



UNIVERSITY OF TRENTO  
Department of Legal Sciences  
Faculty of Law

**Co.Co.A.**  
**Comparing Constitutional Adjudication**  
**A Summer School on Comparative Interpretation of European Constitutional Jurisprudence**  
**2nd Edition - 2007**

*The Dignity of Man in Constitutional Adjudication*

**Italy**

**Human Dignity and the Italian Constitutional Adjudication**

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## HUMAN DIGNITY AND THE ITALIAN CONSTITUTIONAL ADJUDICATION

by Alejandro Fuentes\*

*"...perché il Lager è una gran macchina per ridurci a bestie, noi bestie non dobbiamo diventare; che anche in questo luogo si può sopravvivere, e perciò si deve voler sopravvivere, per raccontare, per portare testimonianza; e che per vivere è importante sforzarsi di salvare almeno lo scheletro, l'impalcatura, la forma della civiltà. Che siamo schiavi, privi di ogni diritto, esposti a ogni offesa, votati a morte quasi certa, ma che una facoltà ci è rimasta, e dobbiamo difenderla con ogni vigore perché è l'ultima: la facoltà di negare il nostro consenso."*

Primo  
Levi, *I*

SUMMARY: 1. Human dignity and the constitutional Italian framework. - 2. Human dignity among the fundamental principles of the Constitution. - 3. Human dignity and (human) rights: which relationship? - 4. Human dignity and (human) rights: continuation... - 5. Final words.\*\*\*

*sommersi e i salvati*, Einaudi, Torino 2003. \*\*

1. When we talk about human dignity, under the legal point of view, it is quite difficult to define in a clear manner our object of study. That is because 'human dignity', as a concept, is very ambiguous and vague. Some times, it has been quoted as a value, some times as a principle or fundamental principle, and some

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\*\* "...because the Lager [concentration camp] is a big machine for reduce as to animals, we animals should not become; in this place we can survive too, and, thus, we should want to survive, for report, for give our testimony; and because for live it is important to safe at least the skeleton, the framework, the form of the civilization. We are slaves, deprived of every right, exposed to every offence, thrown to a certain death but one faculty has remained, and we should defence it with any vigour because it is the last one: the faculty of negate our consensus." Primo Levi, *I sommersi e i salvati*, Einaudi, Torino 2003, p. 35 ss.

\*\*\* As preliminary statement, may I say that the translation of all judgements that I have quoted in this paper were made by myself because official translations are not available. Thus, any inaccuracy with the Italian official versions will be my entire responsibility, and, for this reason, I give my excuses to the lector in advance.

times as a right (with an individual or collective dimension) or fundamental right. Hence, I will not try to develop a definition or conceptualization of this notion, especially if we take into consideration that the extension of this brief essay leads us no room for such sort of semantic discussion. What I will try to do here is show –in a very succinct manner– the way in which the Italian Constitution has received this notion and its interpretation by the Italian Constitutional Court.

Starting with the text of the Italian Constitution, it is unavoidable to say that we will not find in the wording of this instrument a clear appeal to a human dignity as an individual or fundamental right, as e.g. it is clear within the German Basic Law in its Art. 1(1)<sup>1</sup>. Nevertheless, within the text of the Italian Constitution we can find several references to human dignity but under different wording; some times as an adjective, e.g. in Art. 36 (1) when establish the right to an adequate wage<sup>2</sup>; some times as a noun, e.g. in Art. 41 (2) when set out a limit to a right to private and economic initiative<sup>3</sup>; some times under the point of view of an individual person (individual dimension of human dignity), e.g. in Art. 32 (2) as a limitation of invasive medical treatment<sup>4</sup>; and some times, human dignity is taken under the point of view of the society, as a social or collective value (social dimension), e.g. in Art. 3 (1) when states that “*All citizens have equal social dignity...*”<sup>5</sup>

The following question –of course– would be whether these distinctions are important or not. Do they have any significance under the constitutional point of view? And, if this is the case, the next questions will be about its constitutional relevance. As a primary approach to the first question, may I say that the only distinction that it is effectively important in this matter (under the constitutional point of view) is the second one, merely, the approach to human dignity under both the individual and social point of view. I will analyse these two dimensions of human dignity together with the relevance articles of the constitution and their interpretation provided for the Constitutional Court.

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<sup>1</sup> The basic Rights set out in the German Constitution being with the provisions of Article 1 that: “1) The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority. 2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community of peace and justice in the world. 3) The following basic rights shall bind the legislature, the executive and the judiciary as directly enforceable law.”

<sup>2</sup> Art. 36 (1) of the Italian Constitution states that: “Workers have the right to wages in proportion to the quantity and quality of their work and in all cases sufficient to ensure them and their families a free and dignified existence.”

<sup>3</sup> Art. 41 (1 and 2) of the Italian Constitution set out that: “Private economic initiative is free. It cannot be conducted in conflict with public weal or in such manner that could damage safety, liberty, and human dignity.”

<sup>4</sup> Art. 32 (2) states that: “No one may be obliged to undergo particular health treatment except under the provisions of the law. The law cannot under any circumstances violate the limits imposed by respect for the human person.”

<sup>5</sup> Art. 3 (1) set out the principle of equality and non-discrimination: “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions.”

The question whether “dignity” is quoted as a noun or as an adjective has not relevance under the framework of the Italian Constitution because at very least in both cases human dignity import a limitation to a public powers for enforce policies or rules that could restrict or reduce the enjoyment of certain rights, in all of those cases where they declare that such restrictions are necessary under the ground –among others- of public order, national security, public morality or budgetary constrains. In other words, when human dignity is used as a noun, as autonomous constitutional principle or value<sup>6</sup>, refers to a specific limitation for the intervention of public authorities in order to restrict the enjoyment of fundamental rights, limitation that works as external protection for the “core”, for the essential part of those rights, for the minimum amount of its enjoyment. Over and beyond of this minimum protected, it would be a violation of the value or the principle of human dignity.

On the other hand, when human dignity is quoted as an adjective, assumes the same function that in the latter case but with a different ‘position’; it means as an integrative element of the protected right rather than external element of its. In this case, “dignity” is conceived as constitutive part of the right; it is its core element without which would be not right at all rather than its infringement. In other words, it is not an external element that protect the right against unlawful restriction; instead of that, dignity configures an internal element of the right and works –at the very end- as protection or limitation against its infringement. This is the case e.g. of the above mentioned right to earn adequate wage<sup>7</sup>.

As we can see, in both cases human dignity works as a protective element (internal or external) that guarantees the minimum enjoyment of fundamental rights against unlawful restrictions made by public authorities. Indeed, the object of protection is the same, merely, the enjoyment of a specific fundamental right in which human dignity is contented. I will come back later to this point.

2. Turns back to the Constitution, I said at the very beginning of this assay that the principle of human dignity is present throughout its text. In fact, the Constitutional Court held on this regard that “*The dignity of human being is, in fact, a constitutional value that permeates with itself the positive law*”<sup>8</sup>. Under this point of view, I will try to spot now those articles over which the overarching principle of human dignity was constructed.

First of all, we need to start quoting perhaps the most two relevant articles of the first part of the constitutional text, merely, the part entitled “Fundamental

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<sup>6</sup> I intend to not make her any distinction between values and principles do the nature and extension of this assay.

<sup>7</sup> For more explanation of this case, see bellow.

<sup>8</sup> Const. Court: Judgement n° 293/2000, 11/07/2000. Official Gazette, 26/07/2000.

Principles". These two articles are Art. 2<sup>9</sup> and Art. 3<sup>10</sup> of the Constitution. Both are complementary because, on the one hand, they recognise the inviolability of human rights, "as an individual, and in the social groups" (Art. 2), without discrimination and equal social dignity (Art. 3 (1)), and, in the other hand, they create a specific obligation, over the head of public authorities, for the removal of all of those obstacles which "really limiting the freedom and equality of citizens, impede the full development of the human person..." (Art. 3(2)). Here, we find a direct reference to "human dignity" only in the first paragraph of Art. 3, when talks about "social dignity". What does it mean have equal social dignity? The meaning of this wording have to be found through a conjunction reading of these two articles; it means that every citizens, or better, every human being has equal value (or dignity) within the society framework; every of them is porter of his or her human dignity, and –at least- only for this reason should be treat under the equal foot, as individual and as a member of the society in which her or his personality will develop. Thus, under this reading it is possible to say that human dignity could be describe as a coin with a double side: one side regards the individual dimension of this value, and the other one, its social dimension.

As individual value, human dignity tends to protect the "minimum enjoyment" of each fundamental right, working as a limitation to the discretionary public powers in all of those cases when authorities try to reduce or avoid the exercise of these rights, without (constitutional) reasonable justifications. In other words, human dignity operates as a core element, as the essential part of each fundamental right. Indeed, the violation or restriction of the enjoyment of these rights, beyond the limit states for this 'core' value, will generate an infringement of the human dignity. This *individual* dimension is commonly taken into account in the jurisprudence of the Italian Constitutional Court, for example, on regard to the right to health, the Court stated that it is not limitable under the argument of lack of current financial resources, because otherwise it will "...restrict the intangible nucleus of the right to health protected by the Constitution as the inviolable space of the human dignity"<sup>11</sup>. I will come back late to this point, when we will analyse

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<sup>9</sup> Art. 2 set out that: "The Republic recognizes and guarantees the inviolable rights of man, as an individual, and in the social groups where he expresses his personality, and demands the fulfilment of the intransgressible duties of political, economic, and social solidarity."

<sup>10</sup> Art. 3, set out that: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions. (First paragraph) It is the duty of the Republic to remove those obstacles of an economic and social nature which, really limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country. (Second paragraph)."

<sup>11</sup> Const. Court: Judgement n° 309/1999. 16/07/1999. Official Gazette, 21/07/1999.

the relation between human dignity and the right to health, under the light of Art. 32 of the Constitution.<sup>12</sup>

Under its *social* dimension, human dignity is not focusing in the single person, rather it is focusing in the social concept of the human person within a particular society; in other words, taken into consideration the understanding of 'dignity' that it is coming from the "social group" in a broad sense, it means, as the society in which a single person express and develops his or her personality. Here the stress is putting over what the society thoughts, what the society understands in respect of human dignity, rather than what a single person thought about his or her 'personal' or 'individual' dignity. In this sense, human dignity is a *cultural* common concept and, as such, could be used as a limitation but, rather than a limitation or restriction in the exercise of discretionary public powers, could be a limitation in the exercise of the rights itself. In this case, it is the right's bearer who suffers the limitation in the enjoyment of his or her right, rather public power in the exercise of their authority, because the individual enjoyment of the right infringes the common and share notion of human dignity within a given society.

One clear example of the latter point could be finding in the famous *Peep Show* case in Germany<sup>13</sup>, but not only. If we look to the Italian jurisprudence, it is possible to discover the same line, for example, when the Constitutional Court recognised that the enjoyment of the right to freedom of expression (Art. 21 Const.)<sup>14</sup> could be

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<sup>12</sup> Article 32 of the Italian Constitution states that "The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent (First paragraph). No one may be obliged to undergo particular health treatment except under the provisions of the law. The law cannot under any circumstances violate the limits imposed by respect for the human person (Second paragraph). "

<sup>13</sup> BVerwGE 84, 314 and BVerwGE 64, 274. In these cases, the Federal Administrative Tribunal of Germany held that the holding of peep shows violated the dignity of the women performing them, even if they wanted to perform them for remuneration. In this sense, this tribunal ruled that "because its significance reaches beyond the individual, [human dignity] must be protected even against the wishes of the woman concerned whose own subjective ideas deviate from the objective [social] value of human dignity." In these kind of cases, even when the individuals feels that his or her dignity has not been violated, the states has the right and moreover the duty to intervene.

<sup>14</sup> Article 21 of the Italian Constitution states that: "All have the right to express freely their own thought by word, in writing and by all other means of communication (First paragraph). The press cannot be subjected to authorization or censorship (Second Paragraph). Seizure is permitted only by a detailed warrant from the judicial authority in the case of offences for which the law governing the press expressly authorizes, or in the case of violation of the provisions prescribed by law for the disclosure of the responsible parties (Third paragraph). In such cases, when there is absolute urgency and when the timely intervention of the judicial authority is not possible, periodical publications may be seized by officers of the criminal police, who must immediately, and never after more than twenty-four hours, report the matter to the judicial authority. If the latter does not ratify the act in the twenty-four hours following, the seizure is understood to be withdrawn and null and void (Forth paragraph). The law may establish, by means of general provisions, that the financial sources of the periodical press be disclosed (Fifth paragraph). Printed publications, shows

lawfully limited in all of those cases when its exercises "...could disturb 'the common moral feeling' of the society"<sup>15</sup>. Indeed, the Court clarified that "Only when the threshold of the civil society's attention is negative beaten or offended by the publication of papers or images, with offensive or warped details that infringes and damages the human dignity of every human being, therefore awareness by the entire community, causes the reaction of the legal system."<sup>16</sup> In this case, the object of the violation was not an individual right or dignity; rather, here it had been violated a common feeling of a given society, its common notion of what human dignity was as a share value. Hence, the protection of this dimension of human dignity generated the lawful restriction of one fundamental right, not its protection. In other words human dignity appears here as a guarantee, as a protection clause for the society, where society's moral code is in danger of being transgressed by one of its members.

To sum up, these two dimension of the human dignity, as an individual and social value, are absolute relevant within the jurisprudence of the Italian Constitutional Court, because throughout the utilization of this dual principle, the Court has made different sort of accommodation between conflict rights or opposite interest. Some times, when the Court has to take a decision, balancing different fundamental rights and constitutional principles that, in a given case, would be presented against each other, the resolution is taken through the identification of the presence of human dignity within one of the rights in conflict (as its core element) and, consequently, the identification of the different constitutional value among them. When the Court has made this kind of accommodation, it was through the application of the *individual* dimension of human dignity. Notwithstanding, as we have seen above, human dignity has been used as well as a justification for the restriction or limitation of certain individual rights, in all of those cases where society's values were in danger. These cases are clearly linked with the *social* dimension of human dignity.

In the following paragraphs, I will analyses different articles of the Italian Constitution in which we can find reference to human dignity, both as external limitation of certain rights and as internal constitutive part of others fundamental rights, together with some illustrative jurisprudence.

3. Leaving the chapter of fundamental principles and entering into the chapter of rights within the Italian Constitution, the first reference has to be found in Art. 27 (2), in connection with the entity of punishment which "*cannot consist in treatment*

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and other displays contrary to morality are forbidden. The law establishes appropriate means for preventing and suppressing all violations (Sixth paragraph)."

<sup>15</sup> Const. Court: Judgement n° 293/2000, 11/07/2000. Official Gazette, 26/07/2000.

<sup>16</sup> Ibid.

*contrary to human dignity*"<sup>17</sup>. Here the constitutional principle of human dignity operates as an external limitation of any kind of punishment, or –in other words- as a constitutive and essential part of the right to not be punished with punishments that would be possible generate a minimum sort of infringement in our dignity.

On this regard, the Constitutional Court has applied Art. 27(2), together with Articles 3 and 13 (2 and 3)<sup>18</sup> of the Constitution, in several cases in which the constitutionality of the penitentiary regime had been challenged<sup>19</sup>. In those cases, through the interpretation and application of these norms, the Court founded the general personality right of the prisoner which, although his or her imprisonment, still has a residual part of personal freedom. In front of the power of the administration, founded in security reasons that are inherent part of the prison's life, the Court argued that, on the one hand, there is a precisely and inviolable right of the personality of the condemned (Judgement: 351/1996); and, on the other hand, there is and strict obligation for the administration to take care of the environmental conditions where inspection and search are carrying out, and the

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<sup>17</sup> Article 27 of the Italian constitution states that "Criminal responsibility is personal. (First paragraph) The defendant is not considered guilty until final judgment is passed. (Second paragraph) Punishment cannot consist in treatment contrary to human dignity and must aim at rehabilitating the condemned. (Third paragraph) The death penalty is not permitted, except in cases provided for in martial law. (Fourth paragraph). Even when this it is an official English version of the text of the constitution (available at the web page of the Italian Constitutional Court: <http://www.cortecostituzionale.it/>), it is quite different in its wording from the Italian version, because at the third paragraph the later version talk about "*trattamenti contrari al senso di umanità*" that means "*treatment contrary to the sense of humanity*" and not "*to human dignity*". Nevertheless, if we take into consideration the interpretation gave it by the Constitutional Court it is clear that we can read here "human dignity" as a absolute limitation for any kind of punishment.

<sup>18</sup> Article 13 of the Constitution states that "Personal liberty is inviolable (First paragraph). No form of detention, inspection or personal search is admitted, nor any other restrictions on personal freedom except by warrant which states the reasons from a judicial authority and only in cases and manner provided for by law (Second paragraph). In exceptional cases of necessity and urgency, strictly defined by law, the police authorities may adopt temporary measures which must be communicated within forty-eight hours to the judicial authorities and if they are not ratified by them in the next forty-eight hours, are thereby revoked and become null and void (Third paragraph). All acts of physical or moral violence against individuals subjected in any way to limitations of freedom are punished (Fourth paragraph). The law establishes the maximum period of preventative detention (Fifth paragraph)."

<sup>19</sup> See, as one of the latest, Const. Court: Judgement n° 526/2000, 15-22 November 2000. Official Gazette: 29/11/2000, where the question was the declaration of unconstitutionality of the of the Italian Penitentiary regime (Art. 34 of the rule of the Parliament n° 354, of 26 July 1975), in the case of inspection or body search of the condemned for security reasons, with the respect of their personality, when does not require written motivated form, contained the modalities of the search and the duty, for the communication –in advance- of this action to a judicial authority in a period of 48 hours. In this case, the Court stated that the Penitentiary administrations' powers did not infringed the minimum portion of freedom that remained over the head of the prisoner, instead of that, those powers are inherent part –the Court said- of the detention.

behaviour of the personnel shall be, in any concrete situation, respectful of the persons and human dignity of the condemned<sup>20</sup>.

The following article, in which “human dignity” is mentioned, is Article 32 (2) of the Constitution, which states the right to reject medical treatments, in all of those cases in which they are not bound by law. Nevertheless, the Constitution set up an absolute limitation for this later case, it means a limitation to the possible legislative limitation; merely, the law that would limit the exercise of this right “*cannot under any circumstances violate the limits imposed by respect for the human person*”<sup>21</sup>. In other words, in this paragraph human dignity is included as a limitation, as a protection against invasive health treatment in respect of both, the right of self-determination of the patient and the right to be ill or sick until the final consequences of the illness.

Moreover, second paragraph of Art. 32 should be read together with its first paragraph in which is recognised –as a fundamental right- the right to health. A minimum of health care and assistance should be provided by government and public institution, also in all of those cases where patients do not have enough funds to pay for it. In fact, in this paragraph, what is guaranteed is the right to “*free medical care to the indigent*”.

Indeed, if we ask about which is the connection between these two paragraphs, merely, between the fundamental right to health and human dignity, we will realize that the latter is included within the former. Thus, human dignity operates as an internal ‘nucleon’, as a core or essential part of the right to health, which protection should be guaranteed (as a minimum of assistance) by public authorities. And, on the other hand, human dignity operates as an external limitation to public policies, because public authorities cannot argue the existence of budget limitation or any other sort of inadequacies in order to reduce or avoid the minimum supply of health care that is guaranteed –in fact- as a minimum standard of protection of the right to health under which human dignity would be violated.

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<sup>20</sup> See Judgement n° 349/1993, 24/06/1993. Official Gazette, 04/08/1993, where the Court stated that the imprisonment cannot absolutely or totally suppress the freedom of a person, it is a grave limitation of it but never its suppression. Thus, the Court argued that all of those rules that would restrict even more the situation of the prisoner, would be applied only when they would respect all guarantees set for in Art. 13 (2) of the Constitution (Rule of Law and Judicial Jurisdiction).

<sup>21</sup> Article 32 of the Constitution states that: “The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent (First paragraph). No one may be obliged to undergo particular health treatment except under the provisions of the law. The law cannot under any circumstances violate the limits imposed by respect for the human person (Second paragraph).”

Of course, the identification of this minimum standard it is not an easy task and, as we will see below, has been conducted –at the end- case by case by the Constitutional Court. In this sense, the Court stated, for example, that “*The protection of right of health cannot be conditioned by the legislator for the ground of the distribution of the current financial resources*”<sup>22</sup>. Moreover, the Court considered that “*Budged reasons cannot assume, at the time of make balances between rights, a preponderance influence; they cannot restrict the intangible nucleus of the right to health protected by the Constitution as inviolable space of the human dignity. The right to receive free health treatments, in a case of indigent people, is part of this intangible nucleus.*”<sup>23</sup>

Another important resolution was hold in connection with the right to health and the possibility to enjoy free access to public transport for citizens of Third States countries (not European Union Member States). In this regard, the Court stated -first of all- that the *Principle of Equality* (Art. 3 Const.) does not tolerate discriminations between citizens and foreigners in all of those cases where fundamental rights are involved<sup>24</sup>, but out side of those cases, discrimination under the ground of nationality would be acceptable. Nevertheless, the Court argued, there is an intangible nucleus in the right to health protected by the Constitution as inviolable space of the human dignity, in which no protection [even in a case of non-european citizens] is binding. Hence, the intangible nucleus of the right to health should be recognising even to foreigners, without any consideration of their legal status (regular or irregular migrant) within the territory of the State.<sup>25</sup>

Notwithstanding, the Court hold that the right to free public transport, is not part of the intangible nucleus of the right to health, protected by the Constitution, and – for this reason- it is facultative for the local governments [Regions] to establish or not this additional free public service and –consequently- to determinate the requirements for the enjoyment of it. However, the Constitutional Court declared the unconstitutionality of this regulation because did not comply whit the *Principle*

<sup>22</sup> Const. Court: Judgement n° 267/1998, 7-17 July 1998. Official Gazette, 22/07/1998. See also Judgements n° 416/1995, 21-28 July 1995, Official Gazette 02/08/1995; 247/1992, 20 May-3 June 1992, Official Gazette, 10/06/1992; and 455/1990, 26 September-16 October 1990, Official Gazette, 24/10/1990.

<sup>23</sup> Const. Court: Judgement n° 309/1999, 07-16/07/1999. Official Gazette, 21/07/1999. In this case, was claimed the unconstitutionality of Art. 37 of the regulation of the National Health Care Service (Rule of Parliament n° 833/1978) and its implementation (Legislative Decree n° 618/1980), in that part in which did not provide any form of health assistance in support of Italian citizens in a foreign country (non European Member State country), for grounds different than work or the enjoyment of a student fellowship. This unconstitutionality was claimed within a civil case, in which was demanded the reimbursement of all cost of the health treatment that had been covered and paid in United State, in a case of an urgent hospitalisation of an Italian indigent, to a local health unit (Venice) by the Italian Central Government.

<sup>24</sup> See Const. Court: Judgement n° 64/1994, 10-24 February 1994, Official Gazette, 02/03/1994.

<sup>25</sup> See also Const. Court: Judgement n° 252/2001, 5-17 July 2001. Official Gazette, 25/07/2001.

of *Rationality (or reasonableness principle)*; it means that the possibility to introduce different legislative regimes would be only acceptable when that sort of regulation would be not arbitrary and reasonable (Art. 3 Const.).<sup>26</sup>

Coming back to the second paragraph of Article 32 of the Italian Constitution, where human dignity is expressly mentioned but under little different wording, merely "*respect for the human person*", we found here the bases for right of self-determination of the patient and its reverse limitation or restriction for public health authorities to provide invasive health treatment against the will of the patient, or – in other words- the respect of the right to death following the natural process of terminal diseases.

Indeed, this paragraph gives constitutional bases to the principle of *informed consensus (or non consensus)* in all of those cases where the medical treatment is not binding by law. Nevertheless, there is no general law in Italy that regulates those cases where medical treatments would be obligatory; thus, it is not possible under the current states of the legislation to impose any kind of medical treatment without the *consensus* of the patient<sup>27</sup>. This latter right is close linked with a very controversial issue, namely, *euthanasia* under its positive or negative implementation. In this regard the Italian Supreme Court (Corte di Casazione) stated, in a controversial Judgement, that "*...the individual right to health implied, as right of liberty, the protection of its negative side, merely, the right to loose health, to be ill, to not receive any kind of medical treatment, the right to live the final steps of the existence under the human dignity personal interpretation of the person involved, even if this particular point of view will take this person to death.*"<sup>28</sup>

<sup>26</sup> In this case, the regulation of the Region of Lombardia had violated the *principle of rationality* contained in Art. 3 of the Constitution, because '*nationality*' was not consider for the Court as a 'reasonable ground' for base a lawful discrimination among handicap people. Thus, it did not have reasonable link between the nationality requirement and the objective condition (invalidity) for the admissibility to the social benefit (enjoyment of free public transport), on the one hand, and with the ratio of the regulation, on the other hand. Nevertheless, the Constitutional Court clarified that *residence* could be a legitimate ground for such kind of discrimination.

<sup>27</sup> As an exception of this principle, the Italian Bioethics National Committee stated in 2003 (18 December), that the artificial nutrition and hydration of the patient it is not included within the right to refuse medical treatment; thus, it is ethically obligatory because it is addressed to guarantee the minimum physiological conditions for the survival of the patient (This report is available -in Italian- in the following web page: [http://www.governo.it/bioetica/testi/Dichiarazioni\\_anticipate\\_trattamento.pdf](http://www.governo.it/bioetica/testi/Dichiarazioni_anticipate_trattamento.pdf)). Nonetheless, the Italian Supreme Court in a recent Judgement (n° 21748/07 of 4 October 2007) stated that "there are not doubts about that the utilisation of a gastric sonde, for the artificial nutrition and hydration of the patient, it is a medical treatment."

<sup>28</sup> Italian Supreme Court, First Civil Section (Corte di Casazione – Sezione Prima Civile), Judgement n° 21748/07 of 16 October 2007.

This interpretation opened the door to the possibility of ‘negative’ or ‘passive’ euthanasia, it means, when all medical treatments supplied to the patient are stopped, even those indispensable for the preservation of the life (life-saving), following clear and precise instructions given by a capable, conscious and full informed patient. Nonetheless, the Supreme Court, without made any expressive distinction between positive and passive euthanasia, considered that “*the refuse of medical-chirurgical therapies, even if it will generate the death of the patient, cannot be confuse with an hypothesis of euthanasia, merely, a behaviour that it is intend to foreshorten the life and positive caused the death of the patient; this refusal is more a manifestation of a choice, made by the patient, consisted in permit to the illness to continuous its natural course*”<sup>29</sup>.

4. Last but not least, we will consider the latter two articles in which human dignity is mentioned, merely, articles 36 and 41, presents in the Title III of the Second Chapter of the Italian Constitution.

As I have mentioned above, in Art. 36(1) human dignity is quoted as an *adjective* rather than as a *noun*. In fact, human dignity works here as a qualification of the kind of life that workers and their families have to have. Indeed, it has been guaranteed to workers “*the right to wages in proportion to the quantity and quality of their work and in all cases sufficient to ensure them and their families a free and dignified existence*”<sup>30</sup>. Moreover, from the wording of the constitutional text, it is possible to conclude that –in this case- human dignity works as an internal positive limitation for this constitutional right, which means that the workers wages

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<sup>29</sup> Italian Supreme Court, First Civil Section (Corte di Casazione – Sezione Prima Civile), Judgement n° 21748/07. In this case, resolved that in all of those cases where the patient had been laid on the bed for many years (more than 15 years in this particular case), in a Persistent Vegetative State (PVS) with the consequently radical incapacity to contact the external world, and that have been kept alive with the artificial supplies of nutrition and hydration, with a gastric sonde, the judge could authorizes the deactivation of these supplies, under the claim of the person that act legally in its behalf, and after a contradictory audience with the special curator, only when the following requirements will be full filing: (a) When the PVS’s conditions would be absolute irreversible, under a rigid medical analysis, and would not be, under scientific international standards, any possibility that the patient would recover its capacity of consciousness and perception of the external world, even in a minimum amount; and (b) only when the claim would be truly expressive, based in clear, unequivocal and consistent proof of the willing of the patient, such as his or her past declarations, or his or her live stile, way of thinking, thought and believes, and the way in which this person conceives his or her personal dignity, manifested before to enter in the PVS state. Finally the Court stated that, when one each requisite would be absent, the judge should not authorizes the interruption of the medical supplies, and will be absolute priority to the right to life with not consideration of the health state of the patient, its autonomy or its capacity and consciousness, or the perception that others could have on regard to the ‘quality’ of life.

<sup>30</sup> Art. 36 of the Italian Constitution states that “Workers have the right to wages in proportion to the quantity and quality of their work and in all cases sufficient to ensure them and their families a free and dignified existence (First paragraph). The maximum working day is fixed by law (Second paragraph). Workers have a right to a weekly rest day and paid annual holidays. They cannot waive this right (Third paragraph).

cannot -in any case- decrease under the “dignified” level. Human dignity is enshrined within this minimum standard. Of course, this sort of positive limit should be –at least- determined case by case by the judicial power, taking into consideration the entire circumstances of the worker’s family life.

In this regard, the Constitutional Court has recognised in several opportunities the judicial power’s competence for the adequacy of workers’ wages in those cases where salaries were not longer align with the real monetary value of the local currency after its devaluation<sup>31</sup>. In fact, the Court has considered that Art. 36(1) has established a ‘*right to a sufficient wage*’ and –consequently- has recognised that its protection is on the judge’s hand, which has the responsibility to not apply all of those statutes that would generate the inadequacy of salaries’ amount whit the minimum standards, and, therefore, to provide for its substitution for rightful proportions.<sup>32</sup>

In short, this article provided a specific ‘*human dignity*’ guarantee to a specific category of people, merely, workers and their families. But, what does it happen with others categories? Are they constitutionally protected in the same way? Perhaps, the first answer is coming from Article 38, first paragraph, of the Constitution where it is recognise that “*every citizen unable to work and without the resources necessary to live has a right to social maintenance and assistance.*” In other words, involuntary unemployed, merely, persons that cannot work for different circumstances, has a right to a social protection and maintenance. This is not the case of all of those people that are circumstantially unemployed, because the letters are covered by the second paragraph of this article, when states that “*workers have the right to be provided with and assured adequate means for their needs and necessities in cases of accidents, illness, disability and old age, and involuntary unemployment.*”<sup>33</sup>

Perhaps, as ‘*voluntary*’ unemployed, it means as a person that it is not covered by the constitutional guarantee set for in Art. 38, we can identify ‘*voluntary*’ indigent people (following –in *stricto sensu*- the wording of the Constitution)<sup>34</sup>. This latter category would be only protected by the right to have free medical treatment, as we see above when we analysed Art. 32(1) but there is not constitutional protection for them in order to have a minimum amount of income. Nevertheless,

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<sup>31</sup> See, among others, Const. Court: Judgement n° 177/1984, 14/06/1984.

<sup>32</sup> Const. Court: Judgement n° 156/1971, 28/06/1971.

<sup>33</sup> Art. 38 (2) of the Italian Constitution.

<sup>34</sup> Under the author point of view, talk about “voluntary indigents” is very controversial because behind their personal stories would be possible identify a large range of circumstances that would have conditionally influent their way of living.

there is not limitation for the recognition of this minimum by law, under the form of subsidy or other sort of economical add.<sup>35</sup>

Finally, the last but not least article of the Constitution that expressly mention human dignity is Art. 41, which states that “*private economic initiative is free*” (First paragraph). This very liberal right is not –of course– and absolute right. In fact, immediately after its recognition, the constituent legislator set out its external avoidable limits, merely, social utility, safety, liberty and human dignity (Second paragraph)<sup>36</sup>.

This article is –again– a manifestation of the social rights’ constitutional transversal protection; because it is intend to protect labour forces against unlawful exercises of the right to private economic initiative by the entrepreneurs (employers). In fact, the Constitutional Court stated that the meanings and values involve in Art. 41 Const. ‘justify’ a negative legislative estimation of the behaviour of the entrepreneurs when, through their manslaughter, negligence or lack of experience, they do not take all measures –even beyond of those measures expressly stipulated by law– addressed to reduce the employees’ exposure to risks.<sup>37</sup> In short, Art. 41 of the Constitution set out a general obligation of protection and safeness of workers, especially through a large range of measures of safety that should be taken at the workplace.

5. As a final words, we can say that human dignity should be taken, within the framework of the Italian Constitution and beyond, in the Italian legal order, as an overarch principle (or value) that shapes and modulates the entire system, through the reinforcement of all personal fundamental rights which contain in its interior a transversal nucleon of dignity. This *nucleon* of dignity, present in each fundamental right, operates as a core protection, as an insuperable limit for any intervention or restriction of those rights, founded in different public actions tending to pursue a public interest, public security or public order. In other words, it means

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<sup>35</sup> The reference made by the Constituents to the specific dignity of the workers is not casual in the text of the Italian Constitution; rather, this is a transversal issue present along over the text. The importance and protection of workers is a founded value of the Constitution as it is recognise in Article 1 (1), which states that “Italy is a Democratic Republic, founded on work”. As a direct consequence of this recognition ‘work’ –as a value– is constitutionally protected in its entire dimension, as we can read in Art. 35 (1) when states that “The Republic protects work in all its forms and applications.” Moreover, Art. 38 (2) guarantees and protects workers through their entire work’s life when states that “Workers have the right to be provided with and assured adequate means for their needs and necessities in cases of accidents, illness, disability and old age, and involuntary unemployment.”

<sup>36</sup> Article 41 of the Italian Constitution states: “Private economic initiative is free (First paragraph). It cannot be conducted in conflict with public weal or in such manner that could damage safety, liberty, and human dignity (Second paragraph). The law determines appropriate planning and controls so that public and private economic activity is given direction and coordinated to social objectives (Third paragraph).”

<sup>37</sup> Const. Court. Judgement n° 312/1996, 18-25 July 1996; Official Gazette: 21/08/1996.

that human dignity would be equal –at the very end- to the minimum amount of enjoyment of those fundamental rights that are constitutionally guaranteed. In this sense, human dignity has not an autonomous content; its content is equivalent to the core or essential part of those fundamental rights. Thus, the infringement of this essential part produces -at the same time- a violation of the right itself and of the principle (or value) of human dignity.

Nevertheless, the individual or personalistic dimension of human dignity is not the only dimension that was enshrined in the Constitution<sup>38</sup>. In fact, as we have seen above, human dignity additionally operates in a collective or social dimension which is perhaps less significant than the latter but, notwithstanding, is still very important because entails a slightly different approach. In other words, under its social dimension, human dignity works as an external limit to individual rights because it is intended to protect not the latter but the community itself. In this sense, it operates together with those collective notions such as public interest, public security and public order, for the protection of the collective understanding of what human dignity means, as a common value.

In this regard, human dignity is closer to the common *majoritarian* morality present within a given society. Therefore, when the common understanding of dignity would be in contrast with its individual understanding, merely, when these two dimensions would clash each other, the Constitutional Court is called for balance both dimension, taken into consideration –under case by case bases- the entire structure of the constitutional text and, fundamentally, all principles that has inspired it. In fact, the Constitutional Court stated, talking about the equal guarantee of fundamental human rights provided by either the Italian Constitution and universal and regional conventions, subscribed by Italy in this field, that fundamental human rights are constantly more knowledgeable for the contemporary consciousness as co-essential to human dignity, and, beyond of the consciousness of the catalogue of these fundamental rights, the diverse formulas that expresses them are each other integrated, and should be reciprocally completed at the time of their interpretation.<sup>39</sup>

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<sup>38</sup> See Const. Court. Judgement n° 167/1999, 29 April-10 May 1999; Official Gazette: 19/05/1999, in which the Court stated that the personalistic principle that inspires the Constitution establish as a final aim or goal of the social organization the development of the human person.

<sup>39</sup> Const. Court. Judgement n° 388/1999, 13-22 October 1999; Official Gazette: 27/10/1999.