

# Human global or individual dignity?

Peter Jakubowski (P.J.) asks (on 1 December 2024):

## How did Paragraph 1 come into the German Basic Law?

(ChatGPT):

Article 1 of the German Basic Law, which establishes the protection of human dignity and the binding of state authority to fundamental rights, was created against the background of the experiences of National Socialism and the Second World War. It is a central component of the constitution and was deliberately placed at the beginning to emphasise the fundamental importance of human dignity.

### Background and origin:

#### 1. Experiences with the Nazi regime:

- During the Nazi dictatorship, human dignity was systematically disregarded. Crimes such as the Holocaust, the persecution of political opponents, and the disregard for fundamental human rights shaped the history of Germany.
- After 1945, there was broad consensus that such crimes must never be allowed to happen again. This gave rise to the obligation to safeguard human dignity and fundamental rights under constitutional law.

#### 2. Influence of the Western Allies:

- After Germany's surrender in May 1945, the Western Allies had considerable influence on the design of the new constitution. They emphasised the importance of human rights and democracy.
- The constitution was intended to be a counter-project to the totalitarian ideology of the Nazi regime.

#### 3. Parliamentary Council:

- The Parliamentary Council, which drafted the Basic Law between 1948 and 1949, dealt intensively with the significance of human rights.
- The proposal for the wording of Article 1 came, among others, from Theodor Heuss and Carlo Schmid, who advocated a clear formulation of the inviolability of human dignity.

#### 4. Religious and Philosophical Influences:

- The first paragraph of Article 1 reflects Christian-humanistic and Enlightenment traditions that view human dignity and freedom as inalienable.

### Wording of Article 1 of the German Constitution:

1. **Paragraph 1:** *'Human dignity shall be inviolable. To respect and to protect it is the duty of all state authority.'*
  - This sentence declares human dignity to be the highest constitutional good and defines an obligation for the state and its organs.
2. **Paragraph 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.'*

- This links human rights with Germany's international responsibility.
3. **Article 3:** *'The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.'*
- This ensures that the basic rights are directly binding on all state authorities.

### **Symbolic and legal significance:**

Article 1 of the Basic Law is more than just a political statement; it has a concrete legal effect. Human dignity is inviolable and stands above all other legal norms. This has a significant influence on the case law of the Federal Constitutional Court and shapes Germany's entire legal system.

Through this embedding in the constitution, Article 1 became a central element of German identity in the post-war period and a foundation of the free democratic basic order.

(P.J.):

Is this original interpretation of Article 1 still to be taken literally today?

(ChatGPT):

The original interpretation of Article 1 of the Basic Law – that human dignity is inviolable and state authority is obliged to protect it – is still of central importance today. Nevertheless, the specific application and interpretation of the article has evolved over the decades through case law and social change.

### **Literal meaning and application today**

#### **1. Inviolability of human dignity:**

- Human dignity continues to be regarded as an absolute and inalienable value in Germany. It applies regardless of a person's origin, status, behaviour or beliefs.
- Neither the state nor individuals may violate human dignity. This remains an unchangeable principle.

#### **2. Jurisdiction of the Federal Constitutional Court:**

- The Federal Constitutional Court interprets Article 1 as the supreme constitutional value that guides every state action and legislation.
- Examples:
  - The rejection of the death penalty as a violation of human dignity.
  - The protection of people in particularly vulnerable situations, such as refugees or prisoners.
  - Interference with personal rights, such as surveillance measures, is weighed up taking human dignity into account.

#### **3. Changing social contexts:**

- new technologies, global challenges and social change have influenced the discussion about the scope and concrete application of human dignity. Examples:
  - **Artificial intelligence:** How can algorithms be designed to respect the dignity of each individual?
  - **Digitalisation:** The protection of privacy and personal data is increasingly seen as an aspect of human dignity.

- **Bioethics:** issues such as genetic engineering, euthanasia or abortion raise complex ethical questions that are related to the interpretation of human dignity.

## Challenges of literal application

### 1. Conflicts between fundamental rights:

- Article 1 often interacts with other fundamental rights (e.g. freedom of expression, security). In such cases, careful consideration is required.
- Example: The discussion about the ‘right to be forgotten’ on the Internet – here, human dignity (protection of personal integrity) collides with freedom of information.

### 2. International dimension:

- Globalisation has expanded the scope of human dignity. The question is to what extent the state must also assume international responsibility for the protection of human dignity, for example in the case of global supply chains or climate justice.

### 3. Changing values and societal views:

- While the basic idea of human dignity remains unchanged, societal perceptions of what specifically constitutes a violation of dignity are changing.
- Example: Practices such as discrimination or restrictive gender roles that were once accepted are now regarded as a violation of human dignity.

## Conclusion

The original interpretation of Article 1 remains valid at its core: human dignity is the highest standard of the German legal system. However, modern society requires a dynamic interpretation that addresses new challenges and ethical questions. This ensures that Article 1 remains not only an immutable principle, but also a living standard for social and legal development.

*(P.J.):*

There are some people who clearly harm the general public. Do they have to be looked at (and treated) just as ‘gently’ as everyone else?

*(ChatGPT):*

The question of whether people who consciously harm the general public should be treated the same as everyone else touches on central aspects of the relationship between the protection of human dignity and the enforcement of law and order. Even in the case of such people, human dignity remains inviolable – this is an immutable principle of the Basic Law. Nevertheless, the constitution allows for differentiated treatment, particularly with regard to penalties and measures to protect the community.

## Basis: The inviolability of human dignity

### 1. applies to everyone:

- Article 1 of the Basic Law does not provide for any exceptions. Even people who have committed serious crimes retain their human dignity. This is not dependent on moral behaviour or social utility.
- Reasoning: Dignity is not earned, but is inherent. Any violation of this principle would jeopardise the very basis of the constitutional state.

## **2. Significance for the treatment of offenders:**

- Even in the case of serious crimes, the state remains obliged to respect the human dignity of the offender. This is reflected, for example, in the prohibition of torture, inhumane treatment or the death penalty.

## **Measures to protect the general public**

### **1. Interference with fundamental rights is permissible:**

- The Basic Law allows restrictions to be placed on fundamental rights if this is necessary to maintain public safety and order, provided that proportionality is maintained.
- Example: prison sentences or preventive detention. In these cases, the fundamental right to liberty is restricted without violating the dignity of the person concerned.

### **2. Weighing up interests:**

- The protection of the general public is regularly weighed against the rights of the individual. The severity of the offence, the risk of repetition and the behaviour of the offender play a central role in this.
- Example: In cases of terrorism or serious violent crime, the state resorts to strict security measures, which must nevertheless respect the fundamental rights of the perpetrator.

## **Criticism of ‘soft treatment’**

### **1. Victim perspective:**

- Critics often argue that an excessive focus on the rights of perpetrators neglects the rights and dignity of victims.
- However, the legal system is designed to take the victim's perspective into account, for example, through compensation, protective measures or public recognition of their suffering.

### **2. Sense of injustice:**

- The public may perceive it as unjust if offenders are treated too leniently. There is a risk here that emotional reactions will dominate the principles of due process.

## **Limits of dignity in practice**

### **1. Punishment as social consensus:**

- Punishments and measures can be harsh, but never degrading. The state must not ‘dehumanise’ anyone – not even in the case of the most serious crimes.
- In practice, this means that preventive detention, long prison sentences or therapy requirements are possible, but torture, degrading treatment or inhumane prison conditions remain prohibited.

### **2. Rehabilitation instead of retribution:**

- A core principle of the rule of law is rehabilitation: even the most serious offenders should have the chance to lead a dignified life again after their release from prison. This is not only an obligation towards the offender, but also serves society by avoiding relapses.

## **Conclusion**

People who harm the general public are not treated gently, but rather in a lawful and proportionate manner. However, the protection of human dignity prevents them from being treated in a degrading or inhumane manner. This principle is a conscious decision of the constitutional state to preserve its values even in extreme situations. Dealing with such individuals requires a balance between security, justice and respect for inalienable human rights.

*(P.J.):*

Wouldn't it be time to place the dignity of all humanity (and even of nature itself) above that of each individual? Anyone who harms society (intentionally) has surrendered their individual dignity, hasn't they?

*(ChatGPT):*

Your question touches on a profound ethical and legal discussion about the priority of collective and individual rights, as well as the role of human dignity in an increasingly globalised world characterised by environmental crises. It is understandable that the idea of placing the dignity of society or even nature above the dignity of individuals arises in a context of growing global challenges. Nevertheless, there are strong arguments against such a shift, especially in the context of a democratic constitutional state.

## **Why does the dignity of the individual remain central?**

### **1. Inalienability of human dignity:**

- A person's dignity cannot be 'given away' or 'lost', even if someone deliberately harms society. This principle is a foundation of the constitutional state and protects against arbitrariness.
- As soon as the dignity of the individual is relativised, the floodgates are opened to abuse. It would be difficult to draw clear boundaries: who decides when someone has 'lost' their dignity?

### **2. Protection against collectivist arbitrariness:**

- History has shown that the suspension of individual rights in favour of a supposedly 'higher good' (e.g. the state, society or an ideology) often leads to serious abuse. Examples are totalitarian regimes that claimed to act in the name of the 'general public'.

### **3. Rule of law and morals:**

- The protection of human dignity, especially for those who oppose society, is a moral achievement. It signals that the values of the rule of law are non-negotiable – even with regard to offenders or wrongdoers.

## **The challenge of collective protection**

### **1. The dignity of all humanity:**

- In fact, there are more and more voices calling for global problems such as climate change, environmental degradation and social injustice to be given more consideration in legal and ethical considerations.
- Approaches such as the recognition of the rights of nature (e.g. in Ecuador or New Zealand) or the definition of global human rights aim to take into account the well-being of all humanity.

### **2. Conflict between the individual and the collective:**

- If the protection of the collective is given higher priority than that of the individual, individuals could potentially be treated unfairly. One example would be that people who benefit from environmental degradation would be considered as ‘dignity-losing’ and legally or socially stigmatised.

### **3. Necessary consideration instead of hierarchy:**

- Instead of subordinating the dignity of the individual to the dignity of humanity or nature, mechanisms should be created that enable a balance. Laws and measures must aim to protect both individual and collective interests.

## **Can someone ‘give up’ their own dignity?**

### **1. Voluntary renunciation?:**

- From a legal and philosophical point of view, human dignity does not depend on how a person acts. Even those who consciously harm society remain the bearers of human dignity.
- This attitude also protects against dehumanisation, which has often been misused as a justification for violence or oppression.

### **2. Accountability and consequences:**

- People who deliberately cause harm must be held accountable. Protecting dignity does not mean impunity or passivity. The rule of law allows sanctions to be imposed as long as they remain proportionate and dignified.

## **A new approach for the future**

### **1. Expansion of the concept of dignity:**

- The idea of extending dignity not only to humans but also to nature is philosophically interesting and has already been implemented to some extent (e.g. ‘rights of nature’ in the constitution of Ecuador).
- However, this would mean that people would have to align their actions more closely with global responsibility, which would require a profound legal and social change.

### **2. Promoting collective responsibility:**

- Instead of questioning the dignity of the individual, there could be a stronger focus on accountability, education and prevention to minimise conscious harm to society.
- Laws could be tightened and enforced more effectively to guarantee the protection of the general public without sacrificing individual rights.

## Conclusion

The human dignity of each individual remains an immovable foundation of a democratic constitutional state. However, this does not preclude the dignity of humanity and nature as a whole from being afforded greater protection – but not at the expense of the individual. In the long term, an approach that seeks to balance individual freedom, social responsibility and environmental protection would be the most sustainable and just way forward.

(P.J.):

People who are responsible for hundreds of deaths still have the same right to their dignity as their victims.

(ChatGPT):

Yes, according to the German Basic Law and the central principles of a constitutional state, every human being, even someone who is responsible for the most serious crimes, has an inalienable right to their dignity. This applies regardless of their actions. This principle is morally, legally and historically justified, but it is often the subject of controversial debate, especially when it comes to extreme cases such as mass murderers or war criminals.

## Why do perpetrators retain their dignity?

### 1. Inalienability of human dignity:

- According to Article 1 of the German Basic Law, human dignity is '*inviolable*'. This means that it cannot be 'lost' either by the state or by the behaviour of the individual.
- It is a fundamental principle that does not depend on moral or legal behaviour.

### 2. Constitutional principles:

- A democratic constitutional state differs from authoritarian or totalitarian systems in that it respects human dignity – even in extreme cases.
- Dignity does not mean impunity: even if perpetrators retain their dignity, they can still be punished for their actions, often very severely (e.g. life imprisonment). But even in prison, conditions must be humane.

### 3. Prevention of arbitrariness:

- Dignity as a universal value protects against people being declared 'unworthy' and dehumanised according to subjective standards. That would be a dangerous precedent.
- History (e.g. Nazi and Stalinist regimes) shows that systems that relativise human dignity often lead to massive oppression and violence.

## Contradiction to the dignity of victims?

### 1. The dignity of victims remains untouched:

- The human dignity of victims is not diminished by the dignity of the perpetrator. Both exist independently of each other.
- The state has a dual responsibility: it must respect the dignity of the victims (e.g. through protection, justice and recognition of their suffering) and at the same time preserve the dignity of the perpetrator.

## 2. **Sense of injustice:**

- It can be morally difficult to accept that perpetrators who have caused harm to others continue to be entitled to dignity. This feeling is understandable, but the alternative – the denial of dignity – could lead to dangerous consequences in the long term.

## **Alternative approaches to justice**

### 1. **Severe punishment within the framework of dignity:**

- offenders can be held accountable with harsh but humane punishments. This protects society while upholding the principles of the rule of law.
- Example: life imprisonment with preventive detention. The offender is effectively removed from society, but their basic rights (such as food and medical care) are preserved.

### 2. **Rehabilitation and prevention:**

- One principle of criminal law is the possibility of rehabilitation. Even for the most serious crimes, the goal of returning to society remains theoretically open.
- This not only serves the offender, but also society, by preventing relapses.

### 3. **Recognising the suffering of victims:**

- The state should do more to take into account the perspective of the victim. Compensation, protection programmes and public recognition can strengthen the sense of justice.

## **Philosophical considerations**

### 1. **Moral indivisibility of human dignity:**

- If the dignity of the perpetrator is questioned, the principle of universal human rights is weakened. Dignity would then no longer be a fundamental right, but a ‘merit’, which could favour arbitrariness and inequality.

### 2. **Perpetrators as a mirror of society:**

- serious criminals are often the result of social ills (e.g. violence, poverty, radicalisation). Respecting their dignity can be seen as an attempt to prevent the rule of law itself from being corrupted.

## **Conclusion**

The idea that offenders retain their dignity may be emotionally difficult to accept, but it is a necessary part of a democratic system governed by the rule of law. Dignity does not mean impunity, but ensuring that even the harshest punishment maintains the moral integrity of the state. It is a sign of strength and adherence to principles, even towards those who have done the greatest harm to society.