

# THE PLACE OF THE PRINCIPLE OF HUMAN DIGNITY IN THE ALGERIAN CONSTITUTION

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Submitted: 04/09/2024

Accepted: 22/11/2024

Published: 10/12/2024

## Abstract:

*Human dignity represents a fundamental value within human values, which exists in all cultures, civilizations, and legal systems. This value reflects on development in its political, economic, social, and legal dimensions, especially after the shift in its concept from being merely an ethical principle to a legal principle that forms the basis of the most important human rights. The 1948 Universal Declaration of Human Rights stated in its preamble that inherent human dignity is shared by all members of the human family and is associated with their equal and inalienable rights. It constitutes the foundation of freedom, justice, and peace in the world. Furthermore, the International Court of Justice has ruled that none of the rights enshrined in this covenant can be used to violate the dignity of others, and that human dignity is an integral part of the core rights stipulated. Thus, it cannot be violated, even in cases where rights are restricted. This matter now compels states, after their involvement in international treaties and declarations of human rights, to enshrine the principle of human dignity in their constitutions, either directly or through other rights.*

*On this basis, this paper aims to clarify the place of human dignity within the Algerian legal system and its legal dimension, not as a right in itself, but rather as a founding principle for other rights and freedoms.*

**Keywords:** Human Dignity - Legal Dimension - Rights and Freedoms.

## INTRODUCTION

Human dignity is a gift granted by Allah, the Almighty, to mankind since His creation, as stated in His clear revelation: “*And indeed We have honoured the children of Adam, and We have carried them on land and sea, and have provided them with At-Tayyibât (lawful good things), and have preferred them to many of those whom We have created with a marked preferment.*”<sup>1</sup> The phrase “*And indeed We have honored*” indicates a magnification of honor, meaning that Allah has granted them honor, dignity, and virtue. This dignity encompasses their creation in this form with an upright stature and beautiful appearance. The correct view upheld by scholars is that this preference is based on intellect and the ability to distinguish, which are essential for the responsibilities (taklif) placed upon mankind, and through which Allah is known and His speech is understood.

This principle of human dignity has become a cornerstone that protects every individual from degrading or inhuman acts that may reduce them to the level of an object. This transformation became especially evident after World War II, when human dignity shifted from a mere ethical principle to a legal principle that forms the legal foundation for essential human rights, in response to the atrocities of war. This led to the incorporation of human dignity into the preamble of the United Nations Charter of 1945, the 1949<sup>2</sup> German Basic Law, the 1978<sup>3</sup> Spanish Constitution, and the

<sup>1</sup> Sûrah Al-Isrâ (17:70).

<sup>2</sup> German Basic Law (Grundgesetz), enacted on May 23, 1949, and last amended on December 19, 2022: This law stipulates that “Human dignity is a fundamental right of public authority” under Chapter 1, entitled “Fundamental Rights.”

<sup>3</sup> Spanish Constitution, enacted on December 29, 1978: The Constitution establishes rights and freedoms in Chapter 2 of Title I, which is titled “Basic Rights and Duties.”

Universal Declaration of Human Rights of 1948, which states in its preamble that inherent human dignity is shared by all members of the human family, and with their equal and inalienable rights, forming the foundation of freedom, justice, and peace in the world. The International Court of Justice has ruled that none of the rights enshrined in this covenant may be used to violate the dignity of others, and that human dignity is an integral part of the core rights stipulated, which cannot be violated even in cases of restricting rights. This has led to the expectation that states, following their engagement with international treaties and declarations of human rights, enshrine the principle of human dignity in their constitutions, either directly or through other rights.

In the same context, human dignity in Algeria has found its place within the legal system of the state, just as in other countries. The concept of human dignity in Algeria has evolved from a natural concept to a constitutional principle, requiring the state to take positive action to create the rights and freedoms that emanate from this principle and provide protection for them.

**Research Problem:**

Through our contribution, we have chosen to frame the issue as follows: What is the place of human dignity in the Algerian legal system and its legal dimension as a guiding principle, which imposes on the legislator, when drafting legislative provisions related to rights and freedoms, the obligation to ensure that these rights are protected and are not subject to any form of interference by public authorities?

**Objective of the Study:**

The aim of this research paper is to contribute to highlighting the legal dimension contained within the topic of human dignity in Algeria, not only to define the principle, but also to emphasize that it is a principle which requires the legislator to be fully aware of their responsibility when drafting provisions related to rights and freedoms, ensuring that human dignity is respected and that guarantees are provided to protect these rights and freedoms.

**Methodology of the Study:**

In order to study the topic of human dignity, we employed both descriptive and inductive-analytical methodologies. The study is limited to two main axes: the constitutional recognition of human dignity in the Algerian Constitution (First Section), and human dignity as a guiding principle in the formulation of legal rules (Second Section).

**First Section: Constitutional Recognition of Human Dignity in the Algerian Constitution**

The Constitution of any country is the fundamental law of the state, being the supreme law under which all other laws are hierarchically subordinated, creating a specific legal order that ensures the higher legal norms bind the lower ones<sup>4</sup>. Therefore, the Constitution is the protector of rights and freedoms, which obliges the legislator to ensure that legislative provisions do not fall outside the constitutional framework. If they do, they are considered unconstitutional. Explicitly enshrining a specific right within the Constitution gives it a special status, making it a fundamental right, distinct from rights provided by ordinary laws.

On this basis, we will address the recognition of human dignity in the preamble of the Constitution (First Subsection) and the constitutional recognition of human dignity at the core of the Algerian Constitution (Second Subsection).

**First Subsection: Recognition of Human Dignity in the Preamble of the Constitution**

As the fundamental legislative framework concerning rights and freedoms, the constitutional text is primarily a directive from the constitutional framers to the legislator, not to the executive authority. The legislator alone holds the responsibility of enacting laws in the area of rights and freedoms, without deviating from the framework set by the Constitution<sup>5</sup>.

The Algerian constitutional founder explicitly mentioned the term "dignity" in the body of the country's first Constitution, specifically in Article 10, when stating that defending freedom and

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<sup>4</sup>Burdeau, G. *Treatise on Political Science*. L.G.D.J., Paris, p. 191.

<sup>5</sup>Yasser Said Hasef Said, "Constitutional Protection of the Right to Access Information and Data," Ph.D. Dissertation, Cairo University, 2014, p. 158.

respecting human dignity are among the fundamental goals of the People's Democratic Republic of Algeria<sup>6</sup>.

Unlike the 1963 Constitution, which did not explicitly mention the term "dignity," subsequent constitutions did not include it in the body of their articles. However, references to it appeared in the preamble, starting with the 1989 Constitution through to the 2020 Constitution, which states: *"Its history, whose roots extend over thousands of years in a continuous series of struggle and jihad, has made Algeria always a source of freedom, and a land of honor and dignity."*<sup>7</sup>

This is similar to the French Constitution of 1958, which did not include human dignity in its articles, but referenced it in the preamble. Furthermore, the French Constitutional Council's ruling in 1994 confirmed that the protection of human dignity against any form of humiliation or slavery is a principle with constitutional value<sup>8</sup>.

### **Second Subsection: Constitutional Recognition of Human Dignity in the Core of the Algerian Constitution**

In addition to explicitly mentioning human dignity in the preamble of the Constitution, the Algerian constitutional framers also enshrined the principle of dignity in several articles of the Constitution, particularly in the sections relating to fundamental rights and public freedoms. Furthermore, the inclusion of dignity in these articles does not diminish the value of its mention in the preamble, which serves as the introductory part of the Constitution and provides a framework of principles, foundations, values, ideals, and constitutional directives. As such, the preamble is considered a source for interpreting the Constitution itself, affirming that it holds the same constitutional value as the articles of the Constitution. This debate was settled by the French Constitutional Council, which ruled on the constitutional value of the preamble of the Constitution of October 27, 1946, through decision No. 44-71, considering the preamble as a reference for judicial review of the constitutionality of laws, and recognizing that the rights and freedoms it stipulates have constitutional value<sup>9</sup>.

In line with the constitutional enshrinement of human dignity, the Algerian constitutional framers introduced the term "dignity" for the first time in the 2016 Constitution. Article 27 of the 1989 Constitution was amended as follows: "The state ensures the preservation of the identity and dignity of citizens residing abroad and enhances their ties with the nation, mobilizing their contributions to the development of their country of origin."<sup>10</sup>

Additionally, Article 39 of the current Constitution emphasizes the inviolability of human dignity and prohibits any physical or moral treatment that could infringe upon human dignity<sup>11</sup>.

In the same context, and to reaffirm human dignity and physical integrity, the constitutional framers mandated that, upon the expiration of the detention period, the detainee must be given the opportunity to request a medical examination, with the detaining authority required to inform the detainee of their right to such an examination<sup>12</sup>.

Regarding freedom of expression, the Constitution grants the right to disseminate news, ideas, images, and opinions within the framework of the law, and with respect for the national values,

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<sup>6</sup> Article 10, Paragraph 4 of the 1963 Constitution.

<sup>7</sup> Second paragraph of the preamble of the Algerian Constitution for the years: 1989, 1996, 2016, 2020.

<sup>8</sup> - Constitutional Council Decision No. 94-343/344 of July 27, 1994.

<sup>9</sup> Constitutional Council Decision No. 71-44 DC of July 16, 1971, Official Journal of July 18, 1971.

<sup>10</sup> The second paragraph of Article 29, Chapter Three (State) of the Algerian Constitution of 2020.

<sup>11</sup> Article 39 of the Algerian Constitution of 2020 :

"The State ensures that the dignity of the human being is not violated.

Any physical or mental violence, or any infringement upon dignity, is prohibited.

The law punishes torture, cruel, inhuman, or degrading treatment, and human trafficking."

<sup>12</sup> Article 45 / 2, Chapter Two (Basic Rights, Freedoms, and Duties), Section One (Basic Rights and Freedoms) of the Algerian Constitution of 2020:"Upon the expiration of the detention period, a medical examination must be conducted on the detained person if requested, and they must be informed of this possibility in all cases."

religious, moral, and cultural principles. However, despite the freedom of the press, it is prohibited from using this freedom in ways that harm the dignity, freedoms, or rights of others<sup>13</sup>.

Moreover, the Constitution also guarantees the freedom of intellectual creativity in its scientific and artistic dimensions, stipulating that this freedom can only be restricted if it infringes upon the dignity of individuals, the supreme interests of the nation<sup>14</sup>, or national values and principles. The state also commits to upholding the dignity of martyrs' families<sup>15</sup>.

### **Second Section: Human Dignity as a Guiding Principle in the Formulation of Legal Rules**

The Algerian legal system did not limit itself to merely referencing human dignity in the preamble and articles of the constitution, but rather the matter evolved so that it became a fundamental feature in several other laws. Among the legal texts in which the legislator ensured the incorporation of human dignity as a guiding principle when formulating legal rules, we find references to human dignity in the Penal Code (First Subsection), in Labor Law (Second Subsection), and in the Code of Criminal Procedure (Third Subsection).

#### **First Subsection: Human Dignity in the Penal Code**

The Algerian legislator has explicitly recognized the illegitimacy of torture<sup>16</sup> during criminal investigations, whether physical or psychological, since Algeria's ratification of the Convention against Torture in 1989. Following this, the crime of torture was introduced into the Algerian Penal Code under Article 263 bis<sup>17</sup>.

Furthermore, the legislator has stipulated penalties for the crime of torture when committed by a public official who practices, incites, or orders the use of torture to extract confessions, obtain information, or for any other reason. Such an offense is punishable by imprisonment for a period ranging from 10 to 20 years, along with a fine ranging from 150,000 DZD to 800,000 DZD. If the torture precedes, accompanies, or follows a crime other than intentional murder, the penalty increases to life imprisonment<sup>18</sup>.

In addition to this, the legislator has criminalized acts of assault, which constitute the material element of crimes against bodily integrity, such as injury, beating, or administering harmful substances. Even more, the legislator has made the right to bodily integrity immune from the statute of limitations.

As the legislator has made the right to physical integrity a non-financial right, it cannot be quantified in money. However, an infringement of this right may give rise to the victim's right to compensation for the loss suffered and the gain they have missed<sup>19</sup>.

Regarding intentional acts of violence, the legislator in Article 264 of the Penal Code prescribes penalties for anyone who intentionally causes injury or performs any other violent act. The penalty for such actions ranges from 1 to 5 years of imprisonment, accompanied by a fine

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<sup>13</sup> Paragraph Six of Article 54, Chapter Two (Basic Rights, Freedoms, and Duties), Section One (Basic Rights and Freedoms) of the Algerian Constitution of 2020.

<sup>14</sup> The First and Second Paragraphs of Article 74, Chapter Two (Basic Rights, Freedoms, and Duties), Section One (Basic Rights and Freedoms) of the Algerian Constitution of 2020.

<sup>15</sup> Article 80, Chapter Two (Basic Rights, Freedoms, and Duties), Section One (Basic Rights and Freedoms) of the Algerian Constitution of 2020.

<sup>16</sup> Article 2/7 of the Rome Statute of the International Criminal Court defines torture as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person under the custody or control of the accused, but does not include pain or suffering arising only from lawful sanctions or as a part of them or resulting from them."

<sup>17</sup> Article 263 bis of Ordinance No. 66-156 dated 18 Safar 1386 (8 June 1966), which contains the Algerian Penal Code, amended and supplemented by Law No. 04-15 dated 10 November 2004, Official Gazette of Algeria, No. 71, p. 10: "Torture is defined as any act that causes severe physical or mental pain or suffering intentionally inflicted upon a person, whatever the reason may be."

<sup>18</sup> Article 263 bis 2 of Ordinance No. 66-156 dated 18 Safar 1386 (8 June 1966), which contains the Algerian Penal Code, amended and supplemented by Law No. 04-15 dated 10 November 2004, Official Gazette of Algeria, No. 71, p. 10.

<sup>19</sup> Abdul-Hay Hijazi, Introduction to the Study of Legal Sciences, Part Two, University of Kuwait, 1970, p. 214.

between 1,000 DZD and 500,000 DZD, if the violence results in illness or disability preventing work for more than 15 days. In addition to the imprisonment, the perpetrator may also be deprived of the rights outlined in Article 14 of the Penal Code for a period ranging from 1 to 5 years. If the violence results in the loss of an organ, the inability to use it, or the loss of sight in one eye, or any other permanent disability, the perpetrator faces imprisonment ranging from 5 to 10 years. If the act of violence causes death without intent to kill, the perpetrator is sentenced to imprisonment ranging from 10 to 20 years<sup>20</sup>.

Regarding human trafficking, Article 303 bis 4 of the Penal Code states that exploitation includes the prostitution of others, all forms of sexual exploitation, exploitation of others for begging, forced labor, slavery, practices similar to slavery, or the illegal removal of organs. Those guilty of human trafficking are sentenced to imprisonment from 3 to 10 years, along with a fine between 300,000 DZD and 1,000,000 DZD<sup>21</sup>.

With regard to the crime of organ trafficking and removal, the legislator imposes a penalty of imprisonment ranging from 5 to 10 years, along with a fine between 500,000 DZD and 1,000,000 DZD for anyone who removes an organ from a living person without consent in accordance with the applicable legal provisions. To maintain the dignity of the deceased<sup>22</sup>, the legislator has applied the same penalties if an organ is removed from a deceased person without adhering to the applicable legal framework<sup>23</sup>.

### **Second Subsection: Human Dignity in Labor Law**

As mentioned above in Subsection 1 of this study, the legislator has incorporated the principle of human dignity, as enshrined in the constitution, as a guiding principle that must be present when establishing the legal rules related to labor. This is reflected in **Title II** under "Rights and Duties of Workers", **Chapter I** entitled "Rights of Workers". The law stipulates the workers' rights within the framework of labor relations, including actual employment, respect for physical and moral safety, and dignity. It also includes protection from any discrimination in terms of job position based on merit and eligibility, professional training, career advancement, regular payment of wages, social services, and all benefits associated with the employment contract in a substantive manner<sup>24</sup>. Additionally, other rights linked to dignity are mentioned, such as health prevention, security, occupational medicine, and rest<sup>25</sup>.

### **Third Subsection: Human Dignity in the Code of Criminal Procedure**

As for the Algerian criminal legislator, human dignity is referenced in **Article 1** of the **Code of**

<sup>20</sup> Article 264 of Ordinance No. 66-156 dated 18 Safar 1386 (8 June 1966), which contains the Algerian Penal Code, amended and supplemented by Law No. 06-23 dated 20 December 2006, Official Gazette of Algeria, No. 84, p. 22

<sup>21</sup> Article 303 bis 4 of Ordinance No. 66-156 dated 18 Safar 1386 (8 June 1966), which contains the Algerian Penal Code, amended and supplemented.

<sup>22</sup>We point out that the Algerian legislator followed the example of Islamic law in preserving human dignity even after death. Umm al-Mu'minin Aisha (may Allah be pleased with her) reported that the Messenger of Allah (peace be upon him) said: 'Breaking the bone of the dead is like breaking it while they are alive.' (Narrated by Ahmad, Abu Dawood, and Ibn Majah, with a chain of narration in accordance with the conditions of Sahih Muslim).

This noble Hadith indicates the sanctity of not violating the dead, just as it is forbidden to violate the living. Hafidh Ibn Hajar, in his commentary on this Hadith, says: 'It is understood from this that the sanctity of a believer remains after their death, just as it was during their life.' Imam al-Tayyibi says: 'It indicates that the dead should not be dishonored, just as the living should not be dishonored.' Imam al-Baji says: 'It means that the dead have the same sanctity in death as they did in life, and that breaking their bones after death is as forbidden as breaking them during life.'"

<sup>23</sup> Article 303 of Ordinance No. 66-156 dated 18 Safar 1386 (8 June 1966), which contains the Algerian Penal Code, amended and supplemented.

<sup>24</sup> Article 05 of Algerian Law No. 90-11 concerning Labor Relations and its amendments until 1997, Official Gazette of Algeria, Issue No. 17.

<sup>25</sup> Article 06 of Algerian Law No. 90-11 concerning Labor Relations and its amendments until 1997, Official Gazette of Algeria, Issue No. 17.

**Criminal Procedure**, which states that this law is based on the principles of legality, fair trial, and respect for human dignity and rights<sup>26</sup>. The law also emphasizes in the **Chapter on Crime Investigation** that the presumption of innocence and the sanctity of private life must be respected in all circumstances<sup>27</sup>.

Furthermore, based on the aforementioned, searches and inspections of residences may not begin before **5:00 AM** or after **8:00 PM**, unless requested by the homeowner, or if calls are heard from within, or in exceptional circumstances provided for by law<sup>28</sup>.

The legislator also requires that, upon the expiration of detention periods, a medical examination must be conducted on the detained person if requested directly by the detainee, or through their lawyer or family. The medical examination must be carried out by a doctor chosen by the detainee from practicing doctors within the jurisdiction of the court. If this is not possible, a judicial police officer will appoint a doctor automatically<sup>29</sup>.

### CONCLUSION:

In conclusion to what has been previously mentioned in this research paper, in which we attempted to explore the position of human dignity in constitutional and legal texts, we deduce that the constitutional framers did not delay in addressing human dignity in the constitution. Although there is no explicit provision for it, the reference to dignity in the preamble, as a comprehensive term, even if in a secondary manner, implies that this right encompasses a set of rights enshrined in certain articles of the constitution, which further affirms the constitutionalization of human dignity.

Moreover, the presence of certain national legislations that enshrine the principle of human dignity renders this principle not a mere ordinary one, but rather a guiding principle, which compels the legislator to respect it when formulating legal provisions, especially those relating to rights and freedoms. Thus, this principle becomes an objective standard in the Constitutional Court's review of laws pertaining to rights and freedoms.

Accordingly, we propose the following:

- **First:** To dedicate at least one article in the constitution, preferably at the beginning of Chapter One titled "Fundamental Rights and Public Freedoms," in the second chapter titled "Fundamental Rights, Public Freedoms, and Duties," of the Algerian Constitution of 2020, explicitly stating human dignity and the obligation of public authorities to respect it.
- **Second:** That the Constitutional Court, in future, in its constitutional review of laws and regulations, **justifies its opinions and decisions** based on the principle of human dignity when the issue concerns rights and freedoms, thereby enabling the legislator to be alerted to the importance of this principle and its mandatory inclusion in legislative drafts and regulations relating to rights and freedoms, especially after the establishment of the mechanism for constitutional challenge, which has become a strong safeguard for protecting individual rights and freedoms.

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<sup>26</sup> Article 01 of Ordinance No. 66/155 dated 08/06/1966, containing the Code of Criminal Procedure, as amended and supplemented by Law No. 17/07 dated 27/03/2017.

<sup>27</sup> Article 11 of Ordinance No. 66/155 dated 08/06/1966, containing the Code of Criminal Procedure, as amended and supplemented by Law No. 06/22 dated 22/12/2006, and Ordinance No. 15/02 dated 23/07/2015, Official Gazette of Algeria, Issue No. 41, approved by Law No. 15/17 dated 13/12/2015.

<sup>28</sup> Article 47 of Ordinance No. 66/155 dated 08/06/1966, containing the Code of Criminal Procedure, as amended and supplemented by Law No. 82/03 dated 13/02/1982, Official Gazette of Algeria, Issue No. 49, and Ordinance No. 95/10 dated 25/02/1995, Official Gazette of Algeria, Issue No. 17, and Law No. 06/22 dated 22/12/2006.

<sup>29</sup> Article 51 Bis 1 of Ordinance No. 66/155 dated 08/06/1966, containing the Code of Criminal Procedure, as amended and supplemented by Law No. 01/08 dated 26/06/2001, and Ordinance No. 15/02 dated 23/07/2015, Official Gazette of Algeria, Issue No. 41, approved by Law No. 15/17 dated 13/12/2015.

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