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The constitutional status of human dignity

The right to human dignity in the Belgian Constitution: the scope of article 23 of the Constitution and its application by the Belgian Constitutional Court

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Introduction

This article contains an analysis of the place of the principle of human dignity in Belgian constitutional law. Before 1994, this principle played no role at all (point 1). In 1994, it was explicitly mentioned in the new article 23, branch 1 of the Constitution (point 2). The drafters of this constitutional provision have, however, not intended that provision to be strongly enforceable (point 3). Nevertheless, the analysis of the jurisprudence of the ordinary and administrative courts (point 4) and the vast jurisprudence of the jurisprudence of the Constitutional Court (point 5) prove that this principle does have some, albeit limited, legal value. It is nevertheless to be expected that, because of supranational evolutions, the principle's role in Belgian law might grow in the future, and that, apart from its legal value, the principle might be seen as an over-arching principle common to and underlying all rules and rights in the Constitution (point 6).

1. No mention of the principle of human dignity in the Belgian Constitution of 1831

The Belgian Constitution,[3] promulgated in 1831, has been considered to be a very modern constitution throughout the 19th century and mayor parts of it became a model for the constitutions of other European countries.

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[3] For a general overview of Belgian Constitutional law, see A. ALEN, D. HALJAN, e.a., *International Encyclopaedia of Constitutional Laws - Belgium*, Wolters Kluwer 2013, 314 p.

Its current structure[4] is as follows:
- The articles 1 to 7 (title I) concern the Belgian territory. It states that Belgium is a federal state, it defines the language zones, the communities, the regions, the provinces and the procedure of special majority acts.
- Article 7*bis* (title I*bis*), adopted in 2007, sets a general, yet non-binding, policy goal for all federal and federated entities, consisting of a focus on sustainable development, both in its social, economic and environmental aspects, taking into account the intergenerational solidarity (see *infra*).
- The articles 8 – 32 (title II) relate to the human rights provisions. The Belgian Constitution was the first one to actually incorporate these rights into the written body of the constitution, instead of enumerating them as mere 'philosophical' statements in a separate Bill of Rights. The human rights provisions are placed before the provisions regulating the institutions; this can be seen as an obligation for all powers to respect the human rights, which is a fundamental aspect of the rule of law. Currently, the Constitutional Court systematically interprets these human rights in the light of analogous provisions in the European Convention on Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.[5]
- The articles 33-166 (title III) distribute the powers in a classical *trias politica*. The federal Legislature, the federal Executive, the Communities and the Regions, the Constitutional Court, the Judiciary, the Council of State and other administrative judges, and the municipalities and provinces.
- The remaining part of the Constitution contains provisions about the external relations, public finances, the military, some miscellaneous provisions and the procedure to revise the constitution.

Not all fundamental principles are written down in the Constitution; some general principles of law are unwritten, some important matters are regulated by special majority laws, which can be changed without using the rigid procedure for amending the Constitution.

The 1831 Belgian Constitution guarantees all classic liberal political and civil rights, which are primarily intended as a

[4] The Belgian Constitution was renumbered in 1994, because it had become virtually unreadable after four State Reforms. In 2014, the Sixth State Reform amended, abolished or inserted no less than 47 provisions of the Constitution (see A. ALEN, B. DALLE, K. MUYLLE, W. PAS, J. VAN NIEUWENHOVE and W. VERRIJDT (eds.), *Het federale België na de Zesde Staatshervorming*, Bruges, die Keure, 2014, 653 p.).

[5] See A. ALEN, J. SPREUTELS, E. PEREMANS and W. VERRIJDT, *Rapport de la Cour constitutionnelle de Belgique présenté au XVIe Congrès de la Conférence des Cours constitutionnelles européennes*, Vienne, 12-14 mai 2014, La coopération entre les Cours constitutionnelles en Europe – Situation actuelle et perspectives, 54 p., *www.const-court.be*, nos 1-17.

protection against the State. Our 1831 Constitution reflects a great deal of mistrust in the Executive, while there is an almost unconditional faith in the legislator. It contains a lot of human rights provisions, among which the ones that were suppressed the most by the Dutch King Willem I before the independence (1815-1830). It also established the Judiciary as a separate power, which was granted the competence of judicial review of Executive acts.

The Constitution is **the highest national rule**; all laws, both formal and material, must obey it. Nevertheless, the Court of Cassation's adoption of the theory of inviolability of the formal law has led to a situation in which the ordinary judge could not examine its constitutionality, a gap which has only been filled by the creation of the Constitutional Court in 1984.
The inviolability theory only applied to the legislator's work, which means that the judge has always been able, according to article 159 of the Constitution, to examine the purely material law's constitutionality. According to that provision, the judges are obliged to refuse the application of Royal, provincial and local regulations violating a higher rule, such as the Constitution, the self-executing treaties and other binding norms of international law, and the general principles of law. Only since 1985, the Constitutional Court will annul or declare unconstitutional the formal laws violating them.

The Belgian Constitution of 1831 did not make any mention of the principle of human dignity, but this should not come as a surprise, since this principle had, at that time, not been developed yet. Given the very slow rate[6] of constitutional amendments before Belgium's evolution towards a federal State, which kicked off in 1970, it should equally not come as a surprise that it took a very long time before this principle did appear in the Constitution.

2. Explicit mention of the principle of human dignity in 1994

The first and only reference to the principle of human dignity in the Belgian Constitution took place in 1994, with the insertion of its new article 23. This provision, however, does not so much intend to guarantee the right of human dignity as a separate human right, but rather mentions it as an overarching principle when inserting the so-called "second generation of human rights" into the Constitution.

[6] Before 1970, the Constitution had only been amended on two occasions (1893 and 1921), both concerning the democratization of the electoral system. See A. ALEN, D. HALJAN e.a., *o.c.*, 26-28.

Until then, the Constitution had only recognized the classic liberal civil and political rights, although some social rights had already been mentioned in ordinary legislation.[7] Article 23 of the Constitution finally added the **socio-economic, cultural and environmental human rights** to the Belgian human rights catalogue.[8].

Article 23 of the Constitution states:

*"Everyone has the right to lead a life in keeping with **human dignity**.*

To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.

These rights include among others:
1° the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation;
2° the right to social security, to health care and to social, medical and legal aid;
3° the right to decent accommodation;
4° the right to the protection of a healthy environment;
5° the right to cultural and social fulfilment;
6° the right to family allowances."

Although the second branch of article 23 mentions both social, economic and cultural rights, the specific enumeration of these rights in article 23's third branch mainly relates to social rights. The recognition in the Constitution of the fundamental social rights responds to a social evolution that had already taken place at the international level, e.g. in the International Covenant on Economic, Social and Cultural Rights and in the European Social Charter. Therefore, it can be argued that the concept of "human dignity" in that

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[7] E.g. the right to social aid in the Act of 8 July 1976 on the Public Centre for Social Welfare; the general principles of social security in the Act of 29 June 1981; the right to a minimum allowance in the Act of 26 May 2002.

[8] See R. ERGEC (ed.), *Les droits économiques, sociaux et culturels dans la Constitution*, Brussels, Bruylant, 1995, 321 p.; G. MAES, *De afdwingbaarheid van sociale grondrechten*, Antwerp, Intersentia, 2003, 463 p.; W. RAUWS and M. STROOBANT (ed.), *Sociale en economische grondrechten: artikel 23 Gw.: een stand van zaken na twee decennia*, Antwerp, Intersentia, 2010, 212 p.; A. VANDEBURIE, *L'article 23 de la Constitution. Coquille vide ou boîte aux trésors?*, Bruges, die Keure, 2008, 266 p.; M. VERDUSSEN (ed.), *Les droits culturels et sociaux des plus défavorisés*, Bruylant, 2009, 488 p.

provision refers to nothing more than the right to decent living conditions, rather than to a universal right to human dignity in its broadest sense.

3. Enforceability of article 23 of the Constitution

Article 23's wordings are vague, and they allow the legislator to take into account the economic situation and to determine the conditions under which these rights can be practiced.
Hence, these rights are not enforceable like the other human rights. According to the parliamentary preparatory works, article 23 has no direct effect, but it does possess some judicial value: it should be understood to contain a softened legality principle, an equality principle and a *standstill*-effect.[9]

a. Softened legality principle

The "softened legality principle" is unique in the Belgian Constitution, in which the legality principle has always held an important position, as a reaction against the Dutch King Willem I (1815-1830), who wanted to rule by Royal Decree instead of involving the Parliament. Therefore, the Belgian Constitution granted the residuary powers to the Legislature, curtailed the powers of the King, allowed for a strong judicial review of purely material laws, and specifically required many matters to be regulated by the law.[10] According to article 105 of the Constitution, the King has no other powers than the ones attributed to him by the Constitution or by formal legislation. According to article 108 of the Constitution, however, he does have the power to execute and implement formal legislation. Moreover, virtually all human rights provisions listed in Title II of the Constitution explicitly require that these rights can only be limited by formal law. Therefore, the legislator's possibilities to delegate powers to the Executive are rather limited.[11]
In that context, article 23 of the Constitution, which also makes part of Title II, is a clear exception, as it does not contain the "regular" legality principle, but a softened one. This means that any legislator regulating or limiting the

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[9] *Parl. St.* Chamber of Representatives, B.Z. 1991-1992, no. 391/1, pp. 1-9; *Parl. St.* Senate, B.Z. 1991-1992, no. 100-2/3°, p. 13 and no. 100-2/4°, pp. 85-86. See P. MARTENS, "L'insertion des droits économiques, sociaux et culturels dans la Constitution", *RBDC* 1995, 18.
[10] A. ALEN, D. HALJAN e.a., *o.c.*, 25-26.
[11] Without entering into details and nuances: the delegation of non-essential aspects, such as mere implementing measures is never a problem; yet the delegation of essential aspects of the matter to be regulated, generally requires exceptional circumstances, a clear admission by the legislator, and even then, a validation *a posteriori* by the same legislator (A. ALEN, D. HALJAN, e.a., *o.c.*, 94-97).

rights enumerated in article 23, can almost entirely delegate that matter to the Executive (see *infra*, 5.a).

b. Equality principle

The mentioning of the equality principle in the context of article 23 of the Constitution comes as no surprise, since the Constitutional Court has always ruled that this principle forbids all discriminations, including discriminations in the enjoyment of the (fundamental) rights granted by the Constitution, by international treaties and by general principles of law.[12]

Therefore, even before the Constitutional Court became competent for using all human rights enlisted in Title II of the Constitution as direct reference norms, it used article 23 as an indirect reference norm through the prism of the principle of equality.[13]

c. Standstill-effect

The standstill-effect, which finds its origin in several international and European treaties concerning social and economic rights, generally means that the legislator cannot lower the standard of protection offered by the legislation concerning these rights. The precise meaning of the standstill-effect has, however, raised many questions :
- is the standstill-principle applicable to all rights mentioned in article 23 of the Constitution (including the principle of human dignity?) or only to some of the specifically enumerated rights?
- is the point of reference the date at which article 23 of the Constitution entered into force (12 February 1994), or does every legislative amendment constitute the new threshold?
- does the standstill-principle forbid any lowering of the standard of protection, or does it only forbid a significant decline in the level of protection?
- is a (significant) lowering of the level of protection nevertheless allowed if exceptional circumstances call for it?

After a period of intense debate in the legal doctrine and unclear jurisprudence by the Constitutional Court, the latter has only recently answered these questions in a rather structural manner (see *infra*, point 5).

4. The jurisprudence of the ordinary courts and the Council of State

[12] Well established jurisprudence since CC. no. 23/89, 13 October 1989; CC. no. 18/90, 23 May 1990; CC. no. 72/92, 18 November 1992.
[13] CC. no. 81/95, 14 December 1995; CC. 51/2003, 30 April 2003.

In the jurisprudence of the ordinary courts, article 23 of the Constitution has received a level of enforceability beyond the will of its drafters. Some jurisprudence even grants the human dignity principle a direct effect, especially in the field of social assistance.[14]

Thus, the Court of Cassation has ruled that the right to lead a life in keeping with human dignity (article 23, first branch) and the right to social security (article 23, third branch, 2°) imply that foreigners who reside illegally on Belgian soil should receive social assistance beyond urgent medical assistance if they have demanded the regularization of their stay in Belgium.[15]

On the other hand, the Court of Cassation has ruled that the standstill-principle is not a general principle of law.[16]

The Council of State has never granted a direct effect to article 23 of the Constitution, and has even stressed that the standstill-principle is not an absolute right.[17] In 2008, it explicitly adopted the Constitutional Court's jurisprudence summarized in the following paragraph.[18]

5. The Constitutional Court's jurisprudence

The Constitutional Court has always denied article 23's direct effect, and has always ruled that this provision merely possesses a standstill-effect.[19] The Court's jurisprudence concerning the standstill-effect, which has become more

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[14] See H. FUNCK, "L'article 23 de la Constitution, à travers la jurisprudence des cours et tribunaux (1994-2008): un droit en arrière-fond ou l'ultime recours du juge ?", in W. RAUWS and M. STROOBANT (eds.), *o.c.*, 69-111.

[15] Cass. 17 June 2002, *JTT* 2002, 407; Cass. 7 June 2004, *RW* 2004-05, 1058. The Constitutional Court, however, in keeping with its standstill-jurisprudence, has ruled the same legal provision to be constitutional, although it limited the social assistance of that category of persons to urgent medical aid (CC. no. 131/2001, 30 October 2001).

[16] Cass. 14 January 2004, *Chr.D.S.* 2004, 506.

[17] CS 3 July 1995, *Beerts*, no. 54.196; CS 14 April 2000, *Renquin*, no. 86.787; CS 24 March 2005, *Van Goethem*, no. 142.620.

[18] CS 17 November 2008, *Coomans*, no. 187.998.

[19] Nevertheless, two judgments appear, at first glance to directly examine the violation of a right entrenched in article 23: in CC. no. 101/2008, 10 July 2008, the Court appears to directly examine whether the obligation for the tenant in a social housing scheme to learn Dutch violates the right to decent accommodation (article 23, 2°); and in CC. no. 37/2011, 15 March 2011, the Court appears to directly examine whether the exposure to tobacco smoke in the public sphere violates the right to health care (article 23, 2°). The omission to specifically mention the standstill-mantra should, however, not be seen as abandoning it; later judgments have, moreover, mentioned it again.

consistent after its judgment no. 135/2011 of 27 July 2011, is based on the following principles.

a. Softened legality principle

Taking into account the aforementioned softened legality principle, the Constitutional Court has ruled that the legislator must determine at least the basic principles of the fundamental right at hand or determine the limits within which the Executive may operate.[20] In more recent jurisprudence, the Court has even become more lenient, as it does **not forbid the legislator to delegate these powers to the Executive, as far as** these delegations are related to the adoption of measures whose subject is indicated by the competent legislator.[21]

b. Wide margin of appreciation

The Constitutional Court has ruled on several occasions that **it is for the legislator to decide when limits are to be set** on a socio-economic fundamental right. Such restrictions would only be unconstitutional if the legislator would introduce them without there being any need to adopt them or if those restrictions would have significantly disproportionate consequences in light of the objective pursued.[22]

The Constitutional Court's review is indeed not very stringent.[23] In over 20 judgments concerning the standstill-principle, the Court has only found two violations, both of them concerning the right to the protection of a healthy environment (article 23, 4°).[24]

c. Not for all rights in article 23

So far, the Constitutional Court has only accepted the standstill-effect for three socio-economic rights specifically mentioned in article 23's third branch: the right to social security (article 23, 2°),[25] the right to protection of a

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[20] CC no. 18/98, 18 February 1998 ; CC. no. 103/999 and 104/99, 6 October 1999 ; CC no. 41/2002, 20 February 2002; CC. no. 94/2003, 2 July 2003; CC. no. 160/2004, 20 October 2004; CC. no. 87/2005, 4 May 2005; CC. no. 43/2006, 15 maart 2006; CC. no. 66/2007, 26 April 2007.
[21] CC no. 135/2010, 9 December 2010; CC. no. 151/2010, 22 December 2010.
[22] CC no. 66/2007, 26 April 2007 ; CC no. 99/2008, 3 July 2008.
[23] M. BOSSUYT, "Artikel 23 van de Grondwet in de rechtspraak van het Grondwettelijk Hof", in W. RAUWS and M. STROOBANT (eds.), *l.c.*, 59-66.
[24] CC. no. 137/2006, 14 September 2006; CC no. 8/2011, 27 January 2011.
[25] CC no. 169/2002, 27 November 2002; CC. no. 123/2006, 28 July 2006; CC. no. 132/2008, 1 September 2008; CC no. 135/2011, 27 July 2011.

healthy environment (article 23, 4°),[26] and the right to legal aid (article 23, 2°)[27].

The Court often tries to avoid having to take position as to whether the other rights enumerated in article 23's third branch possess a standstill-effect. It does so by ruling that *"without having to examine whether article 23 of the Constitution possesses a standstill effect in this regard, the measure under scrutiny cannot be seen as significantly diminishing the existing level of protection"*.[28]

In any event, the Court's jurisprudence attributing a standstill-effect to rights mentioned in article 23 of the Constitution only concerns the specific rights enumerated in its third branch. It has, by contrast, never granted a standstill-effect to the vaguely formulated principle of human dignity itself.

d. Evolving point of reference

In its judgment no. 135/2011 of 27 July 2011, the Court finally clarified that the point of reference for evaluating the level of protection, is not the date of entry into force of article 23 of the Constitution (12 January 1994), but that every new legislative reform constitutes the new point of reference.[29]

By adopting this "existing level of protection" approach, the Court chose for the stricter of two options. Nevertheless, this strict approach might entail reverse effects, as the legislator might hesitate to grant new socio-economic rights because he fears that it will become difficult to abolish or diminish them in the future.

e. Possibilities to lower the standard of protection

The latter danger is, however, countered by the Court's more lenient approach concerning the possibilities to lower the standard of protection. In the Court's jurisprudence, the standstill-effect is indeed not an absolute right, as it only forbids the competent legislator *"to significantly diminish the current level of protection without reasons related to the general interest"*.[30]

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[26] CC. no. 135/2006 and 137/2006, 14 September 2006; CC. no. 121/2008, 18 November 2008; CC no. 102/2011, 31 May 2011.
[27] CC. no. 182/2008, 18 December 2008; CC no. 99/2010, 16 September 2010; CC. no. 19/2011, 3 February 2011.
[28] E.g. CC. no. 52/2010, 6 May 2010, concerning the right to collective negotiation (article 23, 1°).
[29] CC. no. 135/2011, 27 July 2011.
[30] CC. no. 135/2011, 27 July 2011.

A distinction is therefore to be made between a non-significant and a significant lowering of the standard of protection.

A non-significant lowering of the standard of protection is always possible. The Court, however, has not yet had to deal with a situation in which the level of protection of such a socio-economic right was consecutively diminished several times in a row. Theoretically, given the fact that each legislative amendment forms the new standard (see point 5.d), such a chain of minor diminishments can *in globo* lead to a significant diminishment without judicial control.

A significant lowering of the standard of protection is, in principle, not possible, except when the legislator manages to prove that the general interest requires such a diminishment. It is yet unclear whether the Court will require the same evidence when the legislator creates a *de facto* significant diminishment through several consecutive non-significant diminishments.

f. A matter of rights and corresponding obligations

The Constitutional Court has also clarified that the socio-economic rights in article 23 of the Constitution are not unilateral. It has ruled that these rights should be read alongside the corresponding obligations.

According to the Court, the legislator regulating upon a socio-economic right, can **impose obligations** to the citizens who want access those rights, **as far as three conditions are met:**
- these obligations must be linked to the general objective of article 23 paragraph 1, i.e., making it possible for everyone to lead a life keeping with human dignity by the enjoyment of the listed rights;
- those obligations must be relevant for meeting this objective;
- and those obligations are proportionate to that objective.[31]

Thus, the Court allowed the Flemish legislator to oblige persons entitled to social housing in Flanders to learn Dutch.

6. Final remarks

a. No legal application of the principle of human dignity

[31] CC no. 101/2008, 10 July 2008. See also CC. no. 135/2011, 27 July 2011.

The Constitutional Court's review only concerns the specific rights enumerated in the third branch of article 23 of the Constitution, but not the principle of human dignity itself. Nevertheless, the specific rights all contribute to human dignity. The Court of Cassation has, in one occasion, used the principle of human dignity itself as a reference norm.

Insofar as article 23 of the Constitution is a reference norm, it will not play a very significant role. Although each new stadium in the legislation forms the new standard in light of the standstill-principle, the Constitutional Court's focusing on the legislator's wide margin of appreciation, his possibilities to nevertheless lower the existing standard and the possibility to pair the rights guaranteed by article 23 with their corresponding obligations, grant the competent legislator a very wide maneuvering space.

b. Taking into account international standards

When the Constitutional Court is asked to examine the conformity of legislation with human rights provisions in the Constitution, it will always read these rights in the light of analogous human rights laid down in human rights treaties, with which they are presumed to form an inextricable unity.[32]

This means that the conformity of legislation with human rights is examined by three different types of human rights instruments: the national Constitution, the Charter of Fundamental Rights of the European Union and international treaties, notably the European Convention on the Protection of Human Rights and Fundamental Freedoms. The Court can thus take into account the jurisprudence of the ECtHR and of the European Court of Justice. The principle of the widest protection applies. By relying on that principle, the Belgian Constitutional Court has maximized the protection of human rights by requiring that a limitation to a human right guaranteed both by title II of the Constitution and by an ECHR provision meets both the formal standards laid down in the Constitution and the material standards laid down in the ECHR.[33]

This jurisprudence is well established in the field of the classic liberal civil and political human rights, but has not been applied yet in the field of socio-economic rights. In theory, however, the Court could read the specifically enumerated rights in article 23 of the Constitution in the

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[32] Well established jurisprudence since CC. no. 136/2004, 22 July 2004. See in detail M. BOSSUYT and W. VERRIJDT, "The Full Effect of EU Law and of Constitutional Review in Belgium and France after the Melki Judgment", *EuConst* 2011, 355-391.

[33] A. ALEN, J. SPREUTELS, E. PEREMANS and W. VERRIJDT, *o.c.*, nos. 13-17.

light of analogous provisions in human rights treaties, notably the European Social Charter and the International Covenant on Economic, Social and Cultural Rights. The added value of this would, however, be limited, since these treaties are not systematically interpreted and applied by supranational judges, whereas the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union are.

The principle of human dignity constitutes a general principle of European Union law[34] and a human right laid down in article 1 of the Charter of Fundamental Rights of the European Union, even before the right to life (article 2), the right to human integrity (article 3) and the prohibition of torture and inhuman and degrading behavior (article 4). Therefore, the principle of human dignity applies in all EU Member States, including Belgium, as a human right within the scope of application of EU law.[35] Within that scope of application, the Constitutional Court could read the principle of human dignity in article 23 of the Constitution in light of article 1 of the Charter, applying the jurisprudence of the ECJ in that matter.

The right to lead a life in keeping with human dignity thus still has a long future in the jurisprudence of the Constitutional Court. It can mean a driving force for the further development of law and legal practice.

c. Changing role of the State

Article 23 of the Constitution has created the opportunity to fill the gap that may exist in the 'tool box' of fundamental rights – even though, because of the vague words, the impression may exist that there are no new concrete elements in the text of article 23, par 1.

Nevertheless, article 23's insertion into the Constitution proves the changing position and role of the State. Human dignity has come into use in the judicial interpretation and application of human rights guaranteed by the Constitution and in the jurisprudence of the Constitutional Court. The authorities have the duty to respect and treat everybody as a person with its inherent human dignity, as an end in itself and not as a means.

d. Human dignity's role as an over-arching principle

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[34] ECJ 9 October 2001, *The Netherlands v. Parliament and Council*, C-377/98; ECJ 14 October 2004, *Omega Spielhallen*, C-36/02.

[35] See on the scope of the Charter of Fundamental Rights of the European Union ECJ, 26 February 2013, *Akerberg Fransson*, C-617/10; ECJ 26 February 2013, *Melloni*, C-399/11.

Since the foregoing analysis shows that the legal and judicial role of the principle of human dignity in Belgium is, despite some jurisprudential evolutions, still limited, the question arises whether it has a stronger role to play as an over-arching principle.

The answer is that the principle of human dignity in the Belgian Constitution does not play the same over-arching role as it does in other countries, notably in Germany. Indeed, the Title I*bis* of the Constitution, consisting of only one provision, article 7*bis*,[36] sets only one "general policy goal" for all federal and federated entities, i.e. the principle of sustainable development.[37] This principle can be called the "human right of the third generation".[38] This constitutional provision sets a general rule of conduct for all governments, but is not intended to grant rights to individuals.[39] Nevertheless, the Constitutional Court has ruled that it will take this general rule of conduct into account when examining the constitutionality of formal legislation.[40]

By contrast, the principle of human dignity, which, on a theoretical account, can be said to underlie all human rights provisions, is only mentioned specifically in article 23 of the Constitution, in Title II of the Constitution, concerning human rights. If the drafters of the Constitution want to grant the same over-arching effect to the principle of human dignity as they have granted to the principle of sustainable development, they should lift it out of article 23 and transfer it to a new article 7*ter* in Title I*bis* of the Constitution.

Conclusion

This conference made it possible to dialogue between judges; it provided a language in which we can try to justify how to deal with issues such as the weight of rights, the checks and

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[36] This provision was inserted in the Belgian Constitution on 25 April 2007.

[37] See C. BORN, "Le développement durable: un 'objectif de politique générale' à valeur constitutionnelle", *RBDC* 2007, 193-246; F. DELPÉRÉE, "À propos du développement durable. Dix questions de méthodologie constitutionnelle" in *Liber amicorum Paul Martens*, Brussels, Larcier, 2007, 223-233.

[38] A. ALEN and K. MUYLLE, *Handboek van het Belgisch Staatsrecht*, Mechelen, Kluwer, 2011, 69-70.

[39] *Parl. St.* Senate, 2005-2006, no. 3-1778/1, p. 4 and no. 3-1778/2, pp. 8-9; *Parl. St.* Chamber of Representatives, 2006-2007, no. 51-2647/004, p. 3.

[40] CC no. 75/2011, 18 May 2011. In that judgment, the Court also added that this principle will not have a significant influence on the Court's review, because it is not formulated in a sufficiently precise manner and because the governments have a very wide margin of appreciation, since article 7*bis* does not explain how the distinct social, economic and environmental aspects are related to one another.

balances, the contextualization of rights, and to focus on the specific practices of human rights. The common minimum standard, human dignity, that each human being possesses as an intrinsic worth that should be respected, implying that some forms of conduct are inconsistent with respect for this intrinsic worth and that the state exists for the individual instead of vice versa, grows, notwithstanding that every country still has its own history and challenges.
Thank you for the dialogue.