equal dignity’ of all human beings. Dignity and universality are therefore indissociable.”³⁵.

ECtHR’s analysis of the concept of dignity in its “general” aspect seems to be stopping at this point. Apart from exhaustive references to the relevant international human rights documents, stressing its underlying character and reiterations that “the concept of dignity prevails throughout the European

29 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, 4 April 1997, Preamble.

30 Charter of Fundamental Rights of the European Union, 7 December 2000, Preamble, art.1, art. 31.

31 Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances of 3 May 2002, Preamble.

32 Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005, Preamble, art.6, art.16; see also *Bouyid v. Belgium*, § 47.

33 ECtHR judgment *Vereinigung Bildender Künstler v. Austria*, 25.01.2007, app.no. 68354/01, joint dissenting opinion of judges Spielmann and Jebens.

34 See: ECtHR judgment *Pretty v. the United Kingdom*, 29.04.2002, app. no. 2346/02, § 65; ECtHR judgment *Christine Goodwin v. the United Kingdom*, 11.07.2002, app. no. 28957/95, § 90; ECtHR judgment *Valašinas v. Lithuania*, 24.07.2001, app. no. 44558/98, § 102.

35 DECAUX, Emmanuel. “Dignité et universalité”. In MARCUS HELMONS, Silvio (ed). *Dignité humaine et hiérarchie des valeurs. Les limites irréductibles*. Brussels: Academia-Bruylant, Bruylant, 1999, p. 164: “Le fondement des droits de l’homme ne peut être que « l’égale dignité » de tous les hommes. Dès lors, dignité et universalité sont indissociables.”; at: *Vereinigung Bildender Künstler v. Austria*, joint dissenting opinion of judges Spielmann and Jebens, § 8.

Convention on Human Rights” and respect for it is “the very essence of the Convention”³⁶, the ECtHR didn’t have too much to say in this regard.

The Court’s general approach to the notion of dignity is undertaken very modestly and may be noticed only on several occasions. It definitively shouldn’t be perceived as the Court’s serious attempt to unravel the complete conceptual depth of concept of dignity. The main reasons for such approach seem pretty clear and concern the complex nature of notion of dignity and its wide underlying character. The Court prefers to refer to the notion of dignity in relation to particular rights.

3 The notion of dignity in respect of particular ECHR rights

Apart from its general approach to the notion of dignity, the Court focuses on this issue within the framework of particular Convention rights. This approach was applied on numerous occasions and focused on several rights. The article will analyze some of these guarantees, namely freedom from torture, inhuman or degrading treatment and punishment (art.3) and right to respect for private and family life, home and correspondence (art.8). The Court when referring to the notion of dignity in respect of particular rights, takes under consideration the scope of particular right protected and the individual aspect of the case. In this regard, the notion of dignity is used not in general terms, but rather as personal or individual dignity.

3.1 Prohibition of torture, inhuman or degrading treatment or punishment

The notion of dignity had been mentioned frequently in the Court’s jurisprudence concerning art. 3 of the ECHR. The relation of freedom from torture, inhuman or degrading treatment and punishment with dignity is a very clear one. Despite lack of such reference in the text of art. 3 of the ECHR, ICCPR clearly indicates such connection. Article 7 of the Covenant does not refer to human dignity, but art. 10 para 1. states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”³⁷. It seems clear that any other form of treatment (torture, cruel, inhuman or degrading) would be contrary to the respect for “dignity of the human person”. Member of the Human Rights Committee, Ms. C. Medina in her individual opinion stressed that Article 10, paragraph 1, requires States to treat all persons deprived of their liberty “with humanity and with respect for the inherent dignity of the human person”. This, in my opinion, means that States have the obligation to respect and safeguard all the human rights of individuals, as they reflect the various aspects of human dignity protected by the Covenant, even in the case of persons deprived of their liberty³⁸.

36 *Pretty v. the United Kingdom*, § 65; *Christine Goodwin v. the United Kingdom*, § 90.

37 ICCPR, art. 10 para 1.

38 Human Rights Committee, *Zheludkova v. Ukraine*, 6.12.2002, comm. no. 726/1996, Individual Opinion by Committee Member Ms. Cecilia Medina, p.12.

The underlying purpose of torture, inhuman or degrading treatment or punishment is to strip individual of its dignity at its core. The extent and methods may vary, depending on individual circumstances, form of ill-treatment or its mental or physical dimension, but the aim will always be the deprivation of dignity. The ECtHR stressed on numerous occasions that treatment contrary to art. 3 diminishes human dignity³⁹ and arouses feelings of fear, anguish and inferiority capable of causing of humiliating and debasing them⁴⁰.

In *Selmouni v. France*, the Court examined case of severe beatings, sexual violence and threats against the applicant in police detention. According to ECtHR these acts were to arouse the feelings of fear, anguish and inferiority capable of humiliating and debasing the applicant and possibly breaking his physical and moral resistance. The Court found these elements sufficiently serious to render such treatment inhuman and degrading. ECtHR noted that in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in art. 3⁴¹.

The Court focused on the notion of dignity within the ambit of art. 3 in *Bouyid v. Belgium*. The case is particularly interesting from the perspective of dignity, because it doesn't concern a "typical" incident concerning police violence. In this regard two minors were administered slaps by officers at the police station. This event took place in the context of very tense atmosphere between the local police and the applicants' family⁴². ECtHR reaffirmed that article 3 of the Convention enshrines one of the most fundamental values of democratic societies⁴³. Indeed the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity⁴⁴.

In *Bouyid v. Belgium*, the ECtHR also widely referred to the notion of dignity in the international and regional texts and instruments⁴⁵. The Court also stressed that although the Convention does not mention that concept – which nevertheless

39 ECtHR judgment *Pósa v. Hungary*, 07.07.2020, app. no. 40885/16, § 23; ECtHR judgment *Hellig v. Germany*, 07.07.2011, app. no. 20999/05, § 33; ECtHR judgment *Ribitsch v. Austria*, 04.12.1995, app. no. 18896/91, § 38,

40 ECtHR judgment *Cirino and Renne v. Italy*, 26.10.2017, app. no. 2539/13 4705/13, § 81; *Hellig v. Germany*, § 51. It should be stressed that treatment may considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. In considering whether treatment is "Degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of art.3. – see *Hellig v. Germany*, § 51.

41 ECtHR judgment *Selmouni v. France*, 28.07.1999, app. no. 25803/94, § 99.

42 *Bouyid v. Belgium*, § 11–31.

43 See i.a.: *Selmouni v. France*, § 95; ECtHR judgment *Labita v. Italy*, 6.04.2000, app. no. 26772/95, § 119; ECtHR judgment *Gäffen v. Germany*, 1.06.2010, app. no. 22978/05, § 87.

44 *Bouyid v. Belgium*, § 81.

45 *Ibid*, § 45–47, see also section 2 of this article referring to the "general" approach to the notion of dignity.

appears in the Preamble to Protocol No. 13 to the Convention, concerning the abolition of the death penalty in all circumstances – the respect for human dignity forms part of the very essence of the Convention⁴⁶. ECtHR also noted that there is a particularly strong link between the concepts of “degrading” treatment or punishment within the meaning of Article 3 of the Convention and respect for “dignity”, which has been highlighted in the Courts jurisprudence⁴⁷. On the merits of the case *Bouyid v. Belgium*, the Court emphasized that a slap inflicted by a law-enforcement officer on an individual who is entirely under his control constitutes a serious attack on the individual’s dignity⁴⁸. In conclusion, ECtHR stated that the slaps administered by the police officers did not correspond to recourse to physical force that had been made strictly necessary by their conduct, and thus diminished their dignity.

The Court had numerous opportunities to refer to the notion of dignity in respect of other alleged violations of art.3. In *Kudła v. Poland* the Court referred to the conditions and lack of medical assistance in detention. In this context ECtHR stressed that the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance⁴⁹.

In *Gäfgen v. Germany* the Court analyzed the threats towards the applicant of inflicting him considerable physical pain at the hands of a person specially trained for such purposes and subjecting him to sexual abuse⁵⁰. In this regard the Court referred to the German Federal Constitutional Court decision, which confirmed that the police officers’ threat to inflict pain on the applicant in the investigation proceedings had violated human dignity and the prohibition on subjecting the applicant to ill-treatment, as enshrined in German Basic Law⁵¹. Three ECtHR judges expressed their partly concurring opinion in this regard and stressed the absolute protection of human dignity under both, art. 1 of the German Basic Law and art. 3 of the Convention⁵².

According to the above concurring opinion, art. 3 provides absolute protection of human dignity. The particular importance of this notion in relation

46 Ibid, § 81; see also: ECtHR judgment *Svinarenko and Slyadnev v. Russia*, 17.07.2014, app. no. 32541/08 43441/08, §118; ECtHR judgment *C.R. v. the United Kingdom*, 22.11.1995, app. no. 20190/92, § 42; *Pretty v. the United Kingdom*, § 65

47 Ibid, § 90; see also ECtHR judgment *Kudła v. Poland*, 26.10.2000, app. no. 30210/96, § 94; *Svinarenko and Slyadnev v. Russia*, § 138; ECtHR judgment *Valašinas v. Lithuania*, 24.07.2001, app. no. 44558/98, § 102.

48 Ibid, § 103.

49 *Kudła v. Poland*, § 94.

50 *Gäfgen v. Germany*, § 11–23.

51 Ibid., § 145.

52 Ibid., Joint Partly Concurring Opinion of Judges Tulkens, Ziemele and Bianku, § 3.

to prohibition of torture and other forms of ill-treatment under art. 3 can't be disputed. As already mentioned, torture and ill-treatment violate the very core of human dignity and their aim is to subject individual to humiliation and debasement. In *Bouyid v. Belgium*, the Court seems to be referring to the notion of dignity as to the root cause of the violation. Undoubtedly, this was done to enforce the argumentation, but such approach to the notion of dignity might be accused of being instrumental. In my opinion, the ECtHR's future jurisprudence would benefit on more advanced and structured approach to the notion of dignity in this regard.

3.2 *Right to respect for private and family life, home and correspondence*

Art. 8 of the ECHR focuses on four aspects of privacy (private life, family life, home and correspondence). The scope of this provision is very wide and seems to be continuously expanding. The notion of dignity in this regard seems intrinsically connected to the privacy, *mutatis mutandis* similarly to art. 3. An assault on sphere of privacy may clearly affect personal dignity of an individual. For that aim the dignity is crucial for the effective protection of art. 8 of the ECHR.

The Court in *Pretty v. United Kingdom*, stressed that the very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court decided that it is under art. 8 that notions of the quality of life take on significance⁵³. Referring to the facts of the case, ECtHR added that in an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity⁵⁴.

In the sphere of right to respect for private and family life, home and correspondence, the Court referred to the notion of dignity on various occasions. In *Rodina v. Latvia*, ECtHR focused on media publication and stressed that honour and dignity forms part of private life of an individual. In this regard, the Court considered that the applicant gave the domestic courts an opportunity to examine all aspects which were crucial for her claim in relation to honour and dignity.

ECtHR also referred to the dignity in the context of beggary. The applicant found herself in a precarious situation and started begging in the streets in order to have sufficient funds for living. The Court reaffirmed that the concept of human dignity is inherent in the spirit of the Convention. Often mentioned in relation to Article 3, this notion has also been referred to by the Court on several occasions in relation to Article 8⁵⁵. ECtHR also stated that human dignity is seriously compromised if the person concerned does not have sufficient means

⁵³ *Pretty v. the United Kingdom*, § 65.

⁵⁴ *Ibid.*

⁵⁵ ECtHR judgment *Lacatus v. Switzerland*, 19.01.2021, app. no. 14065/15, § 56.

of subsistence. By begging, the person concerned adopts a particular way of life in order to overcome an inhuman and precarious situation⁵⁶.

In *Kučera v. Slovakia*, the Court referred to the notion of dignity in the context of the right to respect for home and police operations. ECtHR stressed that a risk of abuse of authority and violation of human dignity is inherent in a situation where, the applicant was confronted by a number of specially trained masked policemen at the front door of his apartment very early in the morning. In the Court's view, safeguards should be in place in order to avoid any possible abuse in such circumstances and to ensure the effective protection of a person's rights under art. 8 of the Convention. Such safeguards might include the adoption of regulatory measures which both confine the use of special forces to situations where ordinary police intervention cannot be regarded as safe and sufficient and, in addition, prescribe procedural guarantees ensuring, for example, the presence of an impartial person during the operation or the obtaining of the owner's clear, written consent as a pre-condition to entering his or her premises⁵⁷.

Similarly, in *Rachwalski and Ferenc v. Poland*, the Court noted that the applicants were confronted by a number of police officers carrying truncheons and accompanied by dogs at the front door of their house in the middle of the night. No compelling justification was given for the use of such visible force. In this context ECtHR observed the existence of a risk of abuse of authority and violation of human dignity⁵⁸.

The connection between dignity and the right to respect for private life, home and correspondence is very clear. The Court refers to the notion of dignity under art. 8 on numerous occasions. However, this approach can't be described as comprehensive or exhaustive. In this regard the ECtHR seems to be using the term "dignity" when necessary due to the particular circumstances of the case. This fact is understandable in the light of art. 8. The scope of the right to privacy is wide and it needs proper assessment of particular circumstances of every individual case. This feature of art. 8 doesn't allow the Court to develop state's positive obligations within its scope in the extent comparable to positive obligations deriving from articles 2 or 3⁵⁹. The necessity of individual assessment of cases under art. 8 doesn't allow creating universal definition of dignity in this regard.

4 Conclusion

The notion of dignity within international law of human rights is an essential one. The protection of human rights is based on the concept of dignity of a human being. The jurisprudence of the Court in this regard is far from being

56 Ibid.

57 ECtHR judgment *Kučera v. Slovakia*, 17.07.2007, app. no. 48666/99, § 122.

58 ECtHR judgment *Rachwalski and Ferenc v. Poland*, 28.07.2009, app. no. 47709/99, § 73.

59 See more: CZEPEK, Jakub. *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka*, Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego w Olsztynie, 2014, p. 144–168.

exhaustive. The Court is perfectly aware of the gravity of the concept of dignity and occasionally stresses its importance, by presenting its “general” approach to the notion. Such attempt are however, very rare.

Most of ECtHR's jurisprudence in this regard raises the notion of dignity within the scope of particular right. This article focused on articles 3 and 8, but the Court refers to dignity in respect of other rights⁶⁰ enshrined in the ECHR. Even though the relation of dignity and both freedom from torture and right to respect for private and family life seems very clear, the Court seems to be referring to it only in certain cases. On the one hand, this may be understood as ECtHR consciousness of the gravity of this notion. On the other hand, the lack of development a comprehensive approach to the notion of dignity within the ECHR system may be raising question about the lack of comprehensive approach to the concept. As stressed before, The ECtHR has developed impressive case-law regarding doctrines used in its jurisprudence, such as living instrument or margin of appreciation and the notion of dignity could be examined in a very similar manner.

Lack of such approach and sometimes casuistic usage of the notion of dignity may point to a conclusion that the Court refers to this concept in order to reinforce the argumentation. This is not necessarily the case. The Court seems to be conscious of the gravity of the notion of dignity and its particular, fundamental and “undefinable” character. The choice not to undertake such attempt seems to be a clear decision, taken in order not to impair or restrict the concept in any aspect.

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60 See e.g. ECtHR judgment *Kharin v. Russia*, 03.02.2011, app. no. 37345/03, § 43.

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