Safeguarding Human Dignity in the European Audiovisual Sector

by Tarlach McGonagle

EDITORIAL

Audiovisual media services fall within the scope of many different international and national legal instruments, as well as of best practices and standards developed by case law. These rules often target a much wider spectrum of activities. Only some of them address specifically the media. Those, however, that don’t are not necessarily of lesser importance for the audiovisual sector. The case in point might be human dignity, a “Human Right” with great bearing on the media. Reversing the logic, one might point out that the media may impact heavily on human dignity.

While the concept of another Human Right, namely the right to information and freedom of expression has been a topic for IRIS publications, we have hitherto published much less information on human dignity. One explanation might be that its essence is even harder to grasp than that of the right to information and freedom of expression. To remedy this situation, this IRIS plus looks into the legal roots and main elements of human dignity as an important standard for audiovisual media services.

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Safeguarding Human Dignity in the European Audiovisual Sector

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Introduction

The protection of human dignity is widely and universally regarded as one of the central animating objectives of international human rights law. However, references to human dignity are more frequently found among preambular assertions in international human rights treaties than among their more substantive provisions. This inevitably prompts questions about the normative consequences that flow from the concept of human dignity. This article sets out to explore the extent of those consequences, both in general terms and specifically in the context of the European audiovisual sector. It therefore provides an overview of the main instruments employed by both the Council of Europe and the European Union to operationalise the concept for the purposes of regulation in the media sector.

Human Dignity and International Human Rights Standards

Leading international human rights treaties, whether generalist or thematically-specific in nature, routinely invoke the protection of human dignity as one of their principal values or goals. This tendency is quite a recent innovation in international law and one which was ushered in by the Charter of the United Nations (UN Charter)1 and the Universal Declaration of Human Rights.2 By enshrining basic standards of protection for human dignity in positive international law, the drafters of the UN Charter and the Universal Declaration of Human Rights aimed to prevent the recurrence of the horrors of the Second World War which violated human dignity on a massive and unprecedented scale. As such, relevant provisions could be described as reactionary in character, but preventive in outlook. They were very much a product of the Zeitgeist.3

The Preamble to the UN Charter reaffirms “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women […]”. The Preamble to the Universal Declaration of Human Rights opens with the proclamation 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”. It also refers explicitly to the UN Charter’s above-cited reaffirmation of faith.4

The pattern established by the UN Charter and the Universal Declaration of Human Rights has, by and large, consistently been followed in subsequent international human rights treaties. In its Preamble, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),5 refers back to relevant sections of the United Nations Charter and the Universal Declaration of Human Rights. So, too, does the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),6 in its Preamble. The sister-treaties, the International Covenant on Civil and Political Rights (ICCPR)7 and the International Covenant on Economic, Social and Cultural Rights (ICESCR),8 both replicate the language of the Universal Declaration of Human Rights (i.e., the excerpt cited supra) in their Preambles. They also recognise that “these rights derive from the inherent dignity of the human person”. As such, they clearly conceive of human dignity as a basis for other rights. For its part, the Convention on the Rights of the Child (CRC)9 adopts in its Preamble the formula used in the Universal Declaration of Human Rights, the ICCPR and the ICESCR about the recognition of the inherent dignity […] of every individual being the foundation of freedom, justice and peace. It also makes repeated references to the underlying principles and values of the United Nations Charter and the Universal Declaration of Human Rights.

This routine, almost reflexive, recourse to the notion of human dignity, can be explained by the overarching importance of human dignity in the dominant conceptual framework for human rights; a framework which insists on the universality, indivisibility, interdependence and inter-relatedness of all human rights.10

The overarching importance of human dignity has generated much academic literature and is well-captured in the following reflection:

“[…] at its heart, the idea of human rights is two-dimensional. There is the absolute side – the moral wrongness of cruelty and humiliation, and there is also the – perhaps less clear but nevertheless essential – dedication to human flourishing. The two are linked in that each flows from a commitment to human dignity, which is in turn manifested in acts of compassion towards the other. In its prohibitory form, this demands that we do not degrade our fellow humans by de-personalising them. The positive side, [sic] stressing growth and personal success, sees human rights as radically pluralist in the hospitality towards others – rather than mere tolerance of them – that its underlying ethic demands. Viewed as a whole, therefore, human rights is an idea that both protects us as persons and enables us to grow at the same time.”11

Styled in this way, human dignity is a conceptual lynchpin, providing crucial linkage between negative and positive dimensions to human rights and the preventive and promotional strategies required for their full realisation. The practical importance of this conceptual linkage becomes evident in the discussion of Council of Europe and European Union strategies for protecting human dignity in the audiovisual sector, as they comprise both preventive and promotional components (see further, infra).

Normative Potential of Human Dignity

As noted at the outset, invocations of human dignity are typically preambular rather than substantive. The provisions detailed in the preceding section all fall into the former category, but they are complemented, if somewhat sporadically, by substantive references to human dignity. Such substantive refe-
ferences emphasise the particular importance of human dignity for the realisation of specific human rights, like various social, economic and cultural rights; work-related rights and the right to a decent existence; educational rights; certain standards of treatment in cases of deprivation of liberty; and for children, the right to enjoy certain qualitative standards of life when suffering from mental or physical disability, or when recovering from having been victimised in any of a number of enumerated ways. This list of illustrative examples concerns substantive provisions of selected international human rights treaties which explicitly couple the concept of human dignity with specific human rights. It should equally be borne in mind, however, that human dignity has a high level of valency, and has obvious implications for the realisation of other rights, even in the absence of express textual linkage. The right to privacy is an obvious example of a right that has clear human dignity ramifications. This perspective is also consistent with the conception of human rights as an interrelated and interdependent whole, as described in the preceding section.

Article 1 of the Universal Declaration of Human Rights states, inter alia, that “All human beings are born free and equal in dignity and rights”. This assertion is quite unique in that it is not preambular, but is contained instead in the corpus of the text of the Declaration. Its position therefore vests it with extra significance. The formula employed suggests that “dignity is a quality or characteristic of human beings” with specific human rights. It should equally be borne in mind, however, that human dignity has a high level of valency, and has obvious implications for the realisation of other rights, even in the absence of express textual linkage. The right to privacy is an obvious example of a right that has clear human dignity ramifications. This perspective is also consistent with the conception of human rights as an interrelated and interdependent whole, as described in the preceding section.

First, when Article 1 of the Universal Declaration of Human Rights is read in conjunction with the preambular provisions discussed in the previous section, what emerges is the view that human dignity serves a foundational purpose vis-à-vis the canon of human rights guaranteed by international law. It grounds those rights and helps to shape the societal matrix in which they are to be realised. Thus conceived, human dignity belongs to the set of values described by Bhikhu Parekh as “operative public values”, i.e., those values “that a society cherishes, endeavours to live by, and judges its members’ behaviour in terms of them. They are public because they are embodied in its constitutional, legal and civic institutions and practices and regulate the public conduct of its citizens. And the values are operative because they are not abstract ideals but are generally observed and constitute a lived social and moral reality. The operative public values of a society constitute the primary moral structure of its public life.”

Second, the claim rests on a certain amount of conceptual unravelling of the term “human dignity”, especially given the absence of any authoritative definition of the term in international human rights law. It is useful to distinguish between the various roles that dignity can play: as already discussed, it can serve as a basis for defined rights or as a value (or, a fortiori, an operative public value). In accordance with those roles, it can be invoked, respectively, in claiming violations of independent rights and for aspirational or exhortatory purposes, e.g., promoting values that ought to be shared at societal level. Another role that has been identified for “human dignity” is that of a principle, whereby it could be invoked “to stand alongside other fundamental principles”.

Yet some commentators who prefer the “human dignity as a ‘fundamental, shared quality of human beings’” thesis to the “human dignity as a human right” thesis also recognise its contingency on the aforementioned conceptual unravelling. David Feldman notes that by virtue of the dignity that is inherent in the human condition:

“An umbrella of rights may be justified as preventing interference with this general human dignity. Subordinate forms of dignity, derived from an individual’s personal qualities and behaviour, may for some purposes also be sufficiently valuable to justify a right to protection. Such protective rights could be termed ‘rights to dignity’ in so far as they have the object of upholding dignity indirectly.”

Constraints of space prevent a more elaborate exploration of the academic debate concerning the role of “human dignity” within international human rights law. For present purposes, the essential point to retain is that whatever divergence of opinion there may be regarding legalistic technicalities (which largely stem from interpretive divergence in the first place), the general, or moral, importance of “human dignity” cannot be gainsaid.

The next two sections explore how the Council of Europe and the European Union have sought to develop the normative potential of human dignity, or in other words, to operationalise it, in the audiovisual sector.

**Council of Europe**

**European Convention on Human Rights**

The European Convention on Human Rights does not explicitly refer to “human dignity” as one of its propelling objectives. Nevertheless, it is reasonable to infer that its general ethos is consistent with upholding “human dignity” along the same lines as other international human rights instruments. This inference is based on the ECHR’s preambular subscription to the values and objectives of the Universal Declaration of Human Rights and also frequent pronouncements by the European Court of Human Rights which are general in scope and revelatory of the Convention’s overall purposes. By way of example, the Court held in *Pretty v. the United Kingdom* that the “very essence of the Convention is respect for human dignity and human freedom.” Similarly, the Court held in *Gündüz v. Turkey* that “tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society.”

It is important to note that the jurisprudence of the Court also contains many pronouncements which are specific to particular rights guaranteed by the Convention. For instance, the Court has held that one of the main purposes of Article 3 (Prohibition of Torture) is to protect “a person’s dignity and physical integrity.” The Court has also emphasised the impor-
tance of human dignity in contexts such as the quality of life of the terminally ill and the recognition of (trans-)sexual identity. Racial violence has been found by the Court to be "a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction." Of particular relevance for freedom of expression and the media, the Court has repeatedly acknowledged the negative impact that "hate speech" can have on human dignity. In consequence, it has consistently accepted that certain types of "hate speech", such as Holocaust Denial, can be considered as disparagement of the dignity of the victims of the Holocaust and are therefore not entitled to protection under the ECHR.

Although the meaning of "human dignity" can be given different emphases when applied in the context of different rights, the explanatory value of those discrete emphases contribute to the development of an overall understanding of the term which is greater than the sum of its parts.

European Convention on Transfrontier Television

Article 7(1) of the European Convention on Transfrontier Television (ECTT) insists that broadcast material (i.e., "All items of programme services") must (in its presentation and content) "respect the dignity of the human being and the fundamental rights of others". It also states that programmes, "in particular", shall not "give undue prominence to violence or be likely to incite to racial hatred". Article 7(1) was inspired by the ECHR, especially its Article 10, and should be interpreted in light of relevant case-law of the Convention's adjudicative organs. Reference is also made to Recommendations No. R (97) 20 on "hate speech", but for present purposes, it is particularly interesting to note that Article 7(1) purports to reflect "elements contained in the preamble to the Universal Declaration of Human Rights (1948) concerning the inherent dignity and equality of all human beings, including equality between women and men".

Standard-setting by Council of Europe Bodies

A large number of media-oriented standard-setting texts adopted by the Committee of Ministers on the one hand and the Parliamentary Assembly on the other hand are (partly) inspired by the need to uphold human dignity, or contain references to the same, or are broadly concerned with it (even without being expressly couched in such terms). Rather than inventorise those texts and itemise pertinent references contained therein, the analytical approach here will be to loosely synthesise their content and assess their implications at the macro-level. It is also worth noting the protection of human dignity is regularly adverted to by the European Commission against Racism and Intolerance (ECRI) in its thematic and country-monitoring work. The monitoring process for the Framework Convention for the Protection of National Minorities has also led to useful consideration of the protection and promotion of human dignity, albeit in the specific context of minority rights and inter-ethnic relations.

In the context of standard-setting in respect of human dignity by subsidiary bodies of the Council of Europe, important distinctions are rightly drawn between State obligations and media responsibilities. States authorities are obliged under their general international human rights law commitments to ensure that their legal systems effectively safeguard both freedom of expression and human dignity. The responsibilities of broadcasters, however, are directly concerned with the material they transmit. In this regard, it is important to distinguish between preventive and promotional strategies to uphold human dignity. Whereas broadcasters can legitimately be expected not to infringe human dignity and are usually required to refrain from doing so under applicable national law, it would be potentially problematic to systematically prescribe the project of promoting human dignity as a value. Considerations of deference to principles of media autonomy come into play here; promotional measures are more appropriately encouraged by State authorities, leaving the media themselves to determine the extent to which they are taken up. The potential role of self- or co-regulatory bodies is often emphasised, as for example in the Committee of Ministers' Recommendation on self-regulation concerning cyber content. These considerations can usefully be considered in analogous contexts. For instance, they guided the Council of Europe's Committee of Ministers in its decision to adopt separate Recommendations to deal with the logically complementary goals of countering hate speech on the one hand, and using the media to promote a culture of tolerance on the other hand:

"As concerns the propagation of racism and intolerance there is, in principle, scope for imposing legally binding standards without violating freedom of expression and the principle of editorial independence. However, as concerns the promotion of a positive contribution by the media, great care needs to be taken so as not to interfere with these principles. This area calls for measures of encouragement rather than legal measures." It is also important that standard-setting measures demonstrate awareness of the different levels at which "human dignity" operates: "the dignity attaching to the whole human species; the dignity of groups within the human species; and the dignity of human individuals".

David Feldman usefully teases out the "slightly" differing legal implications of each kind of dignity, explaining that whereas the first-named kind mainly concerns the objective aspect of dignity, the second comprises objective and subjective aspects, "particularly in respect of the way in which groups visualise and constitute themselves, and the way in which individuals relate to the group". This category, especially, has to balance the sometimes opposing objectives of preventing discrimination and fostering diversity. The third kind of dignity is primarily subjective in character. To the extent that specific standard-setting measures target the safeguarding of particular kinds of dignity, it is important to frame those measures with due regard for their likely legal implications.

By way of illustration, relevant sections of the Committee of Ministers' Recommendation on the democratic and social contribution of digital broadcasting and of its Recommendation on the portrayal of violence in the electronic media would fall squarely into the category of dignity "attaching to the whole human species". What is at issue is general protection from particular kinds of content. Engagement with the second category, concerning the dignity of groups, is exemplified by PACE's Recommendation on the image of asylum-seekers, migrants and refugees in the media. As regards the third category, the Standing Committee on Transfrontier Television's Statement on Human Dignity and the Fundamental Rights of Others (see further, infra), focuses more on individual dignity. Its overriding concern is particularised protection from particu-
lar kinds of content (or experiences resulting from particular formats). This distinction also applies, mutatis mutandis, to human dignity and protection of minors. In a similar vein, the Committee of Ministers’ Declaration on the provision of information through the media in relation to criminal proceedings homes in on specific types of individuals whose dignity, security and privacy should be respected by journalists, viz, victims, claimants and suspects. Other texts stress the need to respect the dignity of victims of terrorism.

In 2002, the Standing Committee on Transfrontier Television of the Council of Europe issued a Statement which focuses on the need for television programmes to uphold human dignity and the fundamental rights of others. The Statement was drafted in response to the emergence - in an increasingly competitive market - of certain television formats (especially so-called “reality tv”) and ideas which “can infringe upon human integrity and dignity and expose the participants in these programmes to a complete loss of their private life, as well as to gratuitous physical or psychological suffering”. The concerns and objectives of the Statement can readily be traced to the ECHR and Article 7, ECTT.

The Statement is cognisant of the duties and responsibilities of regulatory authorities and broadcasters vis-à-vis programme formats that run the risk of adversely affecting human dignity. To this end, the Standing Committee urges regulatory authorities and broadcasters:

- to co-operate and discuss among themselves on a regular basis on the question of television programmes which might contravene human integrity or dignity, with a view to seeking consensual co-regulatory or self-regulatory solutions - as far as possible - as regards such programmes;

- to avoid contractual arrangements between broadcasters and participants whereby the latter relinquish substantially their right to privacy, since this may represent an infringement of human dignity. Contractual arrangements should be designed to protect the most vulnerable parties, namely the participants who may be tempted to waive their rights in the pursuit of popularity and money.

A final concern for relevant standard-setting measures has been neatly captured in the phrase, the “uneasy relationship between dignity and paternalism”. It is important that measures seeking to protect human dignity - at any of the concept’s operational levels - should respect internationally-recognised guarantees of freedom of expression. In this respect, it must be remembered that the right to freedom of expression includes the freedom to receive and impart information and opinions. Moreover, individual priorities and perspectives involved in the exercise of the right can differ, depending on whether an individual is imparting or receiving a message, or indeed, is merely a third-party to the expressive act (but is somehow affected by it).

European Union

Court of Justice of the European Communities

The Court of Justice of the European Communities (ECJ) has had the occasion to engage with the notion of “human dignity” in a number of cases, but its judgment in the Omega Spielhallen case is its most relevant to date, as far as the European audiovisual sector is concerned. The case was a reference for a preliminary ruling under Article 234 EC on essentially two questions. First, clarification was sought as to “whether the prohibition of an economic activity for reasons arising from the protection of fundamental values laid down by the national constitution, such as, in this case, human dignity, is compatible with Community law”. The second question was whether the ability of Member States to restrict fundamental freedoms guaranteed by the Treaty is conditional on the restriction in question being “based on a legal conception that is common to all Member States”. As to the facts of the case: Omega, a German company, operated a so-called “laser-drome” in which “laser sport” was practised. According to the relevant authorities, one of the activities practised there involved simulating acts of homicide (with laser toys) and therefore constituted a danger to public order. A prohibition order was issued and Omega challenged the order before the courts, arguing inter alia that the order infringed the freedom to provide services under Article 49 EC as it “had to use equipment and technology supplied by the British company Pulsar”.

On the first question, the Court ruled: “Community law does not preclude an economic activity consisting of the commercial exploitation of games simulating homicide from being made subject to a national prohibition measure adopted on grounds of protecting public policy by reason of the fact that that activity is an affront to human dignity”. It added, however, that any measures restricting the freedom to provide services “may be justified on public policy grounds only if they are necessary for the protection of the interests which they are intended to guarantee and only in so far as those objectives cannot be attained by less restrictive measures”. On the second question, the Court found that “It is not indispensable in that respect for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member States as regards the precise way in which the fundamental right or interest in question is to be protected”.

Charter of Fundamental Rights of the European Union

As consistently held by the ECJ and as laid down explicitly in the Treaty of Amsterdam, 1997, the EU is bound by the fundamental rights regime of the ECHR. This growing commitment to the upholding of human rights was further consolidated by the proclamation of the Charter of Fundamental Rights of the European Union at the Nice European Council on 7 December 2000. Since then, the Draft Constitution for the European Union has incorporated the Charter of Fundamental Rights of the European Union as its Part II. The Treaty also provides for the accession of the EU to the ECHR, and affirms that fundamental rights, as guaranteed by the ECHR and the constitutional traditions common to the Member States, “shall constitute general principles of the Union’s law”.

The Charter makes preambular reference to human dignity, which identifies it as one of the “indivisible, universal values” on which the European Union is founded (Recital 2). This reference is underscored by Article 1 of the Charter, which has been concisely formulated as: “Human dignity is inviolable. It must be respected and protected.” That the Charter proper should begin by stressing the inviolability of human dignity (Article 1) is not merely of symbolic importance; it also lays down one of the document’s main ideological cornerstones and sets the tone for the remainder of the text. It means that
human dignity is a free-standing right. Had it been bound to other rights listed in the Charter, its status might have been weakened, according to the commentary on the Charter drawn up by the EU Network of Independent Experts on Fundamental Rights.\textsuperscript{72}

The same commentary argues that Article 1 constitutes not only a fundamental right in itself, but the “real basis” of other fundamental rights.\textsuperscript{73} Two points are relevant here. First, the drafters of the Charter cast human dignity as “a fundamental right in itself”.\textsuperscript{74} This is at variance with some of the academic arguments canvassed supra. The Independent Experts’ commentary, however, queries the “practical significance” of Article 1 “as an independent test standard”.\textsuperscript{75} It cautions that “Very careful consideration, examination and explanation are needed to derive a legal position from Article 1 that does not yet result from a specific basic right”.\textsuperscript{76} Second, following the logic of human dignity as a basis for other rights, Article 1 necessarily relates – with varying levels of intensity – to other rights enshrined in the Charter, such as Article 11 (Freedom of expression and information) and Article 20 (Equality before the law), which is reinforced by Article 21 (Non-discrimination). It is also easy to detect its relevance to the Charter’s in-built safety mechanism, i.e., its prohibition of abuse of rights clause (Article 54).

Although the constitutions and national legal systems of many EU Member States safeguard human dignity, either explicitly or implicitly, Article 1 of the Charter is most closely modelled on Article 1 of the German Grundgesetz, which reads as follows:

1.1 Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

1.2 The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. […]\textsuperscript{77}

This is a good illustration of a process that has been termed “the interpenetration of national legal-political orders and the international system”,\textsuperscript{78} whereby human rights standards at the international level can percolate “down” to the national level and simultaneously and conversely, standards at the national level can rise “up” to the international plane. It is a question of the higher standards being allowed to prevail. Indeed, a number of commentators have predicted that in the fullness of time, relevant existing and developing constitutional case-law in Germany\textsuperscript{79} will prove particularly instructive for the ECJ as it continues to engage with the notion of “human dignity”.\textsuperscript{80} Indeed, there have been a number of recent and pertinent examples of case-law.\textsuperscript{81}

The “Television without Frontiers” Directive

The “Television without Frontiers” (TWF) Directive devotes surprisingly little attention to concerns for the protection of human dignity and measures to be taken to prevent the broadcasting of hateful content. Under Article 12, “Television advertising and teleshopping shall not”, \textit{inter alia}, “prejudice respect for human dignity”. This wording is confoundingly vague: neither “prejudice” nor “respect” is self-explanatory and relating them jointly to the already indeterminate notion of “human dignity” greatly exacerbates the interpretive difficulties in question.\textsuperscript{82} Under current proposals for the renaming and revamping of the TWF as the AVMSD, the new Article 3g\textsuperscript{83} would reconfigure Article 12, TWF, to read “audiovisual commercial communications must not […]”.\textsuperscript{84}

The other provision of the TWF dealing \textit{directly} with relevant issues is Article 22a, which reads:

“Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.”

Under current proposals to revise the Directive, Article 22a would be deleted, only to be reconfigured as Article 3e\textsuperscript{85}, which, according to the initial formal proposal from the European Commission,\textsuperscript{86} would have read:

“Member States shall ensure by appropriate means that audiovisual media services and audiovisual commercial communications provided by providers under their jurisdiction do not contain any incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

The significance of this proposed revision can be summarised in two observations. First, it explicitly links the issues of “incitement to hatred” and “jurisdiction”. The tightening-up of the provisions on jurisdiction\textsuperscript{87} was one of the major impulses in the process leading to the proposed revision of the Directive. A number of cases involving the broadcasting by satellite of “hate speech” into Europe have also conditioned regulatory thinking on this issue.

Second, the proposed revision would have extended the impermissible grounds of incitement to hatred from the quite narrow, “race, sex, religion or nationality”, to the rather more expansive, “sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. This proposed revision would have directly incorporated the grounds of discrimination set out in Article 13 of the EC Treaty. However, the European Parliament, in its first reading of the Commission’s proposal as part of the codecision procedure, amended the proposed list of grounds of hatred to: “sex, race, ethnic origin, […]” (emphasis added).\textsuperscript{88} No explanation is given for this departure from the formula used in Article 13 and the preference for “race” over “racial origin” (in any event, this change of wording was not put forward by the Hieronymi Report\textsuperscript{89}).

This juxtaposition of hatred and discrimination has conceptual and practical implications. The conceptual differences between hatred and discrimination would ordinarily have been troublesome, but they are all the more so here because they are ignored. The vagueness of the notion, “hated”, is also problematic. These concerns perhaps explain why the Cultural Committee of the Parliament recommended the insertion of “discrimination” or “before the reference to “incitement”.\textsuperscript{90} The recommended amendment was not adopted by Parliament, however.

Following the Parliament’s approval of the Commission’s proposal (as amended), draft Article 3e acquired a new tail-piece: “or offend against human dignity in any other manner”.\textsuperscript{91} The express reference to human dignity is understandable, given its position of centrality in the Charter. It should be noted in passing that the amendment put forward by the Hieronymi Report also provided draft Article 3e with a similar tail-piece: “[…] and guarantee respect for human dignity and integrity”.\textsuperscript{92} That proposed amendment (which was not
adopted) again focused on human dignity, but asserted its importance in more positive terms. It also introduced the concept of integrity, which is developed, inter alia, in Article 3 of the Charter (“Right to integrity of the person”), as including physical and mental integrity. Puzzlingly, the latest draft version of the AVMSD formulates the proposed new Article 3e in a way that fails to incorporate the amendments described in the foregoing paragraphs. It now reads: “Member States shall ensure by appropriate means that audiovisual media services provided by providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.”

In December 2006, the European Parliament and Council adopted a Recommendation on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry. It extends the scope of Council Recommendation 98/560/EC on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. In short, whereas these Recommendations also share the preoccupations mentioned in respect of the Council of Europe’s standard-setting measures, such as freedom of expression, the impact of new media technologies, the potential of self- and co-regulation, cooperative endeavours between national regulatory authorities (in terms of sharing experiences and handling complaints), (“should”) one cannot help feeling that human dignity is situated closer to the periphery than the centre of both Recommendations. Their overriding concern is protection of minors, a related but distinct goal (see further, supra).

Conclusion

Human dignity is of central importance in human rights law. Its importance is both foundational and normative. The Council of Europe and the European Union employ different means in their attempts to translate the concept into something practicable and workable. In this respect, human dignity can be considered an “operative public value” in the sense outlined by Bhikhu Parekh. The normative implications of human dignity for the European audiovisual sector are numerous and significant; however, the overall development of the concept is being driven by a range of dynamics. This is due to the inherent polyvalency of human dignity and its relevance for a whole array of human rights. It is also due to constitutional and other normative developments at the European and national levels. This is an area of considerable ongoing growth and the continued application of measures for the protection of different kinds of human dignity in the audiovisual sector can make a meaningful contribution to the overall growth of the concept.
Article 6.2 (ex Article F.2) of the EU Treaty now reads: “The Union shall respect the Charter of Fundamental Rights of the European Union, Nice, 7 December 2000, as interpreted by the Court of Justice. It must be respected and protected.”

Article 1 reads: “Human dignity is inviolable. It must be respected and protected.” See also the Charter's preambular reference to human dignity, which identifies it as one of the “indivisible, universal values” on which the European Union is founded (Recital 2).


For further discussion, see, for example, Case 4/73, Omega Spielhallen- und Automatenaufstellungs-GmbH v. Oberbürgermeister der Gemeinde Berlin, Judgment of 14 May 1974, ECR 491, para. 10; Case 260/89, Elliniki Radionopoiisi Teleiria (1991), Judgment of 18 June 1991, ECR I-2925, para. 41; Case C-353/89, Commission v. Greece (1993), Judgment of 25 July 1991, ECR I-4069, para. 38; and Case C-545/00, Advocate General Stix-Hackl of 18 March 2004; see further: Alexander Scheuer, “Advocate General in the Human Dignity Cases”, at 699. See also the principles of liberty and human dignity, as well as respect for the rule of law, which are common to the Member States.” Article 29 (ex Article KI) provides, inter alia, a specific legal definition of “national minorities”, and the combating racism and xenophobia, as well as respect for human rights and fundamental freedoms, and the rule of law, which principles are common to the Member States.” Article 29 (ex Article KI) provides, inter alia, a specific legal definition of “national minorities”, and the combating racism and xenophobia, as well as respect for human rights and fundamental freedoms, and the rule of law, which principles are common to the Member States. Hence, the Union shall respect the Charter of Fundamental Rights of the European Union, Nice, 7 December 2000, as interpreted by the Court of Justice. It must be respected and protected. See also the Charter's preambular reference to human dignity, which identifies it as one of the “indivisible, universal values” on which the European Union is founded (Recital 2).