



YEARBOOK

HUMAN RIGHTS PROTECTION

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THE RIGHT TO HUMAN DIGNITY

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Institute of Criminological and
Sociological Research



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Prof. Zoran Pavlović, PhD, Provincial Protector of Citizens – Ombudsman
Ivana Stevanović, PhD, Institute of Criminological and Sociological Research

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Silvia Signorato*

A NEW RIGHT IN CRIMINAL PROCEDURE IMPLIED BY HUMAN DIGNITY: THE RIGHT TO NON-AUTOMATED JUDICIAL DECISION-MAKING

The right to respect for human dignity is a fundamental right that gives substance to all other rights. Human dignity is inviolable. It prevents any reification of man and postulates respect for the Kantian categorical imperative, which states that “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end”.

However, information technology poses new challenges regarding human dignity. This article analyses this issue in relation to the possibility of criminal judgements being issued by machines. In some cases, this kind of judgement is considered acceptable by Article 11 of directive (EU) 2016/680. However, a question must be asked: Does such automated judicial decision-making respect human dignity or not?

The article shows the incompatibility of robotic decisions with the right to respect for human dignity. Consequently, Article 11 of Directive (EU) 2016/680, in that part in which it admits that such judgments can be issued if authorized by Union or Member State law, should be regarded as unlawful.

Keywords: *human dignity, robotic decision, right to non-automated judicial decision-making in criminal matters, Article 11 of Directive (EU) 2016/680.*

* Silvia Signorato, PhD, Assistant Professor in Criminal Procedure - University of Padua (Italy), Lecturer in Criminal Procedure – University of Innsbruck (Austria). E-mail: silvia.signorato@unipd.it

1. Human dignity: An introduction

Human dignity is a multifaceted concept. Such a term comes from the Latin “dignus”. In the legal field, as has happened in other fields, the meaning of the term dignity has evolved over time. Initially, its meaning was close to that of “merit” and was associated with a high status in some languages. For example, this is one of the reasons why in the US Declaration of Independence, adopted on 4 July 1776, the term “dignity” is not used.

Therefore, the meaning of the term “human dignity” changes over time. The significant historical evolution of the concept of “human dignity” is reflected in legal semantics. What happened during the Second World War, with unimaginable atrocities against civilian populations, thinking in particular of the Holocaust, brought this concept to the centre of the legal debate (Barak, 2015: 34-48). There is a need for the protection of human dignity both in times of peace and in times of war (Paşca, 2020: 116), and in any situation, including criminal trials.

For this reason, treaties and international documents began to speak explicitly of human dignity. This was an epochal transition.

This happened first with the Preamble of the Charter of the United Nations, signed on 26 June 1945, where faith in the word “dignity” was reaffirmed.

Afterwards, the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948 explicitly mentioned human dignity in the preamble¹ as well as in some articles². In particular, Article 1 provides that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

¹ The Preamble first specifies that the «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, has evolved over the years». This Preamble also claims that «the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom».

² See Articles 1, 22, and 23.3. Article 22 provides that «Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality». Moreover, Article 23.3 provides that «Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection».

At the European Level, the Convention for the Protection of Fundamental Rights and Fundamental Freedoms (better known as the European Convention on Human Rights), which opened for signature in Rome on 4 November 1950 and came into force in 1953, did not mention human dignity.³ Nevertheless, this fundamental right is frequently recalled in judgements of the European Court of Human Rights (ECHR).

Instead, human dignity is claimed by the Charter of Fundamental Rights of the European Union (Charter), proclaimed on 7 December 2000. The Charter provides for the inviolability of this right. In particular, Article 1 states: “Human dignity is inviolable. It must be respected and protected”.

Human dignity is a fundamental right. It gives substance to the rights laid down in the Charter. As early as 2001 the Court of Justice of the European Union (CJEU)⁴ made clear that the right of human dignity is part of Union law.

However, the problem remained that the Charter did not have a binding force, but was only a source of “soft law” (Kostoris, 2018: 72).

The Treaty of Lisbon, which was signed on 13 December 2007 and came into force on 1 December 2009, provided that the Charter is a primary law of the Union, therefore assigning to the Charter the same legal status of the Treaties (6.1 TEU). Regarding this fact, Kostoris (p. 73) highlighted that “This is a crucial step that brought about significant consequences for the general framework of the multilevel protection of fundamental rights. Indeed, the Charter, enjoying now the status of primary EU law, is binding on both secondary EU law and Member States law. In addition, it must be stressed that the Charter not only has codified the fundamental rights that had been recognized exclusively by the case law of the Court of Justice but also includes a list of new rights, such as ‘human dignity’ (Art. 1 of the Charter)”.

Two consequences arise from the inviolability of human dignity.

First of all, no right recognized by the Charter can prejudice the dignity of another person. Furthermore, human dignity cannot be balanced with other rights, because it must always be protected and cannot be limited by other rights.

³ Pavlović Z. (2017) *The right to privacy – Challenges of new commitments*, Conference papers “Freedom security: The right to privacy”, Provincial Protector of Citizens – Ombudsman, Novi Sad

⁴ See CJEU, 9 October 2001, Netherlands vs. Parliament and Council, Case C-377/98, at grounds 70-77.

2. The Kantian categorical imperative as the kernel of human dignity

Human dignity is a fundamental right that guides the interpretation of other rights. This is testified by judgments issued by many national and supranational judges, even if the meaning of dignity varies significantly from jurisdiction to jurisdiction (McCrudden 2008: 655–724).

Nevertheless, some examples can be mentioned.

The United States Supreme Court stated that “the primary principle is that a punishment must not be so severe as to be degrading to the dignity of human beings” (Furman v. Georgia (1972), No. 69-5003).

The ECHR has established on several occasions that the detention regime must be such as to not violate human dignity (ECHR, Yaroslav Belousov v. Russia, no 2653/13 and 60980/14, 6 March 2017). Moreover, this Court ruled that human dignity and human freedom are the “very essence” of the Convention (ECHR, Christine Goodwin v the The United Kingdom, no 28957/95, 11 July 2002).

The CJEU also stated that human dignity imposes certain standards for the reception of applicants for international protection, in particular with regard to material conditions involving housing, food or clothing.⁵ The Court specified that a Member State cannot withdraw these standards even temporarily, not even in those cases where the person committed serious breaches of the rules of the accommodation centres or is characterised by seriously violent behaviour (CJEU, Grand Chamber, 12 November 2019, Zubair Haqbin v Federaal Agentschap voor de opvang van asielzoekers, Case C-233/18).

These judgements are just a few examples involving the subject of human dignity, but they are more than enough to demonstrate how human dignity is a fundamental right underlying every other right. The *fil rouge* that connects these judgments seems to be the need to affirm that man can never be considered or treated as a thing.

After all, any legal system should apply the Kantian categorical imperative, which states that “Handle so, daß du die Menschheit sowohl in deiner Person, als in der Person eines jeden andern jederzeit zugleich als Zweck, niemals bloß als Mittel brauchest” (Act in such

⁵ Stevanović A., Grozdić B., (2018) *The idea of human rights as a means of change of the public moral*, Yearbook, Human rights protection “From unlawfulness to legality”, Provincial Protector of Citizens – Ombudsman, Novi Sad

a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end) (Kant, 1788: AA IV, 429).

3. Information technology and new challenges to human dignity: The case of judicial decision-making

The growing use of information technology (IT) poses new important challenges in terms of respect for fundamental rights and also for human dignity.

Technological development make possible the processing of a huge amount of personal data. However, there is the risk that the person is reified and considered a mere set of personal data to be marketed and exploited for the most varied purposes.

As a consequence, the protection of natural persons in relation to the processing of personal data is a fundamental right strictly connected to human dignity.

From a technological point of view, the processing of personal data is based on specific algorithms. In general, an algorithm is a set of instructions for carrying out a procedure or for solving a problem in a finite number of steps (see e.g. <https://www.merriam-webster.com/dictionary/algorithm>).⁶ It is important to underline that some artificial intelligence (AI) techniques, in particular deep learning which is currently undergoing great development, require that the machine learn from data. Therefore, there are some elements of the algorithm actually used in the processing whose values have not been chosen by a programmer, but which are instead the result of automatic learning by the machine.

In the legal field, the use of AI algorithms poses significant problems (Garapon, Lassègue 2018: 1-368; Quattrococo 2020: 1-247). For this reason, the European Commission for the efficiency of Justice (CEPEJ) tried to provide guidelines by adopting the European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment (Strasbourg, 3-4 December 2018).

AI applied to criminal proceedings and criminal procedures is already a reality in the most diverse fields. For example, there are algorithms that perform profiling of potential

⁶ Kambovski, V., (2018), *Natural rights, legitimacy of laws and supranational basis of unlawfulness*, Yearbook Human rights protection "From unlawfulness to legality", Provincial Protector of Citizens – Ombudsman, Novi Sad

offenders or predict where a crime is likely to be committed. From this point of view, it has been noted that the use of algorithms can lead to an increase in proactive investigations. (Ferguson 2016: 731; Ligeti, 2019: 9).

Moreover, other algorithms evaluate the reliability of a witness in a criminal trial. The use of algorithms aimed at assessing potential recidivism risk is currently widespread.

There are also algorithms that allow lawyers to reasonably predict what the judgment will be.

The use of algorithms can go even further. A machine can come to serve as a judge by issuing judgments. Robot judges are, for example, being tested in Estonia where they operate only in civil matters and for cases of low value. However, they decide.

At the European level, the use of such algorithms is only apparently prohibited by Directive (EU) 2016/680 (directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data), as well as by Regulation (EU) 2016/679 (regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; *cd.* General Data Protection Regulation - GDPR).

Regarding the criminal trial, Article 11 of Directive (EU) 2016/680 provides that “Member States shall provide for a decision based solely on automated data processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be prohibited”. Therefore, any robotic decision would appear to be prohibited.

However, the same article establishes a relevant exception. In fact, it provides that the robotic decision is prohibited unless it is authorised by Union or Member State law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject. In particular, at least the right to obtain human intervention on the part of the controller must be safeguarded in all cases.

However, it is necessary to ask ourselves what “the right to obtain human intervention on the part of the controller” consists of. The risk to be avoided is that the Judge becomes a

mere ratifier of what the algorithm decides, on the basis of the alleged aura of infallibility that connotes IT.

In fact, IT is a human product and, therefore, it is fallible. Both programming and algorithm operating errors may occur. For example, recently two planes and more than 300 lives were lost due to a programming error which, combined with a sensor malfunction, caused the on-board computer to shut down the pilots' commands (Sumwalt, Homendy, Landsberg 2019: 1-13). Furthermore, the learning process of a machine can lead to errors. It is important to underline that the goal of deep learning is not to obtain a machine that responds exactly in all cases, but a machine that responds correctly almost always based on reasonable requirements, taking into account the fact that a 100% accuracy rate is not achievable.

4. The difficult relationship between the decision made by a machine and respect for human dignity

At the European level, both Directive (EU) 2016/680 and the GDPR allow exceptions to the prohibition of decision-making based solely on automated data processing, including profiling. However, it is necessary to ask whether, in criminal matters, the exceptions to the prohibition of decision-making based solely on automated data processing are or are not compatible with respect for human dignity.

The problem to be faced is different from that of establishing whether an algorithm (or a set of algorithms) is capable of issuing a reliable judgment or not. This different problem, which was mentioned in § 3, is extremely important, but it is relevant from the point of view of the Right to a fair trial instead.

This question is faced here: Is human dignity violated or not by the fact that it is a machine and not a man who issues the judgement?

It is true that at the European level it is provided that “the right to obtain human intervention on the part of the controller” is respected. However, this does not solve the problem. This can be illustrated by means of an example. Suppose a person is undergoing inhuman or degrading treatment.⁷ There would be a clear violation of both the prohibition of torture and human dignity. If that person at a later stage is treated in full compliance

⁷ Ćorić D, (2018), *The theoretical definition of the notion of unlawfulness - A step towards positive law*, Yearbook, Human rights protection “From unlawfulness to legality”, Provincial Protector of Citizens – Ombudsman, Novi Sad

of all the rules and rights, the previous violation of the prohibition of torture and of human dignity would not disappear.

Similarly, if the robotic decision involved a violation of human dignity, this violation would not be remedied by any subsequent human intervention.

It is therefore essential to understand whether, in criminal matters, a robotic decision causes a violation of human dignity or not. In my opinion the answer is affirmative.

A machine that issues a judgement on a person actually decides on the basis of current and past digital information. In essence, man is reduced to a set of data, that is, to a thing.

One could object to this reasoning saying that, even in an ordinary trial, the judge decides on the basis of a set of information. However, there is a difference. In the case of the robot judge, the person is reduced to information itself. In the case of the human judge, this is not the case. Even in the case of judgments in absentia, the person is something more than the information available to the judge.

If the robotic decision reduces man to a set of information, it follows that man is treated as a thing. Human dignity instead requires that man must always be considered and treated as a person and never as a thing. For this reason, the robotic decision violates human dignity.

Ultimately, human dignity seems to dictate that every man must be judged by another man. A machine could possibly assist a judge, a prosecutor or an investigator and could pick up on elements that would be difficult for a man to detect, especially in the case where a large amount of data needs to be processed, but any decision in a criminal trial must be made only by a man or a panel of men.

5. Conclusions

Human dignity is inviolable. Its kernel meaning dictates that man can never be reified. A robotic decision, on the other hand, reduces humans to a mere set of data and, therefore, to one thing. For this reason, such a type of decision seems to conflict with human dignity.

It follows that it is possible to doubt the legitimacy of Article 11 of Directive (EU) 2016/680, in the part in which it provides that the robotic decision can be authorized by Union or Member State law.

It is also possible to dispel the unfounded myth of the perfection of algorithms. An algorithm is not perfect, nor can it be. Not even a human being is perfect, but he/she is not subject to the risk of programming errors or inadequate training problems in the case of systems that require learning. Furthermore, the algorithm does not consider the uniqueness of every human being, but brings every man back into standard types. It would be interesting to wonder what the algorithm would decide if a person not attributable to typified categories, such as Beethoven, Michelangelo, Leonardo da Vinci, were imputed.

It may also be mentioned that, as part of the update and enhancement of Israel's armoured forces, a new tank is planned in which the two crew members are joined by an additional virtual member. This virtual member integrates all current and previous information provided by sensors and maps, as well as historical information that may not be available to the human crew, analyses the situation and, using AI techniques, shows to the crew possible solutions to the tactical problem. The decision to engage the target is only up to the human crew, i.e. the system is of the "man-in-the-loop" type (Eshel, 2020: 90-92). Anyway, AI in warfare, if not tempered by a "man-in-the-loop" system, is believed to violate several principles, including the principle of human dignity (European Parliament, 2020: 64).

If the concept of "man-in-the-loop" is so important in war, where the decision time can be very short, is it not possible that it is at least as important in criminal procedure, where the decision time is not as short? AI can be useful to help the Judge reach a decision, but the decision must be only up to one or more human beings.

In conclusion, it seems necessary to recognise a new right: the right to non-automated judicial decision-making (Signorato, 2018: 99-103).

References

- Barak, A. (2015) Human dignity as a value and as a right in international documents. In *Human Dignity: The Constitutional Value and the Constitutional Right* (pp. 34-48). Cambridge: Cambridge University Press. doi:10.1017/CB09781316106327.005.
- Eshel, T. (February 2020) Israel's Carmel Programme. Charting Future Concepts for Mounted Combat. *European Security & Defense*, Volume 2020, Issue 1 (pp. 90-92).
- Pavlović Z. (2017) *The right to privacy – Challenges of new commitments*, Conference papers "Freedom security: The right to privacy", Provincial Protector of Citizens – Ombudsman, Novi Sad

- European Commission for the efficiency of Justice (CEPEJ) *European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment*. Strasbourg (3-4 December 2018).
- European Parliament (2020) *The ethics of artificial intelligence: Issues and initiatives*. Brussels: European Union (p. 64), doi: 10.2861/6644.
- Ferguson, A.G. (2016) Predictive Prosecution. *Wake Forest Law Review, Symposium 2016*, Volume 51, May 2016 (pp. 705-744), Available at SSRN: <https://ssrn.com/abstract=2777611>.
- Garapon, A. - Lassègue, J. (2018) *Justice digitale. Révolution graphique et rupture anthropologique*. Paris: Puf (pp.1-368).
- Stevanović A., Grozdić B., (2018) *The idea of human rights as a means of change of the public moral*, Yearbook, Human rights protection “From unlawfulness to legality”, Provincial Protector of Citizens – Ombudsman, Novi Sad
- Kant, I. (1788) Kritik der praktischen Vernunft (AA IV, 429).
- Kostoris, R.E. (2018) The Protection of Fundamental Rights. In Kostoris R.E. (Ed.) *Handbook of European Criminal Procedure*. Cham: Springer (pp. 72-73).
- Ligeti, K. (2019) Artificial Intelligence and Criminal Justice. *Concepts paper for XX AIDP-IAPL International Congress of Penal Law, Rome, 13-16 November 2019* (p. 9). Available at: http://www.penal.org/sites/default/files/Concept%20Paper_AI%20and%20Criminal%20Justice_Ligeti.pdf
- Kambovski, V., (2018), *Natural rights, legitimacy of laws and supranational basis of unlawfulness*, Yearbook Human rights protection “From unlawfulness to legality”, Provincial Protector of Citizens – Ombudsman, Novi Sad
- McCrudden, C. (2008) *Human Dignity and Judicial Interpretation of Human Rights*. *European Journal of International Law*, Volume 19, Issue 4, September 2008 (pp. 655–724), <https://doi.org/10.1093/ejil/chn043>.
- Pașca, I.C. (2020) *Drept penal internațional*, București: Universul Juridic (p. 116).
- Quattrocchio, S. (2020) *Artificial Intelligence, Computational Modelling and Criminal Proceedings: A Framework for A European Legal Discussion*. Cham: Springer (pp. 1-247).
- Signorato, S. (2018) *Le indagini digitali. Profili strutturali di una metamorfosi investigativa*. Torino: Giappichelli (pp. 99-103).
- Ćorić D, (2018), *The theoretical definition of the notion of unlawfulness - A step towards positive law*, Yearbook, Human rights protection “From unlawfulness to legality”, Provincial Protector of Citizens – Ombudsman, Novi Sad
- Sumwalt R.L. - Homendy J. - Landsberg B. (2019) *Safety Recommendation Report 59582, National Transportation Safety Board*. Washington, DC (pp. 1-13).

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